



**MINISTÈRE  
DE LA JUSTICE**

*Liberté  
Égalité  
Fraternité*

Direction  
de la protection judiciaire  
de la jeunesse



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# European guide

ON THE CARE AND PROTECTION  
OF UNACCOMPANIED FOREIGN MINORS



**EUPROM PROJECT**

May 2023





Consortium member

# STATES







FRANCE



SPAIN



ITALY



SWEDEN



**This guide has been published with the financial support  
of the Justice Programme of the European Union (2014-2020).**

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The Justice Programme provides funding to support judicial cooperation in civil and criminal matters such as training to judges and other legal practitioners and effective access to justice for citizens and businesses. It contributes to the further development of a European area of justice based on the rule of law, including independence and impartiality of the judiciary, on mutual recognition, mutual trust and judicial cooperation. It is strengthening democracy, rule of law, and fundamental rights.

Associated with the Rights, Equality and Citizenship Programme 2014-2020, the Call for proposals for action grants to promote judicial cooperation in civil and criminal matters programme has set the improvement of the situation of children involved in civil proceedings, including educational support judicial proceedings for minors neglected and/or at risk.

The contents of this guide are the sole responsibility of the EUPROM project partners and do not reflect the opinion of the European Commission.

It is neither legally binding nor exhaustive.

This guide is the result of work carried out between January 2021 and February 2023 by team of experts from the Spanish, French and Italian Ministries of Justice and from three Swedish agencies (*Socialstyrelsen, Lansstyrelserna and the Swedish Gender Equality Agency*).

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# Introduction

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Every year, hundreds of thousands of migrants and asylum seekers arrive on the territory of the European Union Member States (EU), and among them, many unaccompanied foreign minors (UFMs).

The directive 2011/95/EU<sup>1</sup> defines minors as “*third-country nationals or stateless persons who are younger than eighteen years old*». UFMs are considered as “*minor who arrives on the territory of an EU Member State unaccompanied by an adult responsible for him/her, as per the law or practices of the relevant Member State, or who is left unaccompanied by such a person*”. This expression also includes “*minor who has been left unaccompanied after reaching the territory of the Member states*”.

An increase in the number of UFMs has been noted in several Member States. According to Eurostat, 23 255 asylum seekers who requested international protection within the EU were considered as UFMs in 2021, which is an increase of 72% compared to 2020. This was due to the rise in the number of minors coming from Afghanistan (12,270 in 2021 compared to 5,495 in 2020).

UFMs are a vulnerable group, with complex and varied trajectories and ensuring their effective protection is crucial. However, Member States and professionals working with these minors encounter difficulties related to the traumatic nature of their migratory path and the age of these minors. Standard reception systems for refugees and child protection systems are unable to fully address the wide range of their needs.

These issues cannot only be dealt with at national level must therefore be considered at European level. Since the Lisbon Treaty, the promotion of “*protection of children’s rights*”<sup>2</sup> has been a part of the objectives of the EU, and the best interests of the children are enshrined in the EU’s Fundamental Rights Charter.

The EU and Member States have been developing a common approach for the past few years. The European Commission prepared an “*Action plan for unaccompanied migrant children (2010-2014)*”<sup>3</sup> in order to provide concrete solutions to challenges raised by the arrival of numerous UFM on the EU territory, to respect the rights of these minors and ensure their best interests. On 24 March 2021, the first “*comprehensive EU policy for the rights of the child (2021-2024)*” was adopted and one of its objectives is to promote equality of opportunity for children exposed to the risk of poverty and social exclusion<sup>4</sup>.

## 1. The EUPROM project

The European Commission Justice Program launched in 2019 calls for projects related to legal cooperation actions in both civil and criminal matters, setting among its priority objectives, the improvement of the situation of children involved in civil proceedings, which includes the law of educational assistance dedicated to the care of minors in difficult situations.

The European Union Protection of Unaccompanied Minors (EUPROM) project is in line with these priorities. The increase of the number of UFMs in several Member States raised the question of their protection and the need for an effective cooperation within the EU to strengthen the care provided to these minors.

This extensive project intend to provide practical solutions and practical tools to Member States that will allow them to meet the challenges of welcoming and taking care of UFMs, particularly through the improvement of the existing reception measures.

It is aimed at preparing a state of play of the policies and procedures related to UFMs in each Member State of the consortium. The objective is to identify inspiring practices in the participating countries and to propose recommendations that can be considered by all EU Member States, in order to encourage coherent implementation of the law and the policies of the EU in this regard.

The consortium consists of French, Spanish, Italian, and Swedish representatives. The participation of Spain and Italy is essential owing to their geographical location, which makes these countries important points of entry and transit for accessing European territory. The French involvement is a result of its status as the point of arrival for many UFMs. France is also facing problems resulting from the unmonitored wandering of certain UFMs, and the acts of delinquency committed by some of them. Italy and Sweden have developed very different practices. Italy has implemented a specific reception for UFMs, while care and support of UFMs in Sweden is under the responsibility of the general child protection of the social services following an asylum application.

The number of UFMs in the countries of the consortium increased significantly from 2015, with an important increase in France until 2019. Due to the implementation of a more restrictive reception measures, the numbers of UFMs arriving in Sweden has decreased since 2016. The Covid-19 crisis resulted in a major reduction of arrivals in Europe between 2020 and 2021. However, the four Member States observed an increase in the number of UFM in 2022. It is partly linked to the war in Ukraine.

1. Directive 2011/95/EU of the European Parliament and the Committee of 13 December 2011 concerning standards for conditions which the third-country nationals or stateless persons must meet to receive international protection, has a uniform status for refugees or persons who may receive subsidiary protection, and the content of this protection (rework).

2. Article 2 of the Lisbon Treaty, amending the European Union treaty, the treaty founding the European Community and certain related actions, signed in Lisbon on 13 December 2007

3. Communication by the Commission to the European Parliament and the Committee - Action plan for unaccompanied migrant children (2010 – 2014) SEC(2010)534

4. Communication by the Commission to the European Parliament, the Committee, the European Economic and Social Committee, and the Regional Committee - EU policy for the rights of the child, COM/2021/142 final

Number of UFM per year	2019	2020	2021	2022
<b>Spain<sup>5</sup></b>	12 417 8,8% girls	9 030 9,7% girls	9 294 19,9% girls	11 417 16,7% girls
<b>France<sup>6</sup></b>	16 760 4,5% girls	9 524 5,8% girls	11 315 5,2% girls	14 782 6,8% girls
<b>Italy</b>	6 054 5,2% girls	7 080 3,6% girls	12 284 2,7% girls	20 089 14,9% girls
<b>Sweden<sup>7</sup></b>	902 28% girls	500 31% girls	507 25% girls	1 401 38% girls <sup>8</sup>

5. Number of UFM registered in the Registry of Unaccompanied Minors of the Ministry of the Interior.

6. Number of individuals recognised as UFM by the legal authority and notified to the national unaccompanied migrant children mission of the French ministry of justice.

7. Number of UFM who filed an application for asylum in the country.

8. Including Ukrainian minors that were granted international protection under the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (771 minors including 384 girls).

The nationality of UFM varies from one country to the other. Those who arrived in Sweden these past few years were primarily Syrian, Afghan, Moroccan and Somali, in France the majority of UFM were from Guinea, Ivory Coast, and Mali<sup>9</sup>. A significant presence of Algerian, Moroccan, and Tunisian UFM was also observed on the French, Spanish, and Italian territories. Italy has also received several UFM from Albania and Bangladesh.

## 2. Methodology

The implementation of the EUPROM project has followed a methodology pre-defined by the European Commission and stated in the Charter of Good Practices signed by experts at the start of the project.

For France, the project is led by the Directorate of Judicial Youth Protection (DPJJ) of the Ministry of Justice, which coordinates the national system of accommodation, assessment and orientation of UFM. Three experts were designated by each Member State of the consortium, in view of their expertise in the field of care and protection of UFM. They are coming from different professional backgrounds. These experts acted within the context of a participatory approach and according to a strictly balanced distribution of tasks, designed to promote cooperation. For several work-related objectives, individual preparatory works by the Member States of the consortium was required. These works were then presented to the Steering Committee enabling collective action.

The Steering Committee ensured the governance of the contents and guaranteed the progress of the project to its completion with the presence of at least one expert per Member State and one representative of Expertise France acting as the liaison between the consortium and the European Commission. Two legal officers representatives of the DPJJ were in charge of ensuring the smooth running of the project and its content. The role of the Steering Committee was to prepare and validate all main deliverables related to the project (country-sheets, launching seminar reports, study visits

reports, closing conference, validation of the European guide contents, etc.).

The EUPROM project was implemented following a multi-step procedure:

- 1. A theoretical inventory of national specificities** was prepared to define a common working framework. The participating countries then drafted a "country-sheet" specifying the terms of providing care for UFM and the difficulties encountered.
- 2. A launching seminar** allowed the members of the project to combine their country-sheets, and to obtain an initial transversal vision of the situation of UFM. The experts identified shared difficulties, inspiring practices and defined areas for improvement in the provision of care to UFM. This seminar took place through video-conference on 16 June 2021 owing to the health crisis, with the participation of around one hundred professionals.
- 3. More operational observations** were made through three **study visits** in three of the consortium Member States, with the exception of France, whose specificities were already stated during the launching seminar. These visits allowed to deepen the analysis provided in the country sheets, through field visits to structures providing care for unaccompanied minors and exchanges with the field professionals. The reports drawn up at the end of these visits provide a complete inventory of the practices of each Member State of the consortium.
- 4. A national training action** intended for about fifty professionals was organised in the four Member states. The aim was to discuss the progress of the project and to raise awareness among the participants of certain issues and problems relating to the care of UFM. A video was made by all the experts, assisted by a communications agency, and used as a support presentation.

9. In 2021, 47% of the UFM were from one of these countries. It must nevertheless be highlighted that in 2022, the percentage of Tunisian UFM (10.68%) was higher than those of UFM from Mali (9.36%).

This European guide was designed following the steps in the journey of an UFM, from their arrival on the territory, to their care, to their autonomy. Thus, the present guide summarizes the different care methods, common difficulties, inspiring practices in each of the participating member states and contains avenues for possible improvement based on all the documents drawn up during the EUPROM project.

Two consulting editors assisted the experts during the writing process. The experts discussed and validated each topic during weekly meetings.

This guide proposes recommendations for the competent national authorities and institutions.

By highlighting inspiring practices and stating the recommendations, this guide is intended to contribute to the improvement of the reception systems for UFM in the EU in order to promote their social inclusion and to encourage harmonisation of their care within Member States.

The dissemination and use of this guide shall allow professionals dealing with UFM to understand how their Spanish, French, Italian and Swedish counterparts work.

They will be able to adapt and implement at local or even national level the inspiring practices put forward and thus participate in a unified application of the law and policies of the European Union in this regard.

This guide is intended to be used by all the Member States of the European Union.

### 3. How to read the guide

The guide aims to follow the journey of an UFM. The first step is to address the findings, difficulties and challenges associated with initial assessments: identification and assessment of the minority, and then assessment of the minor's needs. As they are minors, they are by law under the obligation of being assisted by a legal representative. The issue of socio-educational care is central when it comes to minors. The vulnerability of UFM makes them particularly exposed to violence and mistreatment, along with a risk of trafficking or exploitation by criminal networks. The time spent wandering and psychological disorders aggravated by the use of psychotropic substances, are important issues that must be taken into account in order to protect them. Finally, supporting UFM towards autonomy and adulthood must be addressed in a specific manner given the challenges associated with the issue of obtaining a residence permit.

The guide is thus divided into three major categories:

- 1:** Assessing and receiving UFM in an appropriate manner (1);
- 2:** Guaranteeing adapted protection and care that respect the specific needs of UFM (2);
- 3:** Encouraging their autonomisation (3).

These nine thematic sheets that are in this guide are intended to respond to the questions that may be raised during each of these stages. Each sheet contains an overview of the common European normative framework for all EU Member States.

For each of these topics, the difficulties encountered by the participating countries are firstly identified. Further, a comparative table mentions the existing legal provisions and systems put in place in each country followed by the inspiring practices developed in the four participating countries. Finally, each sheet concludes with a list of recommendations intended for the EU Member States and professionals working with UFM.



# Assessing and identifying appropriately

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# Sheet n°1

## IDENTIFICATION AND AGE ASSESSMENT



### 1. European legal framework

#### European Union

- 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 (recast)

#### Council of Europe

- Recommendation CM/Rec(2022)22 of the Committee of Ministers to Member States on human rights principles and guidelines on age assessment in the context of migration of 14 December 2022

According to article 25 paragraph 5 of Directive 2013/32/EU, Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, they have doubts concerning the applicant's age. If doubt remains, the Member States shall assume that the applicant is a minor. This article also specifies that the medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.

Furthermore, according to the same article, the minors must be informed prior to the examination of their application for international protection, and in a language that they understand, of the possibility that their age may be determined by medical examination. The minors and their representatives must consent to a medical examination being carried out to determine the age of the minors concerned. Consequently, the authorities must give them information on the method of examination and the possible consequences of the result of the examination on their application for international protection, as well as the consequences of refusal on the part of the minor to undergo the examination. The decision to reject an application for international protection by a minor who refused to undergo a medical examination must not be based solely on that refusal. The fact that an applicant has refused to undergo a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

The new Recommendation of the Committee of Ministers of the Council of Europe to Member States on human rights principles and guidelines on age assessment in the context of migration, includes the presumption of minority for persons undergoing age assessment, and requires Member States to use multidisciplinary and evidence-based age assessment procedures. It specifies for all Member States that a medical examination for age assessment purposes should only be undertaken when reasonable doubts remain about the person's estimated age once the other measures of the procedure have been exhausted.

### 2. Observations

States face difficulties related to the proof of identity of persons claiming to be UFM, especially due to lack of identity documents or doubts about the authenticity of the documents provided. However, difficulties relating to proof of identity are marginal, stable over time and work is ongoing to reduce the number of situations in question.

Registers/files containing information on UFM present in the country are used. The data information needs to be regularly updated. It is important to stress that their purpose and uses differ from one country to another.

Age assessment is carried when there is a doubt about the age of the individual claiming to be an UFM. Personal interviews are carried out in different ways. If doubts regarding the individual age remain, national laws allow medical examinations to be carried out with the individual's consent. Although guarantees exist regarding their use and interpretation, it is still difficult to establish procedures that are scientifically satisfactory and sufficiently reliable. Consequently, great differences in age are regularly noted in the conclusions of bone tests.

In some countries, the duration and method of assessments may vary from one territory to another. These disparities can lead to tension and insecurity for the individuals assessed. They may be linked to a lack of standardisation of assessment practices across administrative entities or to the shortage of interpreters and trained professionals for conducting these interviews. A lack of doctors carrying out the medical examinations is also reported.

Furthermore, if there is any doubt about minority after the assessment, not all countries consider that this should benefit the person declaring him or herself an UFM.

### 3. Comparative table : identification and age assessment

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#### SPAIN



The National Police Force has the competence to carry out repatriation of the UFM. The minor must be accompanied by a legal representative or a professional responsible for his/her care until he/she is going back to his/her family or taken into care by the competent authorities of the country of origin.

The repatriation of UFM requires the professionals to have knowledge about the child's country of origin in order to assess whether the child's best interests are served by his or her return through reunification with his or her family or placement with the local protection services. If the repatriation of the UFM is contrary to his or her best interest, this proceeding shall not be initiated. The UFM who has sufficient discernment will have the right to be heard and listened during this procedure.

When identified by the police, information about minors are integrated in the national register of UFM. Their fingerprints are taken and kept in that file. The police conduct an initial assessment by checking the identity documents. If the person has no identity documents, the measures required to establish their identity are implemented. The person is deemed to be minor until their age is determined<sup>10</sup>. Minors are referred to the child protection services or primary reception centres<sup>11</sup>.

The Register of Unaccompanied Alien Minors (RUAM)<sup>12</sup> contains information on UFM, especially their fingerprints. This file does not include UFM in conflict with the law and cannot be used for criminal purposes. It can only be used to identify and locate UFM. Every 10 days, the autonomous communities must update the register by providing the names of the missing minors.

The register is managed by the general department of the national police force and supervised by the Public Prosecutor. The latter ensures that all public or private bodies (mainly protection centres) required to include information comply with this obligation.

The register is not public and is intended only for ministries responsible for child protection in order to develop an overall strategy and more efficient management of the resources allocated to the protection of UFM.

Age assessment is mainly carried out when people arrive without their documents or when the documents produced do not appear to be valid, or if there are reasonable doubts about their claimed age. The public prosecutor is responsible for investigating their age<sup>13</sup>. A psychological assessment may be ordered and medical examinations to determine their age are conducted with the person's consent<sup>14</sup>.

This usually consists of collecting anthropometric measurements, constitution, sexual maturational development and oral-dental examination, as well as the detection of any medical pathology that may influence bone development.

Legal aid is provided during the assessment period. The order taken by the Public Prosecutor's office about age determination is reasoned and can be subject to appeal.

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10. Article 12.4 of Organic Law no. 1/1996 of 10 January 1996 on the legal protection of minors.

11. Article 190 of Royal Decree no. 557/2011 of 20 April 2011, which approves the rules of Organic Law no. 4/2000 on rights and liberties of foreigners in Spain and their social integration.

12. Article 215 of the RMNA (RD 557/2011). The RUAM is a section of the ADEXTTRA public file, an application that contains personal data collected for administrative purposes which must be permanently recorded, subject to Organic Law 15/1999 of 13 December 1999 on data protection and its implementing regulation, itself subject to the Ministerial Decree INT/1202/2011 of 4 May 2011 which regulates the personal data files of the Ministry of the Interior, which determines the purposes and uses of the ADEXTTRA file.

13. If the person is in conflict with the law, the children's judge determines their age if there are doubts, mainly based on the person's declaration.

14. Sexual maturation tests have been prohibited since 2021.

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## FRANCE



As a prerequisite to access the child protection system, individuals who claim to be UFM's must appear before the departmental councils for assessment of their age and the presence of relatives in France<sup>15</sup>. This evaluation is a prerequisite for accessing the child protection system<sup>16</sup>. The individuals assessed are presented to the government services in the department, to provide information needed to identify them, in particular if they are known following age assessment decisions from other departments<sup>17</sup>.

The individuals are given shelter for five days by the youth welfare service of the department, prior to a social interview. If the documents submitted by the person do not appear authentic or genuine, the documents can be assessed again. When doubts remain regarding their age, the youth welfare service will inform the public prosecutor, who can decide to order a bone X-ray examination<sup>18</sup>. When the conclusions of the examinations contradict the background information and uncertainties remain regarding the claimed age, the person must be given the benefit of the doubt and be considered as a minor.

Based on all the evidence gathered, the prosecutor of the Republic entrusts temporarily the UFM to the department's child protection service and refers the children's judge. Each month, the president of the departmental council informs the State representative in the department of the date and content of the individual decisions taken following the assessment.

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## ITALY



In Italy, the police is in charge of identifying UFM's (if necessary with the support of a cultural mediator) and gathering all the information needed to carry out the initial assessment, which will be entered into a database. However, the police is allowed to take the minors' fingerprints aged over 14. Individuals claiming to be UFM's are referred to primary reception centres supervised by the municipalities.

The police examine the documents provided to identify the individual. To do so, it may request the collaboration of the diplomatic and consular authorities of the UFM's country of origin<sup>20</sup>.

An age assessment is only carried out if there is reasonable doubt about the individual's age, in particular if there are no supporting documents. The assessment is carried out by order of the Public Prosecutor's office for minors and must be carried out within 48 hours by the host municipality. It comprises a social interview followed by a psychological assessment.

If doubts remain, medical examinations may be ordered. The decision is made by the Juvenile Court at the request of the Public Prosecutor. It can be appealed.

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## SWEDEN



On arrival in the country, individuals claiming to be UFM's submit a request for asylum to the Swedish Migration Agency (SMA). An investigation is then conducted to determine whether they can remain in Sweden.

An age assessment is only carried out by the SMA if there is reasonable doubt regarding the individual's age, especially if there are no supporting documents. Any relevant information regarding the person's age is then requested from the social services and a medical examination is offered to the individual as a way to strengthen his or her claimed minority. If the doubts remain, a medical examination to determine their age may be carried out with the individual's consent.

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15. Law no. 2016-297 of 14 March 2016 on child protection, Decree no. 2019-57 of 30 January 2019 on the methods of assessment of individuals claiming to be minors and temporarily or permanently without the protection of their family, and authorising the processing of personal data of such individuals.

16. Law no. 2022-140 of 7 February 2022 on child protection prohibits departmental councils from reassessing the age of an individual who has already been assessed as an unaccompanied minor by another departmental council.

17. Except in the event of refusal by the person or if they are clearly a minor. The purpose of this file, which was introduced in 2019, is to avoid a further assessment. France has in fact been faced with difficulties, with some people assessed as adults by one departmental council, travelling to another one for another age assessment.

18. Article 388 of the French Civil Code.

19. Unless the individual claiming to be an UM states that they want to apply for international protection.

## 4. Inspiring practices

### Special Section for UFM in the Police Force – SPAIN.

A Special Section for UFM has been created in the national police force. Police officers who work have a legal or social worker training. They also receive specific training in dealing with minors. The aim of this Special Section is to identify UFM and the problems they face, in order to quickly refer them to the child protection services. The National Foreigners and Border Police informs the UFM from the moment he/she is located, in an understandable manner with an interpreter, of his/her rights in Spain as a minor and of the rights that apply to possible victims of trafficking in human beings. The result of this information will be recorded in writing.

### Multidisciplinary age assessment – ITALY

In July 2020, an age assessment protocol was developed in order to resolve the differences in practice observed in municipalities for assessing the age of individuals claiming to be UFM. This assessment is part of a multidisciplinary approach<sup>20</sup>, making it possible to take into account the physical and psychosocial needs of the minor, such as psychological, developmental, environmental, gender and sociocultural factors. The team generally comprises a paediatrician, a social worker and a psychiatrist, who interview the person. Bone tests can only be carried out as a last resort. If doubts remain after the assessment, the individual is given benefit of the doubt and deemed to be a minor.

## RECOMMENDATIONS

### Recommendation nº1 :

Establishing a common European framework for minority assessments.

### Recommendation nº2 :

Guaranteeing provisional emergency reception for individuals claiming to be UFM during the assessment of their minority.

### Recommendation nº3 :

Guaranteeing access to interpretation and developing child-friendly educational tools for assessments of individuals claiming to be UFM, available in several languages.

### Recommendation nº4 :

Guaranteeing the immediate appointment of a provisional representative to each individual claiming to be an UFM for the moment his/her minority is assessed in order to accompany and assist him/her in all administrative and judicial procedures, until a final decision is made.

### Recommendation nº5 :

Encouraging data exchange within the EU about the situation of UFM.

20. Article 5 of Law no. 47 of 7 April 2017 introducing provisions regarding measures to protect unaccompanied alien minors (known as the "Zampa Law").



# Sheet n° 2

## ASSESSMENT OF CHILDREN'S NEEDS



### 1. European legal framework

#### European Union

- Charter of Fundamental Rights of the European Union of 7 December 2000.
- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).
- 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).

Article 24 of the Charter of Fundamental Rights of the European Union stipulates 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"*<sup>21</sup>.

According to these European Regulations, the competent authorities must assess the situation of unaccompanied minors regularly (Article 24 of Directive 2013/33/EU). Member States must ensure that the needs of unaccompanied minors are duly met by the guardian or representative (Article 31.2 of Directive 2011/95/EU). Furthermore, those working with unaccompanied minors must have had and must continue to receive appropriate training concerning their needs, and are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work (Article 24 of Directive 2013/33/EU).

According to Article 31 of Recommendation CM/Rec(2022)10, public policies should encourage and facilitate the contribution to society of migrants and persons with a migrant background by:

- Investing in intercultural education and the development of skills, particularly in relation to learning a country's official language(s);
- Valorising the diversity of migrant languages as an asset to society;
- Recognising skills, qualifications and competences.

Where appropriate, intercultural integration policies can be enhanced by policies that provide targeted support for women, children, young people and individuals with specific needs.

In addition, Member States should promote the inclusion and integration of young refugees in transition to adulthood by mobilising the potential of youth work, based on holistic approaches which support their personal and social development and their intercultural competences (Recital 31 of Recommendation CM/Rec(2019)4).

### 2. Observations

The needs of minors entrusted to the child protection service are assessed in order to offer them suitable protection and appropriate care. This assessment of UFM needs varies from one country to another.

Due to the variety of their profiles a special attention must be given to their situation in order to identify risks or specific vulnerabilities requiring specific protection (traumas, exposure to certain types of violence, human trafficking networks etc.).

The way in which the needs of UFM are met varies between the administrative entities, thereby leading to unequal treatment within the same region leading to some difficulties for UFM (insufficient places in suitable accommodation facilities and number of foster families, in particular for the youngest). There are not enough medical professionals trained to accompany UFM who have experienced trauma during their migration.

Additional resources for unaccompanied minors requesting medical monitoring and/or enhanced care are necessary. While specific measures have been put in place to respond to specific issues, they remain insufficient.

21. See also article 3 of the UN Convention on the rights of child 1989

### 3. Comparative table: assessment of children's needs

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#### SPAIN



The child protection services of the autonomous communities draw up a personalised protection plan for each UFM according to their needs. They decide whether to place the minor in a centre or a foster family, and give them access to various resources (education, healthcare, social welfare system, etc.). Placement in a foster family is always preferred to placement in a centre.

Centres have been created throughout the country to meet the specific difficulties of certain minors such as UFM victims of human trafficking or addiction.

A personalised protection plan is drawn up for each UFM by the child protection service taking into consideration the needs of the child and the objectives to be achieved to ensure the child's proper development. It is for these reasons that a search for the family is carried out, if the restoration of family life is considered to be in the child's best interest and the child can return safely to their country of origin<sup>22</sup>.

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#### FRANCE



During the age assessment carried out by the child protection services, the needs of persons claiming to be UFM are also assessed. Vulnerability factors requiring special protection and specific care are highlighted. An initial assessment of health needs is also carried out and medical follow-up may be set up if necessary.

A few measures have been taken or are currently being tested, to deal with the specific problems of certain minors (human trafficking, addiction and UFM in conflict with the law).

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#### ITALY



After the identification and age assessment phase, UFM are cared for in secondary reception centres managed by the municipal social services, according to their age and specific needs, and the places available in the centres. In these centres, they receive an individual integration programme according to their background.

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#### SWEDEN



Municipal social services are responsible for conducting an individual assessment of the needs of UFM and decide on what measures are needed to meet the child's needs and on the appropriate placement for the child. Social services are also responsible for ensuring that the child receives schooling, healthcare and a legal guardian.

The organisations must create a safe environment where the child's needs are met and respected.

The reception process is based on the principle of "normalisation", which means that all children who live in Sweden must be covered by the same social care system.

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22. Article 19 de la loi organique 1/1996 du 15 janvier 1996.

## 4. Inspiring practices

### Presenting of a short information film to UFM – SWEDEN.

A short information film titled “What happens now?”<sup>23</sup> is presented to UFM who have just arrived in Sweden, available in Swedish, English and in eleven other languages (Arabic, Dari, Farsi, Kurmanji, Pashtun, Somali, Tigrinya). It is intended to inform minors about their situation and their rights in Sweden, and to introduce them to the representatives they will meet. The short film also provides an outline of the asylum application procedure and the support they will receive. After viewing it, UFM are asked to express their needs and the difficulties they face.

There are different versions of the short film depending on the type of accommodation accessible to minors. A tutorial is available for social services staff and reception facilities who must show the film. An information booklet for foster homes has also been produced. It provides more information about the asylum process and different components of the asylum procedure and the usefulness of the short film.

### Tool for individual assessment of the child’s needs (BBIC) – SWEDEN.

Municipal social services are responsible for assessing the child’s need for support and protection. A national assessment tool called the “BBIC” is used. The purpose of the BBIC is to provide a structure for assessing, planning and monitoring minors, so that they all receive equal opportunities.

The three main themes of the assessment are the child’s development, the parents’ capacity, and the family environment. With regard to child’s development, the assessment deals with physical and mental health, educational aspects, and emotions and behaviour. Important aspects of their social relationships are extensively examined (relationships with their parents, with other children and adults). The parents may take part in the investigation, even if they are not present in Sweden. Special attention is given to possible exposure to violence, abuse and/or any type of exploitation. The assessment must be conducted in a way that is suited to the specific situation of the UFM.

Depending on his/her needs, the child is placed in a foster home or in residential care with qualified staff. Some facilities are intended solely for UFM. Social services are responsible for monitoring the well-being, the development and needs of these children regularly. If the child openly or implicitly objects to his/her placement or is reluctant to receive the support offered, his/her needs are immediately reassessed in order to find a suitable alternative<sup>24</sup>.

## RECOMMENDATION

### Recommendation n°6 :

Taking into account the specific issues of UFM during the assessment of minority, with an initial assessment of their health needs.

23. <https://kunskapsguiden.se/omraden-och-teman/barn-och-unga/ensamkommande-barn-och-unga/information-for-ensamkommande-barn-och-unga/>

24. <https://www.socialstyrelsen.se/kunskapsstod-och-regler/omraden/barn-och-unga/barn-och-unga-i-socialtjansten/barns-behov-i-centrum/>



**Guaranteeing  
adapted protection  
and care that  
respect  
the specific needs  
of unaccompanied  
minors**

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# Sheet n° 3

## LEGAL REPRESENTATION



### 1. European legal framework

#### European union

- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 (Dublin III) establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.
- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing trafficking in human beings.
- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection (recast).
- 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).
- Recommendation CM/Rec(2019)11 on effective guardianship for unaccompanied and separated children in the context of migration.

#### Council of Europe

Legal representation of unaccompanied minors appears in numerous European texts. Legal representation consists of assisting and representing minors during the procedures that concern them, safeguarding their best interests and where appropriate, performing judicial acts for them<sup>25</sup>.

The Directives require Member States to quickly take the necessary measures to ensure that unaccompanied minors are represented, assisted, know their rights and respect their obligations (Article 6 of Regulation (EU) No 604/2013). Unaccompanied minors can be represented by a legal guardian or, where necessary, by an organisation responsible for their care and well-being, or by any other appropriate form of representation, in particular that resulting from legislation or a Court decision (Article 31 of Directive 2011/95/EU). Member States must take all the necessary measures to guarantee that a legal representative or a guardian is designated in order to ensure the best interest of the minor (Recital 23, Directive 2011/36/UE).

Unaccompanied minors must immediately be informed of the designation of his/her representative. Their legal representative will carry out its mission in accordance with the best interests of the child (Article 25 of Directive 2013/33/EU). The representative must therefore have necessary the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out. In connection with this representation, regular assessments must be made by the appropriate authorities, including as regards the availability of the necessary means for representing the unaccompanied minor (Article 24 of Directive 2013/33/EU).

Finally, the Committee of Ministers of the Council of Europe specifies in its Recommendation CM/Rec(2019)11 that an effective guardianship system constitutes an essential safeguard for the protection of the rights of unaccompanied children in migration and that guardians play a key role in the safeguarding of children's best interests and the exercise by these children of their rights. In addition, guardianship is critical to ensuring that State efforts to find sustainable, rights-based solutions are initiated and implemented without delay.

### 2. Observations

It is essential to appoint a legal representative to UFM before beginning any legal or administrative procedures to ensure that their rights are respected. The representative has to inform the minor of their situation, help them carry out the procedures and take part in all of the decisions that concern them.

The number of UFM's under guardianship may vary from one administrative entity to another, creating an imbalance at the national level. In some countries, not all unaccompanied minors benefit from a guardian and the process of guardianship can take some time. These findings are explained in particular by different judicial practices, each Courts being free to adopt the procedure it deems most appropriate to the specificities of its territory and in compliance with the provisions of the law.

The guardian may be an individual or a public entity, such as the child protection service. Legal guardians are voluntary individuals, it is however necessary to select, train and supervise them. Further, in some countries, the selection method and the training of guardians provided can also vary from one region to the other. It is also important for the guardian's role to be clearly defined and for the guardian to be able to work in close collaboration with all of the stakeholders supporting UFM's. The number of minors represented must be limited so that the guardians can carry out their duties correctly.

Due to the complexity of their responsibilities and sometimes inadequate remuneration, some countries face a shortage of legal guardians.

25. See also articles 12, 20 and 22 of the UN Convention on the rights of the child 1989.

### 3. Comparative table: legal representation

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#### SPAIN



As soon as UFM's are identified by the police, a legal representative must be appointed to them. The child protection service, legally responsible for the guardianship of minors in situation of neglect<sup>26</sup>, appoints an individual or institution as guardian. UFM's can also be assisted by a lawyer throughout the procedure.

As soon as an UFM is identified, the responsible child protection entity where the UFM is located must ensure their protection by deciding, among other things, which individual or institution will exercise guardianship. The law attributes guardianship to the autonomous community entity for minors in situation of neglect. For minors that are taken into care, the director of the care center or the designated person in case of a foster family can perform the usual acts of the minor's daily life. They can take care of a limited number of minors.

The State and autonomous communities can conclude agreements with NGOs, foundations and social entities dedicated to the protection of children, to allow them to exercise legal guardianship of UFM's.<sup>27</sup> Each agreement must be validated by the competent court, and indicate the number of minors over whom guardianship is exercised, the place of residence and the material resources allocated for their care.

The guardianship expires when the minor is in another autonomous community (transfer of his/her file), when he/she has left the country, or twelve months after the minor voluntarily left the protection centre and cannot be located.

In order to have access to jobs and activities involving regular contact with minors, the individual must not be registered as a sex offender<sup>28</sup>. This requirement applies to individuals wishing to be appointed as guardians.

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#### FRANCE



UFMs entrusted to the child protection service of a departmental council are generally granted emergency protection by the Children's Judge on the basis of educational assistance before being appointed a guardian. The family court judge decides on the guardianship, at the request of the public prosecutor or the reception facility, for all minors whose parents have died or been deprived of their right to exercise their parental authority.<sup>29</sup> UFM's can be placed in the care of the child protection service acting on the authority of the president of the departmental council, appointed as guardian.

Article L. 521-9 of the Code on the Entry and Residence of Foreigners and the Right of Asylum states that when an asylum application is submitted by an UFM for whom no legal representative has yet been appointed, the public prosecutor with territorial jurisdiction, who is immediately notified by the administrative authority, appoints an ad hoc administrator without delay. The ad hoc administrator assists the minor and represents him/her in administrative and legal proceedings relating to his/her asylum application.

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#### ITALY



All UFM's are appointed a legal representative, as provided for by the guardianship system established in the country.<sup>30</sup> The role of the guardian is to inform the minor about their rights, help and assist them in all of procedures (school registration, training courses, regularisation, asylum request, etc.) and to interact with any of the actors involved safeguarding their interests. The guardian also helps with the minor's integration.

Guardians are appointed on a voluntary basis. No professional requirements are needed. Guardians receive training and may be assisted by voluntary lawyers. Once their training is over, they are listed on the official judges' list in each juvenile courts.

When a guardian is appointed by the Court, an initial meeting is organised with the UFM in the presence of a cultural mediator, to establish a relationship of trust between the guardian and the minor. The guardian then contacts the minor directly in order to find out his or her situation (degree of maturity, past life, migration journey, projects etc.) and make the most appropriate decisions concerning them.

They have general duties to provide care, protection and supervision, but may perform tasks linked to the specific vulnerability of the UFM (for instance, special medical care including mental health issues or special support at school).

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26. Article 172 of the Spanish Civil Code.

27. Article 35.11 of Organic Law no. 4/2000 on the rights and freedoms of foreigners.

28. Article 57 of Organic Law no. 8/2021 on comprehensive protection of children and young persons against violence.

29. Article 390 of the French Civil Code.

30. Article 11 of the Law no. 47 of 7 April 2017 introducing provisions regarding measures to protect unaccompanied alien minors (known as the "Zampa Law").

## SWEDEN



In Sweden, minors seeking international protection and separated from their parents or other legal custodian, are appointed a legal guardian to safeguard the child's interests and legally represent them in the absence of his/her parents.

The legal guardian takes part in the process to assess the minor's needs and attends the asylum request interview. Legal guardians are voluntary individuals and are supervised by a local guardianship committee.

Another legal representative appointed to minors is the public counsel, an independent legal practitioner whose role is to support and represent him/her specifically in the asylum process.

## 4. Inspiring practices

### Training of legal guardians · ITALIE

Any individuals who wish to become legal guardians receive a training. This training is aimed at preparing them to act as an intermediary between the minors and public institutions, to ensure the minors' integration, to guarantee that they receive the necessary support achieving a suitable life project, all the while safeguarding their well-being. It is therefore essential for guardians to establish a relationship of trust with the minors and provide them with complete information about their rights and responsibilities, their reception conditions, any procedures that concern them, as well as the decisions made in their interest. They also contribute to the inclusion project of minors.

Legal guardians are trained by independent administrative authorities, responsible for general child protection (ombudsman)<sup>31</sup>. These trainings exist in 20 regions and provinces in Italy. Although the lessons have the same aims and basis, their format, content and length vary according to the regulations and programmes of the local authorities. They are given by professionals<sup>32</sup> and offer legal, psychological and public health information, as well as lessons and experience learned in the field.

The main topics covered by these training are an analysis of statistical data on migration, international and national law, health and social support, recognition of the individual needs of minors and collaboration with the actors involved. A skills test is carried out at the end of the training courses. Those who have passed the test can register on the list of guardians kept by the juvenile courts in order to be appointed.

Each region organizes courses for the training of legal guardians. For example, a call for participation in training courses was published by the Lazio region in May 2022 which was aimed at people fulfilling the legal requisites. The courses address legal framework, health issues including psychological support, relations with social services. Judges, lawyers, doctors, mediators and psychologists, participate in these trainings.

### Dissemination of publications and short films on the role of legal guardians · SUÈDE

The Swedish Association of Voluntary Community Workers (RFS)<sup>33</sup> is a non-profit organisation whose members act as guardians of UFM. The association implemented the "My Right - Your Role" project from 2016 to 2019 in order to clarify the roles between guardians and the other stakeholders working with UFM, to improve collaboration and increase the involvement of young people. The project also included aspects linked to gender.

Following the work carried out involving UFM and the actors in contact with them<sup>34</sup>, the association published two documents in 2018. The first one, entitled "My right - what must guardians of unaccompanied minors do?" is intended for UFM. It provides information about the role of guardians and tools for UFM and their guardian<sup>35</sup>. The second one, entitled "Your role - a document on the distribution of roles between the guardians of unaccompanied minors and other players dealing with unaccompanied minors" is intended for guardians and other stakeholders.

The association has also made short films for UFM who have recently arrived in Sweden. "What must a guardian for unaccompanied minors do to help me?" shows young adults learning about the role and responsibilities of guardians. Another short film mentions the situation of unaccompanied minor girls who arrive in Sweden, and the factors that guardians must take into consideration<sup>36</sup>.

## RECOMMENDATION

**Recommendation n°7 :** Encouraging the appointment of a legal guardian without delay for each UFM.

31. Currently only one region in Italy does not provide this service, which is provided instead by the national authority.

32. The lessons, which are mainly provided remotely, are given by professionals (psychologists, youth workers, social workers, migration service officials) working in public bodies (the protection authority itself, social services, health services, Ministry of the Interior) and the legal experts, owners and employees of reception centres. The trainers also include legal guardians and former UFM, to ensure a truly practical approach.

33. Skrifter - Riksförbundet frivilliga samhällsarbetare (rfs.se).

34. Both UFM and players took part in the surveys, discussion groups and interviews during the work on the documents. They all mentioned the need to clarify the roles and continue the dialogue in order to work together in the best interests of the minors.

35. This document is translated into Arabic, Dari and Tigrinya.

36. If you are a girl and new in Sweden". The film is subtitled in English and Arabic. <https://rfs.se/om-rfs/projekt/min-ratt-din-roll/filmer/>

# Sheet n° 4

## SOCIAL CARE AND EDUCATION



### 1. European legal framework

#### European Union

- Charter of Fundamental Rights of the European Union of 7 December 2000.
- 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).
- Council Recommendation (EU) 2021/1004 of 14 June 2021 establishing a European Child Guarantee

#### Council of Europe

- Convention for the Protection of Human Rights and Fundamental Freedoms known as the European Convention on Human Rights of 4 November 1950
- European Social Charter (revised) of the Council of Europe of 3 May 1996
- Recommendation CM/Rec(2019)4 of the Committee of Ministers to Member States on supporting young refugees in transition to adulthood of 24 April 2019
- Recommendation CM/Rec(2022)10 of the Committee of Ministers to Member States on multilevel policies and governance for intercultural integration of 6 April 2022

Article 2 of the Additional Protocol to the European Convention on Human Rights deals with the right to education. Under that Article, no person shall be denied the right to education<sup>37</sup>.

According to Article 17 of the European Social Charter (revised), with a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Member States undertake to take all appropriate and necessary measures designed to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need.

Article 14 of the Charter of Fundamental Rights of the European Union also specifies that everyone has the right to education and to have access to vocational and continuing training. This right includes the possibility to receive free compulsory education<sup>38</sup>.

The Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast) stipulates in Article 14 that Member States shall grant asylum seekers who are minors access to the education system under

similar conditions as nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres. Furthermore, access to the education system shall not be postponed for more than three months from the date the application for asylum was lodged by the minor or the minor's parents. Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

### 2. Observations

UFMs benefit from socio-educational care through reception, which can take several forms. Some of them are put under the care of foster families, while others are put in residential care. Some of the oldest UFMs are welcomed in structures that allow them to have an autonomy adapted to their age and guarantee appropriate educational support.

In order to meet the needs of UFMs as effectively as possible, the entities responsible for these minors must resort to inventive solutions to better their care. As a result, some have introduced new types of accommodation, and adapted trainings to provide UFMs with better educational support enabling them to be independent.

Access to appropriate social care and education is a decisive factor for the social integration and autonomy of UFMs. Their knowledge of the language of the host country may be inadequate to participate in general school education. Furthermore, most of the UFMs do not speak the language of the host country, are illiterate or do not have the required educational level.

The methods of schooling are often unsuitable for UFMs as they need more educational support and supervision in and out of the classrooms. There are not enough specialised teachers and specialised trainings.

Confronted with the new rules of the host country UFMs may therefore face a cultural shock. Their language, cultural environment, eating habits, style of clothing, codes, values or their way of interacting with others differs from the codes they previously knew and which shaped their identity.

37. See also article 28 of the UN Convention on the rights of child 1989.

38. See also articles 20, 22 and 25 of the UN Convention on the rights of child 1989.



In this context, educational support by professionals cannot easily be put in place, as the professionals may not have the necessary knowledge or a clear understanding of UFM's culture. Further, language barriers are another common challenge and make it difficult to provide the necessary educational support.

In view of all these issues, professionals have raised the need to develop specialized trainings, where intercultural dimension, transitional and transcultural components are taken into consideration. This intercultural approach aims to help and support unaccompanied minors to facilitate their integration in the host country, to understand these new codes and values and to make them actors in an environment unfamiliar to them.

### 3. Comparative table: social care and education

#### SPAIN



Every UFM taken into care has two persons of reference for its attention and care (a protection technician and the guardian). The protection technician ensures the effectiveness of all the minor's rights who is in a situation of neglect and/or risk and the search for the most suitable protection measure. He/she supervises the attention and care provided by the guardian appointed to the minor either in the form of foster care or residential care.

UFMs are entitled to education under the same conditions as any other minor, from the time they arrive in Spain, even if they do not have a residence permit. Their right to education includes free access to the State education system, support programmes to favour their integration in the education system, remedial teachers and Spanish lessons. Specific programs are established for students who present serious linguistic deficiencies or deficiencies in their basic skills or knowledge, in order to facilitate their integration in the corresponding course. The development of these programs must be simultaneous to the schooling of students in regular groups, according to the level and evolution of their learning.

Several autonomous communities offer guides on how unaccompanied minors can exercise their right to education with a presentation of the Spanish education system and the procedures for accessing it. These guides are translated in several languages. They review different situations based on the school level of the minor.

#### FRANCE



Support for UFM's takes the form of placement implemented within collective structures (homes, shared apartments) or in the home of a foster family. The departmental child welfare service coordinates social care and appoints a social worker to support the minor.

The right to education is guaranteed for everyone regardless of their nationality or their administrative legal status.

Like any other children under the age of 16, UFM benefit from compulsory schooling as provided for by article L. 131-1 of the French Education Code. For UFM's aged over 16 who wish to attend school, the State has an obligation to ensure that schooling can be provided to them.

Specific measures have been introduced for non-native UFM's speakers.

#### ITALY



The right to education is guaranteed for everyone regardless of their nationality or their administrative status. It is up to the educational institutions to introduce specific plans for UFM's.

Specific projects aimed at students with a migratory background and UFM's have been put into place, financed by the European program FAMI (Fondo Asilo Migrazioni e Integrazione), intended for migrant integration policies. Seven FAMI projects have so far been activated by the Directorate General for Students of the Ministry of Education, within the FAMI Program 2014-2020<sup>39</sup>, to which is added an additional project funded by the EU in the context of Emergency Measures.

#### SWEDEN



In Sweden, unaccompanied minors are provided with social care and support by the social services who have the responsibility to ensure that the child's needs are met also within the fields of healthcare and education. The family home or residential care home is responsible to support the minor in his/her education in absence of the parents.

All children have the right to education. Children that are in asylum process or for any other reason do not have a granted residence permit have the right to participate in education, but it is not compulsory as it is for legal residents.

39. <https://minoristranieri.istruzione.it/>

## 4. Inspiring practices

### Care programmes for UFM · SPAIN

Red Cross-Spain offers residential fostering through specific reception and residence centres, as well as a network of supervised flats and youth of the Red Cross. The socio-educational projects in an open environment are aimed to minors with difficulties staying in residential protection centres, offering them social mediation, school reinforcement, street work. Red Cross provides as well specialized care to deal with psychological problems that prevent the adaptation and social integration of migrants (both minors and adults).

Fundación Diagrama also promotes and manages residential and initial reception centres oriented for the integral care and promotion of autonomy of UFM. Additionally, this area includes 11 specialised educational care centres for children with behavioural disorders and a residential mental health centres. In these centres, UFM are oriented to therapeutic, personal, social, family, and educational specific intervention.

### Access to vocational training · SPAIN

In some autonomous communities UFM have access to vocational trainings offered by the public service for employment in the same conditions as national citizens regardless of their administrative legal status. The Occupational Schools for UFM of the Don Bosco Project Foundation (FPDB) in the Canary Islands are specialized resources that facilitate the process of insertion through training and guidance actions. They offer occupational training actions through pre-labor workshops (welding, electricity, building, maintenance), basic training actions (reading and writing in Spanish for foreigners, mathematics for life, social competence and insertion) and social and labor insertion actions (training, residential and labor promotion).

### Intercultural mediator · SPAIN

Intercultural mediators, due to their political, sociological and cultural knowledge of the UFM countries of origin, tends to facilitate communication between UFM and institutions. There is no official training of intercultural mediator, they are usually social workers or youth workers trained to interact with people from different cultures and background.

Intercultural mediators work with minors in order to have information about their personal situation and their relations with their friends and families. Their role is to help UFM overcome the difficulties and traumas related to their migratory journey. They also guide and support UFM in their administrative procedures such as their residence permit.

Intercultural mediators try to establish a relation of trust between UFM and teach them how to live together. Intercultural mediators can also carry out campaigns to facilitate relations with UFM (ex: "Impulse to live together" campaign.)

### Access to an interpreter · SPAIN

Some autonomous communities, such as the community of Madrid, have a Translators and Interpreters Service (SETI). These services are aimed to favor the educational inclusion of students with specific educational needs due to late integration. By facilitating communication between the various actors, they enable the UFM concerned and the professionals who support them to better understand the issues involved in their schooling in structures funded by the autonomous community. The application must be submitted by the school or educational service concerned.

### Solidarity foster families in a Departmental Council · FRANCE

Solidarity fostering involves a person, a couple or a family occasionally welcoming an UFM into their home on a voluntary basis, for a specific time. Their stay may last depending on the availability of the family and the will of the young person. A customised reception can also be provided to UFM (meal, an activity, a weekend or a few days).

Solidarity fostering provides educational support to the young person. The family must show empathy, an ability to listen. They must enable UFM to discover French culture to help them become socialised and participate in the local social life which favours their integration and self-esteem. This educational support facilitates UFM integration and enables them to learn the social codes. The family accompanies the minors, they can for example help UFM to do their homework, take them to a museum or help them find an apprenticeship.

This method of fostering is only offered on a voluntary basis and leads to the signing of a fostering agreement by the departmental council, the young person and the family. The young person remains under the responsibility of the departmental council.

### Day care integration centre for UFM (Paris) – Directorate of Juvenile Youth Protection · FRANCE

The challenge for the educational teams working with UFM is to maintain a relationship with them and manage to maintain their commitment over the short or medium term. Three referring professional are present every day to talk to the minors about their background and their specific needs. The objective of these professionals is to make sure they meet the needs of UFM and that these minors have access to healthcare and hygiene, to law and culture, and the acquisition of knowledge and competences.

A variety of integration activities are offered in the day care centre according to the interests and needs of unaccompanied minors (sports, photo-language, music workshop, cultural visits, DIY activities, mechanics, hairdressing). Each week, a musician leads a workshop. The use of music, song writing and self-expression is a roundabout way to talk about oneself and one's teenage concerns.

Cultural activities are particularly suitable as they provide an indirect means for professionals to get closer to the minors, without immediately tackling sensitive issues (identity, background, delinquent activities etc.). For the minors, these workshops are seen as a change in their daily life during which they can let go and be children again. They can escape from their usual identity and express themselves artistically on issues that are important to them. The activities also enable the professionals to discover their desires and tastes, which are important levers for personalising their relationship with them.

The service can follow up to 18 unaccompanied minors under civil or criminal proceedings by court order. The unaccompanied minors concerned are considered as trainees with a salary based on the number of hours they spend in the centre.

### Selection and training of families or individuals wishing to foster UFM · ITALY

The selection and training of foster families and individuals who wish to foster UFM are managed by independent and/or local authorities. As there is no national standardization, it is up to each region to supervise these trainings. The City Council of Bari, in collaboration with the GEA social cooperative also offering assistance for foster families (located in Bari) has launched the "Families without Borders" project to provide training for families that intend to foster UFM. These families are listed in a register kept by the City Council and take a training

course provided by the GEA cooperative, given by immigration professionals (doctors, cultural mediators and psychologists). After their training course is completed, they can foster UFM (who are generally aged 17 or over) following an appointment with the competent Juvenile Court. This unique project has created a precedent in the training of host families wishing to welcome and foster UFM in Italy.

#### **Learning Labs – HOME OLTREMARE Consorzio il Nodo Primary Reception Centre – Catania · ITALY**

This centre is the result of a collaboration between a non-governmental organisation and the Department of Agriculture of the University of Catania. Its purpose is to ensure that UFM can have access to vocational training. In order to achieve this purpose, different labs have been created for different jobs categories in which UFM can learn personal and vocational skills. They are also supported by social workers (educators, psychologists, mediators) who teach them the country's cultural and social codes.

These learning labs enable minors to also work with each other. One of the learning labs proposed is gardening and UFM work in the garden of the primary reception centre and in those of the city of Catania. The fruits and vegetables produced are consumed by the minors at the primary reception centre, redistributed to secondary reception centres and to charitable organisations in the region or sold on the local markets.

These labs are also providing Italian language courses every afternoon in order to quickly integrate UFM into Italian society.

Each UFM receives a Social Card (Carta Acquisti) so that they learn to handle their money. Each week, they are given grades from 1 to 3 according to certain criteria (punctuality, clothes, team work) and receive between €2.50 and €4 depending on the grade they received.

#### **Cultural mediator · ITALY**

Cultural mediators act as an intermediary between UFM and local authorities. They assist UFM from the moment they arrive in Italy, by explaining their rights, by helping them access their basic needs, and by carrying out administrative and healthcare procedures on their behalf.

Their role is to make UFM aware of the social and cultural differences of the host country; therefore cultural mediation has a crucial role in facilitating these minors integration into Italian society.

There is no legal provisions governing the cultural mediators missions, they often act on behalf of associations and non-governmental organisations.

#### **A social education workbook · SWEDEN**

The "Find Your Way" workbook is a comprehensive educational material designed to help unaccompanied minors understand Swedish society<sup>40</sup>. It is intended to be used in order to facilitate dialogue between the minor and his/her foster home or contact person at the residential care home, and covers six broad themes: Identity & development, family & relations, health, education, social interaction, and independence. In addition to the workbook, the material includes a tutorial in order to help the foster family or contact person use the material as intended. The workbook contains several practical exercises, information and some questions that can be discussed with the minor. The material has been developed by the City of Gothenburg with the support of the County Administrative Board of Västra Götaland, and is available online for free use.

## RECOMMENDATIONS

#### **Recommendation n°8 :**

Guaranteeing a quick access to supported accommodation.

#### **Recommendation n°9 :**

Guaranteeing access to schooling and trainings to UFM.

#### **Recommendation n°10 :**

Developing mentoring for UFM in order to promote their social inclusion and support their schooling.

#### **Recommendation n°11 :**

Training cultural mediators to facilitate communication and integration of UFM.

40. <https://www.informationsverige.se/sv/jag-ar-betar-med-asylosokande-och-nyanlanda/material-for-ensamkommande-barn/hitta-ratt.html>

# Sheet n° 5

## Health



### 1. European legal framework

#### European union

- Charter of Fundamental Rights of the European Union of 7 December 2000.
- 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.

#### Council of Europe

- European Social Charter (revised) of the Council of Europe of 3 May 1996.

According to paragraph 11 (Part I) of the preamble of the revised European Social Charter, everyone has the right to benefit from any measures enabling to enjoy the highest possible standard of health attainable. The Member States needs to take all the necessary and appropriate measures to ensure that children and adolescents receive the care they need (Article 24 of Charter of Fundamental Rights of the European Union)<sup>41</sup>.

Articles 17 and 19 of Directive 2013/33/EU states that Member States shall ensure that material reception conditions provide an adequate standard of living for applicants [for international protection], which guarantees their subsistence and protects their physical and mental health” and that “Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.

Regarding vulnerable persons, including unaccompanied foreign minors, Article 23 of the Directive states that the best interests of the child shall be a primary consideration for Member States which shall ensure a standard of living adequate for the minor’s physical, mental, spiritual, moral and social development.

### 2. Observations

UFMs in general have specific physical and mental health needs, due to both a precarious life situation and past experiences. As children in migration, separated from their parents and with sometimes unclear legal status and access to healthcare, they are subject to multiple health risks and vulnerabilities.

Some UFMs may be suffering from serious diseases contracted in their country of origin, during their migratory journey or because they were leaving in unhealthy conditions. These precarious health conditions may lead to considerable physical consequences for these children.

Further, some UFMs may suffer from post-traumatic stress disorder due to repeated traumatic experiences at an early age, to acts of extreme violence experienced in their country of origin or during their migration journey and even during their arrival in the country. Some of these traumas can for example be linked to war, separation from their family or a history of previous abuse, exploitation and/or dependence. The deteriorated level of care, the overcrowdedness of the reception facilities, and the length of the administrative process can create new disorders or aggravate pre-existing ones.

It is important to notice that access to healthcare by UFMs is complex, in both administrative and medical terms. The health professionals are hampered by the complexity of their situations and the lack of suitable facilities for providing appropriate care. It is therefore hard to enable continuity of care due to the difficulty of gaining access to specialised professionals, especially for mental health disorders, as monitoring is essential.

41. Voir également les articles 6, 19 et 24 de la CIDE.

### 3. Comparative table: health

#### SPAIN



UFMs have the right to access healthcare under the same conditions as any other minor, from the time they arrive in Spain.

All UFMs receive a health card. However, in some autonomous communities, in order to better their coordination, protocols have been signed between various agencies to help UFMs in obtaining their health card regardless of their medical or administrative situation.

Educational care also includes health education. UFMs are made aware of healthy diets and personal hygiene, and receive training regarding their emotional and sex life. The records of UFMs are regularly updated according to their needs, to make it easier to direct them to another centre in the event of a transfer.

#### FRANCE



UFMs have the right to access healthcare under the same conditions as any other minor, from the moment they arrive in France. There are no requirements regarding their needs or a need for a minimum period of residence.

It is up to the youth welfare services or the minor's legal representative to provide medical support and to apply for a social security coverage.

#### ITALY



All UFMs are immediately fully covered by the national health service, regardless of the status of their application for a residence permit. They have the right to access free of charge to any health public service. A detailed personal social-health record is promptly issued, filled in and regularly updated by the first reception facility, which staff may be supported in this task by cultural mediators, in terms understandable to children.

UFMs are accompanied to medical appointments by their guardian who has the responsibility of the children's well-being and awareness.

#### SWEDEN



All children in Sweden have the right to free healthcare. Asylum-seeking children have the right to the same level of health and dental care and under the same conditions as children that are Swedish citizens, in accordance to the applicable laws<sup>42</sup>.

### 4. Inspiring practices

#### Support of UFMs arriving on Spanish Territory – Canary Island · SPAIN

Minors arriving on the Spanish coast are immediately taken care of thanks to the intervention of NGOs (Red Cross, Médecins du Monde) and the support provided by the emergency services via the emergency number 112. UFMs are referred to immediate care centres and/or care centres for foreign minors. These centres provide minimal medical support, and communicate to the referral care centre a list of the minors received and their data (first and last name, date of birth or estimated age, country of origin). UFMs benefit from medical care through consultations organized based on the transmitted elements. An appointment is immediately given to conduct a health assessment and apply for an individual health card. The consultation can be organised so that the minors attend in small groups, with an interpreter. The healthcare centre professionals then draw up an action plan jointly with the youth workers on the healthcare needs of the UFM. A summary document is drawn up in collaboration with the professionals for each minor in care, covering the subjects related to health

education and the minor's needs (diet, hygiene, emotional and sexual education, etc.). A medical file is created for each minor, and must be updated to facilitate the possible transfer of the minor to another reception centre.

#### Specialised addictology unit for UFMs – Robert Debré Hospital (Paris) · FRANCE

A unit specialised in the treatment of UFMs was created in 2015 at Robert Debré Hospital. This unit is composed of an educator and a psychiatrist specialised in addictology. The aim is to allow access to treatment without forcing UFMs to stop their drug consumption.

UFMs can access this unit in two different ways. Firstly, treatment can be initiated when visiting the hospital accident & emergency (A&E) department. A medical protocol has been devised. If there is no doubt that the young person is an addict, they can be given a replacement drug to secure their care and facilitate the work of the healthcare professional. Difficulties may be linked to the consequences of withdrawal symp-

42. Act (2017:209) on health examination of children and young people who are cared for outside their own home, and Act (2008:344) on health care for asylum seekers and others.

toms and non-understanding of the French language. Training courses are also provided for A&E medical staff. In addition, healthcare workers can accompany patrols in order to understand the specificities of their needs.

Secondly, UFM's can be monitored as part of the care program provided by the youth legal protection services or the youth welfare services. The program is intended to last for two to three years. The maximum age for inclusion in this special medical unit is 16 and a half.

In this unit a multidisciplinary medical, psychological and educational care is provided. The therapy sessions deal with risk reduction through the use of replacement drugs and specific treatment for psychological trauma. Finally, video consultation can also be held and prescriptions can be sent to educational centres to avoid losing contact with the young people. The aim is to avoid long-term hospitalisation and ensure that the minor continues to receive educational care.

**The Good practices guide for the initial assessment of healthcare needs of people claiming to be minors and without the protection of their family, during the period of temporary emergency shelter · FRANCE**

This guide has been drawn up in 2022 by a multi-partner task force managed by the Directorate-General for Health and the Directorate-General for Social Cohesion, and comprising representatives of the Ministry of Health and Prevention, the Junior Minister's Office for Child Welfare, the Ministry of Justice (youth legal protection department), representatives of departmental councils, regional healthcare agencies and health workers.

One of the good practices mentioned are the need to carry out an initial assessment of healthcare needs while providing an emergency shelter. The goal of this initial assessment is for the minor to quickly have access to suitable healthcare, if necessary. This assessment must be personalised, diagnostic and preventive. Interviews must be conducted in a language understandable to the minor, with the help of a professional interpreter if needed.

This guide is intended for professionals responsible for supporting individuals who claim to be UFM's, and describes how to organise the assessment of healthcare needs and provides information about the rights of these individuals.

**A multilingual website on health, sexuality and the rights of young people (Youmo) · SWEDEN**

The Swedish Agency for Youth and Civil Society, in collaboration with the Swedish government, has created the "Youmo" multilingual website for young people from 13 to 20 years old to be informed about various issues such as their body, sexuality and health conditions. Their right to live free from violence and harassment such as forced marriage, prostitution, trafficking in human beings are also included. It provides information based on the principle of equality and entitlement to healthcare. Through this website, advice are given to improve the well-being of young people and contact details of youth organisations throughout Sweden are provided.

These information (videos and documentation) have been translated into Arabic, Dari, Somali and Tigrinya<sup>43</sup>.

**Training of professionals on the traumatic experiences suffered by minors – Save the Children · SWEDEN**

Save The Children, a non-governmental organisation (NGO) has put in place training days in order to help professionals to better understand the needs of these children who have undergone serious and traumatic events.

These training courses are inspired by the work of Australian psychologists Howard Bath and Diana Boswell, who stated that the healing process of children suffering from traumatic experiences starts with their daily environment and their contact with influential adults.

Therefore, the NGO worked with the National Agency for Education's unit responsible for access to education (*Statens skolverk*), in order to create a tailor-made training course for schools for these newly arrived minors. The programme was developed to enable each participating school to adopt their approach by taking into account the traumas suffered by these children.

These training courses include different modules based for example on healthcare, post-traumatic stress disorder, compassion, exhaustion and also includes personalised advice activities. Professionals are given a common reference framework, which can be used in their daily work to help children and young people to develop their ability to express themselves and manage their feelings and emotions. Another aim is to enable professionals to create safe environments and good relationships with the children they meet.

## RECOMMENDATIONS

**Recommendation n°12 :**

Develop multilingual information tools on physical, mental and sexual health for UFM's.

**Recommendation n°13 :**

Developing training actions for health professionals on the specificities of UFM's.

**Recommendation n°14 :**

Creating multidisciplinary care facilities for young people, with access to interpretation.

<sup>43</sup> <https://www.youmo.se>

# Sheet n° 6

## TRAFFICKING IN HUMAN BEINGS



### 1. European legal framework

#### European Union

- 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 .

#### Council of Europe

- Council of Europe Convention on action against trafficking in human beings of 16 May 2005.

The Protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, adopted in 2000, provided the first internationally accepted definition of human trafficking. This definition was used by the Council of Europe Convention on action against trafficking in human beings adopted in Warsaw in 2005, and 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.

Articles 14 and 15 of that Directive specify the obligations of Member States to implement assistance, support and protection measures for all child victims of trafficking in human beings. Article 16 specifies the obligations of Member States:

- find a durable solution based on an individual assessment of the best interests of the unaccompanied child;
- where appropriate, appoint a guardian to unaccompanied child victims of trafficking in human beings;
- in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, appoint a representative where the child is unaccompanied or separated from its family.

### 2. Observations

UFMs, due to their specific vulnerability, their precarious economic, social and administrative situation, and a lack of awareness of their rights are exposed to the risk of exploitation such as enslavement, domestic servitude, forced labour or services, forced begging, or to commit crimes.

They often live in precarious conditions, and in a violent environment. Therefore, they are usually in the grip of networks shielding them from the control of the institutions responsible for protecting and defending their rights (judicial authorities, health and educational institutions). They may also be highly mobile in different towns of Europe, and opposed to educational monitoring.

The complexity of this phenomenon and the lack of appropriate identification mechanisms make it hard to identify UFMs victims of human trafficking and start the necessary inquiries. In practice, the first contact that potential victims of human trafficking have is usually with the police, which can prevent these children from reporting their situation.

Concerning UFMs victims of human trafficking there is a lack of both specialised professionals and appropriate trainings. Professionals usually feel powerless when facing these children who keep burning the bridges they managed to create. They struggle to create a bond, to identify and implement therapeutic levers to help these minors.

Human trafficking, prostitution and especially, sexual exploitation of minors only exist because of demand from clients. Fieldwork must therefore include beyond the care provided to victims, a prevention component with potential clients.

### 3. Comparative table: trafficking in human beings

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#### SPAIN



The national action plan against trafficking in human beings aims to encourage the drawing up of protocols, manuals and multidisciplinary guidelines in order to handle the criminal investigations into all forms of human trafficking more effectively.

The Spanish law establishes a specific status for undocumented migrants (minors or not) who are victims of trafficking in human beings, from the time it is determined that there are reasonable grounds for suspecting it. It is not necessary to field a report. The following rights are granted:

- A period for recovery and reflection
- Authorisation of temporary stay.
- Sanctioning procedures shall not be initiated or, in the event that they have already been initiated, they shall be suspended for the duration of the identification process and the said period for recovery and reflection.
- The competent administrations shall ensure that victims have the necessary resources for subsistence and, if necessary, ensure their safety and protection

In keeping with the methods of territorial and administrative organisation in Spain, the autonomous communities have largely developed measures in their own legislations to protect and promote the rights of minors who are suffering from neglect and/or in threatening situations. Police units have received specific trainings in preventing and combating human trafficking, identifying the victims and supporting them.

Minor victims of human trafficking can be directed to appropriate support mechanisms provided by the local or regional authorities, or to specialised entities. There are no specific procedures for directing UFM.

Spain has a Prosecutor's Office specialized in trafficking in human beings.

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#### FRANCE



The National Action Plan for combating trafficking in human beings includes key thematic such as "protecting and supporting victims" and "creating secure and reassuring centres for minors in danger".

The Dispatch of 8 February 2021<sup>44</sup> relating to the care of minors who are victims of human trafficking, aims to extend the experimental system implemented in Paris (see below). The system was implemented within the jurisdiction of the courts of Marseille and Bobigny (specifically in the fight against child prostitution).

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#### ITALY



The national action plan for combating trafficking in human beings and severe exploitation aims to improve prevention and suppression of crime and protect the victims. In implementations of the EU directive 2011/36 concerning «the prevention and repression of trafficking in human beings and the protection of victims», the Italian Council of Ministers adopts every three years a National Action against trafficking.

The Law no. 228/2003 provides an assistance program for victims of trafficking and exploitation. It is meant to ensure transitional protection through adequate housing and care, access to health care and psychological assistance. Finally, among the standard instruments prepared for the protection of foreign victims of trafficking and serious exploitation, it is worth mentioning the Legislative Decree 286/98.

Victims can obtain a residence permit regardless of their collaboration with judicial authorities and are fully and permanently included in a support and social integration programme. This model overcomes the idea that victims' social protection must be subjected to their collaboration with the judicial authority. Therefore, it is possible for victims to obtain a residence permit and access to the connected benefits independently from their cooperation with the authorities during the investigations. By doing so, it guarantees the victim's complete social integration.

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#### SWEDEN



The national action plan to prevent prostitution and combat trafficking in human beings focus on the protection and the support of victims. This improves the efficiency of judicial action, promotes the cooperation of victims in judicial investigations and develops professionals' understanding of victims' needs. All measures must focus on the needs of the individual. Special measures are aimed at children and young people.

In Sweden it is not necessary for exploitation to take place for an act to constitute child trafficking, intent is sufficient. Concerning children, no threat, violence or deception is required for it to be considered human trafficking or human exploitation.

Sweden provides a national referral mechanism (NRM). The NRM describes the support and protection process applied in Sweden for victims of trafficking in human beings.

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44. Dispatch DP 2021/0013/FD70 of the Department of Criminal Affairs and Pardons (DACG) and the Department of Judicial Youth Protection (DPJJ) of the Ministry of Justice to the Public Prosecutors, State Prosecutors and interregional directors of the Department of Judicial Youth Protection (DPJJ)



## 4. Inspiring practices

### **The Social representative for combating trafficking in human beings · SPAIN**

In 2016, the Ministry of Security (Ministry of Interior) created the "National social representative for combating trafficking in human beings", responsible for the cooperation and coordination of the different regional social representatives. The representative ensures that all information regarding human trafficking such as national and international regulations or initiatives (social, police) are disseminated. The social representative is also responsible for the mutual exchange of information between concerned actors.

The regional social representatives are the permanent contact point for organisations and entities specialised in providing assistance for victims of human trafficking. They collaborate with them and mutually exchange information, trends and statistics. They also disseminate the coordination protocols required to help the victims and support the specialized police units.

### **Emergency service for victims of trafficking in human beings · SPAIN**

An emergency service for victims of human trafficking has been created in Spain. Victims can contact specialists 24 hours a day via an email address and a toll-free number. The information is checked and transmitted to the competent police units. The aim is to achieve a rapid intervention that ensures the safety of the potential victim and his or her access to appropriate assistance resources.

### **A secure centre for minor victims of trafficking in human beings – Koutcha · FRANCE**

The Koutcha association (founded in 2013 for understanding, informing, assessing and protecting children and young adults victims of trafficking) has created a secure and reassuring centre, in partnership with the "Fondation de France", the City of Paris and the Interministerial Mission to Protect Women against Acts of Violence and Combat Trafficking in Human Beings.

This centre provides shelter for minors aged between 13 and 18 victims of all forms of human trafficking in France. Applications for admission can also be made in cases of emergency and a helpline for professionals is available 7 days a week from 8 am to 8 pm.

The purpose of the centre is to secure young and provide comprehensive support to minors with regards to their life plan (educational, health, academic/vocational, psychological, legal and judicial support) while taking into account their specific individual background (migration journey, cultural identity, separation from their family etc.).

An educational team is trained on specific issues affecting UFM victims of trafficking in human beings (countries of origin, transit countries, specificities of the different types of human trafficking experienced, knowledge of the different violations of rights, migration journeys, acts of violence encountered etc.). The centre further provides substantial means of psychological reconstruction.

To ensure the protection of UFM, the location of the centre is kept secret. Its geographic location ensures the safety of the centre and facilitates its support missions. The centre however is close to a various schools which can facilitate UFM integration.

### **The Guide "Provide better support for minors forced to commit crimes" – Hors la Rue · FRANCE**

Hors la Rue is a French non-profit association whose purpose is to support foreign minors in danger. This association has produced a guide for all field professionals underlining the best practice available to provide better support for minors forced to commit crimes. Based on experience from the field and recommendations, the guide is aimed at comprehending the phenomenon of human trafficking. The guide provides useful tips on finding and identifying minor victims and how to support them better.

For example, in the guide behavioural recommendations are given to professionals such as being patient, persistent, responsive, inventive and how to create a bond with the UFM. Concerning UFM it is important to notice that the meetings can be challenging, as the minors are not necessarily willing to open up to the professionals and speak to them. Therefore, repeated visits enable the association to be gradually identified by the minors, and further provides a framework for the interventions.

It is always desirable to respect the minor's wishes, needs and pace and to avoid talking about their exploitation during the first meetings. It is important to identify an appropriate activity, i.e. one they will find time for.

### **A framework for removing minor victims of trafficking in human beings · FRANCE**

In Paris, a multiparty agreement was signed on 1 June 2016 (city council, prefecture, departmental council, youth legal protection department, associations) to provide personalised care for minor victims of trafficking in human beings with the support of the local partners and stakeholders concerned. The aim of this agreement is to make it easier for professionals to identify these minors and removing them from active networks by placing them in suitable facilities, and offering them medical and administrative support by trained staff.

Reports must be sent to the public prosecutor by any entity facing a situation of trafficking to the detriment of a minor (investigation services, child welfare, particularly in the context of the assessment of minority and isolation of a person declaring himself as an unaccompanied minor, PJJ services, children's judge or associations). The effectiveness of the system assumes that information circulates in real time between the different departments.

This framework was extended to the whole of France in 2021, in coordination with various stakeholders such as state prosecutors, youth welfare departments, youth legal protection department, children's judges, associations and investigative services.

### **The National Referral System for victims of trafficking · ITALY**

The National Referral System for victims of trafficking is a set of recommendations and practices aimed at guiding all the actors involved in the fight against human trafficking, in accordance with the existing human rights standards and norms.

It includes a comprehensive set of standard operating procedures (SOPs), consisting of measures aimed at guaranteeing adequate assistance to victims of trafficking.

The National Referral System is a cooperative system through which state actors fulfill their obligations to protect and promote the human rights of victims of trafficking, by coordinating their efforts through a partnership with civil society. It is primarily directed to all actors involved in the fight against trafficking who come into contact with a victim (whether presumed or recognized as such).

### **National support system against prostitution and trafficking in human beings · SWEDEN**

The Swedish Gender Equality Agency coordinates a national task force against prostitution and trafficking in human beings. It is composed of authorities and organisations involved in the process of providing support and protecting victims. An important component of its work is improving the protection of vulnerable people and increasing the legal action against perpetrators. The agency has special focus on children and young people victims of trafficking of human beings.

Regional coordinators against prostitution and trafficking in human beings are located throughout the country. They are specialised social workers employed by the municipalities. They support the authorities and social services in individual cases and provide information about prostitution, trafficking in human beings and exploitation. Some of them are specialised in dealing with cases involving minors.

### **Centres for the Defense of Children's Rights "Barnahus" · SWEDEN**

The children's rights centres established in Sweden are based on a Nordic model of multidisciplinary and inter-institutional interventions. The target group of Barnahus are children under the age of 18 exposed to violence and abuse including UFM's and victims of human trafficking. The investigation services, the judicial institution, the child protection services, the medical and mental health personnel work in close cooperation by assessing together the minor's situation and decide on the measures to be adopted. The need for therapeutic support, both short and long term, is also assessed.

## **RECOMMENDATIONS**

### **Recommendation n°15 :**

Creating Barnahus-inspired structures for UFM's victims of violence and abuse

### **Recommendation n°16 :**

Creating specialised and secure care facilities for UFM's victims of trafficking in human beings

### **Recommendation n°17 :**

Training the judicial actors and the professionals involved in the care of UFM's in identifying all forms of trafficking in human beings

# Sheet n°7

## UFMs IN CONFLICT WITH LAW



### 1. European legal framework

#### European Union

- The Charter of Fundamental Rights of the European Union (2000/C 364/01) of 7 December 2000
- Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings
- European Parliament resolution of 11 March 2021 on children's rights in view of the EU Strategy on the rights of the child (2021/2523(RSP)).

#### Council of Europe

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

Article 24 §2 of the Charter of Fundamental Rights of the European Union (2000/C 364/01) states 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<sup>45</sup>. The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice of 17 November 2010 stresses that the deprivation of liberty of unaccompanied minors, including those seeking asylum, and separated children should never be motivated or based solely on the absence of residence status.

The European Parliament Resolution of 11 March 2021 on children's rights in view of the EU Strategy on the Rights of the Child (2021/2523(RSP)) emphasises in paragraph 20, that the procedural safeguards introduced by Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, including the child's right to be heard, to be assisted by a legal representative and to be fully informed in a child-friendly manner, must be applied with a particular focus on unaccompanied minors.

### 2. Observations

Most UFMs do not commit offenses. Their immediate environment sometimes heavily influences UFMs who find themselves in conflict with the law. Exposed to situations of domestic, family violence, most of them were already living on the streets and had odd jobs to survive. The precarious living conditions are dangerous for their health and safety as some regularly suffer from numerous addictions, such as drugs and medicines. These living conditions make them more vulnerable to exploitation. Some UFMs, under the influence of various networks, are forced by violence to commit acts of delinquency such as involvement in drug trafficking, thefts and burglaries. Some of them can find themselves victims of sexual exploitation.

Establishing an educational relationship is usually very difficult, especially due to their general mistrust of institutions, their failure to attend compulsory appointments and their episodes of running away. Therefore, they need more adapted care from professionals because of their social situation and degraded physical health.

45. See also articles 3 and 40 of the UN Convention on the rights of child 1989.

### 3. Comparative table: UFM in conflict with law

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#### SPAIN



The Organic law no. 5/2000 of 12 January 2000 regulates the juvenile criminal justice system. The juvenile justice system deals with offences committed by teenagers between the ages of 14 and 18, and may exceptionally be extended to the age of 21.

When a 14-year-old minor commits an offence, the public prosecutor informs the public entity dependent on the autonomous community responsible for the care of minors in danger. Appropriate educational support aimed at preventing recidivism is also provided.

Juvenile criminal justice is based on the principles of education and socialization. Criminal proceedings are conducted by the Juvenile Judge, and involve specialized prosecutors and lawyers. The Juvenile Judge undergoes specific preliminary training, certified by a professional examination. The juvenile section of the public prosecutor office includes a multidisciplinary team (psychologist, educator, social workers specialised in mediation). Restorative justice mechanisms exist (conciliation) and are applied when the minor is aware of the act committed and apologises to the victim, who accepts it. The minor thus repairs the damage caused by carrying out a reparation activity for the benefit of the victim or society.

The technical team submit a report on the social, family and educational situation of the minor, including all relevant information. The report recommends an adapted sanction taking into account the the minor's personality.

Coercive measures may be imposed on the minor. Probation is ordered in most cases. This is a socio-educational measure, the duration of which is determined by a court decision, under the supervision of a juvenile justice professional. It provides the minor with educational support, focusing in particular on the acquisition of social codes and reintegration.

When a UFM suspected of having committed a crime is detained, whether he or she is a Spanish resident or has applied for it, the consular authorities are notified.

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#### FRANCE



In France, the general policy for matters concerning minors in conflict with the law falls within the remit of the Directorate of Criminal Matters and Pardons (DACG) and the Directorate of Judicial Youth Protection (DPJJ) for educational care.

France is characterised by the principal of dual competence of the Juvenile judge in both civil and penal matters. Therefore, the judge has jurisdiction to both protect minors in danger and to deal with minors in conflict with the law.

The juvenile criminal justice code in force since September 30<sup>th</sup>, 2021 recalls the principles of primarily educational justice and of mitigation of criminal responsibility according to the age of the minor. Minors in conflict with the law are judged by specialised jurisdictions, and subjected to specific procedure. It shortens the deadlines and establishes a simple presumption of the absence of discernment for minors under 13 years of age. The minor is always assisted by a lawyer. Juvenile justice is aimed to the educational and moral rehabilitation of the minor. Jurisdictions shall pronounce modular educational measures (which may includes placement as one of its modules). However, a sentence may be imposed if the personality of the minor over the age of 13 and the seriousness of the acts justify it. The penalties applicable to minors include community service<sup>46</sup>, the obligation to follow a course<sup>47</sup>, fines, suspended sentences, probation and imprisonment as a last resort.

The note on the situation of UFM under criminal proceedings, published on 5 September 2018 and the joint DACG-DPJJ note of 12 July 2022 on the improvement of the treatment of acts of delinquency committed by persons presenting themselves as UFM, recall the rules applicable to the criminal response to UFM offenders, in order to ensure a unified response across the country.

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#### ITALY



In Italy, minors are criminally responsible from the age of 14. Juvenile Courts have full jurisdiction over criminal offences committed by minors.

The new penitentiary system for minors, established by Legislative Decree 121/18, has provided for a wide range of alternative measures to detention, offering the possibility of residential accommodation to UFM in conflict with the law.

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46. For minors who are at least 16 years old on the day the decision is pronounced.

47. The content of the course may include citizenship, awareness of the dangers of drug use or the prevention of sexism and awareness of gender equality (article R. 131-35 of the French Penal Code).

## SWEDEN



Children aged under the age of 15 are not criminally responsible. They cannot be arrested, detained or placed in police custody. When children are under the age of 15 the entire responsibility for taking action rests with the social services.

For children aged 15–17 the responsibility is shared between social services and the judicial authorities. A child who has reached the age of 15 can be sentenced for crimes he or she committed. For children aged 15–17, there are special youth sanctions. They include youth care, youth probation and institutional youth care.

A minor cannot be placed in custody unless there are exceptional reasons to do so and it has been made clear that suitable surveillance cannot be organised.

For children aged over 15, a social investigation must be conducted by the social services, in parallel to the criminal investigation.

## 4. Inspiring practices

### Day centers for minors · SPAIN

These day centres take care of sentenced minors in application of court decisions, in particular within the framework of probation measures. These centres offer educational support, training, professional and leisure activities. Mediation, conciliation and reparation measures involving the minor and the victim can be implemented. The main objective of these activities is to make minors aware of their responsibilities and the possible consequences of their behavior, and thus to prevent recidivism. It is intended to help minors to gain maturity and improve their social skills and their relationship with their family. Multidisciplinary teams intervene and organize various workshops (literature, IT, carpentry, electricity, cooking) and psycho-pedagogical interventions (in particular conflict resolution).

### A night shelter – Hors la Rue and Aurore · FRANCE

This night shelter is based on a flexible approach system with numerous partners and actors to better adapt to these minors way of life.

This shelter has twelve places available (including a room reserved for girls). Unaccompanied minors are either placed by civil or criminal decision by the public prosecutor, or identified during patrols and placed without a judicial placement order.

The shelter has a multidisciplinary team: criminal justice youth worker, youth worker from the Paris City Council, health mediator, a nurse, and an art therapist. Daytime individual and collective activities are also proposed outside the shelter.

The aim is to enable these minors to gradually honour their medical appointments and court summonses, and to join a pathway to integration. The aim is to ensure that the minors progressively integrate into the ordinary law.

### Open educational service for UFM (Paris) – Directorate of Judicial Youth Protection · FRANCE

This service located in the Juvenile Court of Paris was established due to a significant increase in the number of UFM in conflict with the law. Recognising that care for UFM requires specific partnerships, this centre was created to facilitate ex-

changes between all the actors involved and to have specialised expertise in one place and enables the swift exchange of information between judges and educational services.

It is composed of eight educators, two heads of educational services, a psychologist, a director and a social worker. Fifty percent of educators are Arabic speakers. The job description for these positions are quite specific and the professionals are trained on specific issues such as addictions, psychological disorders, wandering or traumas related to migratory journeys.

It implements open custody measures pronounced against UFM in Paris and can work with the child welfare services of the Paris departmental council, within the framework of dual civil and criminal measures.

### Linguistic mediator – Juvenile section of the Fleury-Mérogis Prison · FRANCE

Noting and recognizing that the language barrier is an obstacle to effective support, the intervention of a linguistic mediator was thought out within the juvenile detention centre of Fleury-Mérogis (Essonne).

This linguistic mediator facilitates exchanges between unaccompanied minors and professionals by intervening during interviews and activities. Through his understanding of the language and culture of UFM, his mission is to facilitate communication and support their development. The bond of trust is created more quickly. The language mediator is known, identified by young people and professionals, and is able to intervene at any time, particularly in an emergency situation, when the state of the minors requires immediate educational intervention.

This professional provides a sociolinguistic analysis by participating in the assessment of the situation of the young person. He is able to provide detained minors with clear explanations concerning the procedures and the role of each of the actors involved having received training in this regard (educators, prison guards, medical teams, judicial institutions).

## RECOMMENDATION

### Recommendation n°18 :

Ensuring the existence of appropriate care facilities for UFM in conflict with the law



## Promoting empowerment

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# Sheet n° 8

## TRANSITION TO ADULTHOOD



### 1. European legal framework

#### European Union

- The Charter of Fundamental Rights of the European Union (2000/C 364/01).

#### Council of Europe

- Recommendation CM/Rec(2007)9 of the Committee of Ministers to Member States on life projects for unaccompanied migrant minors of 12 July 2007.
- Recommendation CM/Rec(2019)4 of the Committee of Ministers to Member States on supporting young refugees in transition to adulthood of 24 April 2019.

Article 14 of the Charter of Fundamental Rights specifies that everyone has the right to education and to have access to vocational and continuing training. Consequently, according to paragraphs 25 and 26 of Recommendation CM/Rec(2007)9 of the Council of Europe, for as long as the life project is implemented in the host country, the member state should guarantee access for the unaccompanied migrant minor to appropriate vocational training on an equal footing with nationals. The minor should also have the possibility of entering the labour market. In addition, where a minor involved in the implementation of his or her life project attains the age of majority and where he or she shows a serious commitment to their educational or vocational career and a determination to integrate in the host country, he or she should be issued with a temporary residence permit in order to complete the life project and for the time necessary to do so.

Paragraph 31 of Recommendation CM/Rec(2019)4 states that Member States should promote the inclusion and integration of young refugees in transition to adulthood by mobilising the potential of youth work, based on holistic approaches which support their personal and social development and their intercultural competences. Member States and other youth sector stakeholders are encouraged to learn more about and understand better the situation, experiences and aspirations.

### 2. Observations

Reaching majority is an important step for UFM, as it represents a change of status and marks their transition to independence. Ways of supporting UFM once they turn 18, differ from one State to another, although the monitoring and the follow-up remains necessary to ensure the success and sustainability of their integration in the host country.

Host countries agree that unaccompanied minors needs more support towards autonomy and realizing their project, however not all UFM benefit from the same support possibilities once they reach their majority.

In some countries, the transition to majority leads to end of the protection granted to minors, putting an end to the care provided in this specific context. Although there are steps to extend their protection regime, young people who do not qualify for it face difficulties in accessing housing, employment or training. While systems and programs intended for unaccompanied minors who have reached their majority exists, they are not accessible to all of them and greatly vary from one country to another.

In other countries, when UFM come of age, the situation differs between unaccompanied minors who have obtained a residence permit through asylum and those whose application for international protection has been rejected or is still in progress. Those whose situation has been regularized continue to receive care and support from social services for a better integration into the country.

### 3. Comparative table: transition to adulthood

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#### SPAIN



Reaching adulthood implies the end of care by the child protection service.

The autonomous communities have transitional mechanisms put in place to support UFM when they reach their majority, such as work or socio-professional integration programmes or assistance in finding accommodation.

Some autonomous communities provide programs aiming at caring and supporting up to the age of 23 young people who were under the care of child protection services. Young people benefit from a personalized program, which includes access to the labour market, administrative regularization, social integration and support towards autonomy and independence.

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#### FRANCE



Reaching majority results in UFM leaving the minors protection system.

The child protection services of the departments continue to take care of unaccompanied children up to the age of 21 by signing a support contract towards integration and autonomy<sup>48</sup>, called young adult contract.

The most vulnerable and least independent UFM have the possibility of being taken into care for up to the age of 25 by the child protection services in some French departments, within the framework of the extension of the "young adult contract". Young people have therefore more time to become independent and to be integrated socially and professionally in France.

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#### ITALY



Unaccompanied minors are cared for up for until the age of 18 years and 6 months by child protection services.

Unaccompanied minors who will soon reach their majority are entitled to make a request to public prosecutor's office for minors, for the child protection service to extend their care up to the age of 21.

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#### SWEDEN



UFMs benefiting from a temporary residence permit granted through asylum are considered as «unaccompanied young adults» and generally have access to continued support up to the age of 21. Once they reach the age of majority, UFM can apply for continued support by the social services of the municipalities in order to complete their secondary education.

UFMs who are still waiting for their asylum request to be processed when they come of age are under the responsibility of the Swedish National Migration Agency from the age of 18. Their application will then be treated as that of an adult. Adults with a rejected application and an active expulsion order are not eligible for either accommodation or financial support since they are expected to go back to their country of origin<sup>49</sup>.

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48. Article L. 222-5 of the French Family and Social Action Code as modified by the Law no. 2022-140 of 7 February 2022 on child protection.

49. If a young adult under the age of 20 requires compulsory care, for example due to drug addiction or a criminal activity, they remain under the responsibility of the municipal social services.



## 4. Inspiring practices

### Independence support programs · SPAIN

Some autonomous communities provide independence support programs offering care and support up to the age of 23 to these minors who were previously under the care of child protection services. These young people benefit from a personalized program, which includes access to the labour market, administrative regularization, social integration and support towards autonomy and independence.

The Federation of Organisations with Assisted Projects and Apartments (FEPA) brings together organizations that develop care projects for minors and young adults from 16 to 21 who are or have been under the care of child protection services.

The Federation has developed an on-line guide containing resources for these minors and young adults<sup>50</sup>. It gathers information on the different measures, services, procedures, rights and duties, and contact informations. This information can be filtered per autonomous community. The aim is to have a dynamic portal containing constant updated information and where information for professionals who work with these young people is also available.

### Continuation of care for UFM asylum seekers when they come of age · ITALY

UFMs asylum seekers who reach the age of 18 continue to be cared for by the child protection service until their request for international protection has been processed, which ensures that they have a stable situation throughout the procedure.

Most Italian municipalities provided for an extension of care up to the age of 21 even before the entry into force of Law No. 47 of 7 April 2017 («Zampa Law»). This results in continued social support and accommodation.

In order to give effect to the right of every minor to being taken into care, Law No. 616 of 1977 established a social service in each municipality responsible for the reception, protection and support of minors, regardless of their nationality. In carrying out their tasks, the local social services act in conjunction with NGOs and associations.

A special procedure allows UFMs to ask the public prosecutor's office for minors, via their guardian or reception centre, for the continuity of their care up to the age of 21. The requirement is for UFMs to have undertaken a social integration course, the success of which will lead to continued support<sup>51</sup>.

### Baba reception centre · SUÈDE

The Baba centre is a day reception centre<sup>52</sup> that supports UFMs aged under 25, most of whom have not been granted asylum and for various reasons have no support from public authorities such as the social services or the Swedish Migration Agency. Upon admission to the center, UFMs are assigned a mentor and together they define a suitable action plan. Individual support and legal advice are provided, so that the minor rights can be enforced and to make sure that he/she takes an informed decision about his/her future. A lawyer can help to investigate the UFM's situation and discuss the legal measures and remedies available to obtain a residence permit

The centre is also intended to improve the health and quality of life of UFMs by giving them the opportunity to socialise, and providing physical and psychosocial activities. They can sign up for conversation groups, for example on LGBTQI+ rights, creative workshops or swimming and badminton lessons etc. All of these activities are educational tools that enable their integration into the host country.

## RECOMMENDATION

### Recommendation n°19 :

Guaranteeing the continuation of educational care until effective autonomy is achieved depending on the needs of the UFM

50. [www.guiaemancipacion.org](http://www.guiaemancipacion.org)

51. Article 13 of the Law no. 47 of 7 April 2017 introducing provisions regarding measures to protect unaccompanied alien minors (known as the "Zampa Law")

52. <https://www.stadsmissionen.se/vad-vi-gor/migration-och-integration/baba-rad-och-stod-ensamkommande-barn-pa-flykt>

# Sheet n°9

## RESIDENCE PERMIT



### 1. European legal framework

#### European Union

- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 (Dublin III) establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008.
- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).
- 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).

In connection with the return and removal of unaccompanied minors, article 10 of Directive 2008/115/EC stipulates that before deciding to issue a return decision, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child. Consequently, before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

Regarding requests for international protection<sup>53</sup>, article 24 of Directive 2013/33/EU states that unaccompanied minors must be represented and assisted by a guardian. Minors must also from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:

- a) with adult relatives;
- b) with a foster family;
- c) in accommodation centres with special provisions for minors;
- d) in other accommodation suitable for minors.

To the extent possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum. Member States must start tracing as soon as possible after the submission of an application for international protection family members, siblings or relatives of the unaccompanied minor on their territory, where appropriate with the assistance from international organizations or other competent organizations, while protecting the best interests of the minor. Furthermore, article 11 of Directive 2013/33/EU stipulates that as far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

### 2. Observations

Obtaining a residence permit is an important issue for UFM, as their future in the country depends on the outcome of the decision. Administrative formalities must either be carried out before the UFM's arrival in the country or when they reach their majority. The ways and means of obtaining a residence permit vary from one legislation to another.

Usually, the permits granted to UFM, expire when they reach the age of 18. As procedures are often restrictive, it is necessary to ensure that the UFM's administrative documents are in order by the time they legally come of age in the country.

It is worth noticing that having been taken into care can give the right of residence to UFM. The procedure can be simplified for UFM who have obtained a residence permit during their minority, in the countries that issue them. UFM who have been taken into care by the child protection services for a long period of time may find it easier to obtain a residence permit as having been taken into care may entitle these minors to a residence permit.

Some difficulties have been found such as administrative delays, divergent practices between competent authorities, different legal frameworks and rules from one country to another. These difficulties and failure to obtain a residence permit create a sense of loss for the professional that accompanied them and participated to their integration. It can be challenging for the social integration of those minors in the host country.

An identified problem in this context is UFM that go missing either after their asylum request has been rejected or even before the application request has been processed.

53. See also article 22 of the UN Convention on the rights of child 1989.

### 3. Comparative table: residence permit

#### SPAIN



Every UFM under the care of the protection services has the right to obtain a residence permit within three months of arrival. The procedure for obtaining a residence permit and a work permit is simplified (up to the age of 16). The permit issued is valid for two years, and can be renewed for a period of three years during their minority.

Since 2021, residents permit granted to UFM's entitles them to work from the age of 16, without it being necessary to carry out additional administrative procedures. The residence permit mentions the right to work.

The procedure for repatriation is implemented when, according to the information obtained, this solution is in the best interest of the minor, whether it is to hand him/her over to his/her family or to the local child protection services.

UFMs may apply for asylum. International protection must be applied to within a month of entry into the country or from the time when the events justifying the application occur. Immediate steps are taken to ensure that the minor's legal representative acts on his/her behalf and assists him/her during the procedure.

A new regulation has been implemented since November 2021<sup>54</sup>. It aims to simplify the regularisation process for UFM's and to prevent them from being in an irregular situation when they reach their majority. It allows them easier access to the labour market and facilitate the renewal of the residence permit obtained during their minority when they reach the age of 18. These changes preserve the investment made in the training and integration of UFM's by the child protection services.

From the age of 18 until the age of 23, holders of a residence permit obtained during their minority are entitled to extend its validity up to two years. This renewal is conditioned on having made integration efforts and having a minimum monthly income, which may correspond to the minimum subsistence income<sup>55</sup>. This is a social benefit whose objective is to encourage active job seeking and which is cumulated with a salary in a degressive manner.

UFMs who reach majority without a permit may be granted a two-year residence permit for extraordinary reasons<sup>56</sup>. This residence permit can be extended for two more years, with permission to work. In this case, the person must provide documents proving his/her identity and have a clean criminal record. The child protection services that accompanied the person must also demonstrate efforts to integrate him/her into society. Finally, the person must have a sufficient monthly income<sup>57</sup>.

#### FRANCE



UFMs do not have an irregular situation on the territory due to their minority and are not obliged to hold a residence permit before the age of 18. The legislation on foreigners does not apply to them. They have the same rights as French minors. In order to guarantee continuity of rights, a ministerial instruction issued in 2020 requires the services of the departmental councils and the prefectures to organise early examination of applications for residence permits from UFM's, so as to avoid interruptions in their rights while they are engaged in a training programme or working life. In addition, UFM's entrusted to child welfare before the age of 16 are automatically entitled to a residence permit for «private and family life», which can be issued without waiting until they reach the age of majority. Special arrangements are put in place before they reach the age of majority to try to resolve difficulties linked to civil status, which is deficient in some of the countries of origin of these minors. In France, 94% of UFM's obtain a residence permit when they reach the age of majority.

UFMs have the right to request for international protection. If their request is accepted, they are granted a residence permit valid for four (subsidiary protection, protection for stateless persons) or ten years (asylum), depending on the type of protection<sup>58</sup>.

#### ITALY



UFMs are entitled to remain in Italy until their majority and cannot be expelled from the country. They have the same rights as any Italian minors. Their right of residence enables them to obtain a valid permit while they are minors. Once they legally come of age 18, they must regularise their administrative situation<sup>59</sup>.

When they come of age, UFM's can request to convert the permit they obtained while they were minors into a residence permit for study or work purposes or to ensure the continuation of a specific support plan. The Ministry of Interior must issue a formal opinion on the integration level of the minor, indicating whether the minor has lived in Italy for less than three years<sup>60</sup>.

UFMs can submit a asylum request before a Special Commission. If the request is denied, the minor could appeal before a specialized judge (Special Section for Migration in Civil Courts). If the Commission or the judge grants asylum, the minor will obtain a residence permit.

54. Royal Decree no. 903/2021 of 19 October 2021, modifying the Regulation of Organic Law no. 4/2000 on rights and liberties of foreigners in Spain and their social integration, following its reform by Organic Law no. 2/2009, approved by Royal Decree no. 557/2011 of 20 April 2011.

55. This social benefit is regulated by Royal Decree no. 20/2020 of 29 May 2020. It is intended to avoid the risk of poverty and social exclusion for individuals living alone or cohabiting without a sufficient income to cover their basic needs.

56. Article 198 of Royal Decree no. 903/2021 of 19 October 2021.

57. The minimum survival income, a salary or the fact of being involved in a social programme provided by a private or public institution is regarded as a sufficient income.

58. Articles L. 424-1 to L. 424-21, and L. 561-1 of the Code of entry and residence of foreigners and the right of asylum

59. Law no. 47 of 7 April 2017 introducing provisions regarding measures to protect unaccompanied alien minors (known as the "Zampa Law"); Legislative decree no. 142/2015.

60. Legislative decree no. 286/1998.

## SWEDEN



In Sweden, UFM's apply for asylum as a way to legalise their stay as non-residents. If asylum is granted, UFM's are given a temporary residence permit depending on the protection status obtained.

In the case of a definitive rejection of the asylum request, the UFM remains in the care of the social services until a judgement is pronounced to expel them from the country and enforced by the authorities. As long as the person is a minor, special requirements must be met regarding organised reception in the country of expulsion.

## 4. Inspiring practices

### Child-friendly information tools about asylum · SWEDEN

To prepare asylum-seeking UFM's to the possible rejection of their application, the municipality of Strömsund initiated a project aimed at developing a working method for professionals on how to approach this issue by strengthening dialogue with the minor. The project included the development of a workbook for newly arrived children in Sweden and an interactive map suitable as a tool when giving information to children about the asylum-seeking and return process. The project was conducted in collaboration with the Swedish Migration Agency and the County Administrative Board of Jämtland, and was funded by the EU through the Asylum, Migration and Integration Fund (AMIF)<sup>61</sup>.

The Swedish Migration Agency also developed a phone-app (*Migrationsverket Stories*) that regroups information about the asylum process. It is child-friendly and suitable to minors from the age of seven. UFM's can obtain information about their rights as asylum seekers. Information is available in several languages including English, Arabic, Somali, Persian and Albanian<sup>62</sup>.

## RECOMMENDATIONS

### Recommendation n° 20 :

Safeguarding the right to seek asylum and to a child-friendly asylum process, and the right to child protection regardless of asylum status.

### Recommendation n° 21 :

Securing the transition to majority for UFM's under care by promoting access to simplified procedures to grant a residence permit.

61. <https://www.begripligt.nu/in-english/>

62. <https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Children-seeking-asylum.html>

# Recommendations



As a preliminary point, the experts emphasise that all procedures with minors must be carried out in accordance with three principles:

- **Adapting the procedure to the age of the minor**
- **Informing the minor in all circumstances;**
- **Hearing the minor and obtaining his or her consent.**

The recommendations listed in this guide are based on the common reflexion of the national experts involved in the EUPROM project. They were made in accordance with the national provisions and are non-binding.

These recommendations are aimed to inspire Member States as well as professionals who wish to improve the care and protection of UFM.

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# Assessing and identifying appropriately

## Sheet n°1

### IDENTIFICATION AND AGE ASSESSMENT

#### RECOMMENDATION N°1

##### **Establishing a common european framework on minority assessments**

The experts consider that it would be appropriate to create European standards on good practice on minority assessment in order to harmonise practices throughout the EU. In this context, they consider it necessary to provide common training for national assessment actors. Finally, the adoption of a single framework appears necessary. This will involve:

- excluding the use of methods that have not been scientifically proven or are unreliable from a scientific point of view, as well as those that undermine the dignity of the individual, in accordance with the recommendations of the Council of Europe in this regard. No medical procedure shall be carried out without the minor's consent ;
- promoting assessment based on a range of indicators, not on the physical appearance of the individuals claiming to be an UFM.

#### RECOMMENDATION N° 2

##### **Guaranteeing provisional emergency reception for individuals claiming to be UFM's during the assessment of their minority**

The experts consider it is necessary to provide provisional emergency accommodation to young persons claiming to be UFM's before and while their minority is being assessed. The psychological safety of UFM's in a secure accommodation is an essential prerequisite for carrying out a reliable assessment in accordance with the rights of the child as the precariousness associated with wandering is likely to affect the accuracy of the assessment.

#### RECOMMENDATION N° 3

##### **Guaranteeing access to interpretation and developing child-friendly educational tools for assessments of individuals claiming to be an UFM, available in several languages**

Access to information is a prerequisite for carrying out a proper assessment. The individual claiming to be an UFM must be able to understand the information provided orally through access to a child-friendly interpretation in a language that they can reasonably be expected to understand. In addition, the experts consider it appropriate to develop child-friendly educational tools (written documents, drawings, short films) available in several languages. The selection of the languages must depend on the nationalities of the UFM's arriving in each country.

#### RECOMMENDATION N° 4

##### **Guaranteeing the immediate appointment of a provisional representative to each individual claiming to be an UFM for the moment his/her minority is assessed in order to accompany and assist him/her in all administrative and judicial procedures, until a final decision is made**

In order for them to have access to the law and fully understand the issues, the experts consider essential that a representative be appointed on a provisional basis for the duration of the assessment procedure in order to accompany the person declaring him/herself to be an UFM through all the administrative and legal procedures until a definitive decision is taken.

#### RECOMMENDATION N° 5

##### **Encouraging data exchange within the EU about the situation of UFM**

Several Member States have already developed national files to simplify the assessment of individuals of non-EU nationality declaring to be minors. The experts consider appropriate to strengthen communication and to facilitate the exchange of information on these files between Member States in order to improve the care of UFM's, particularly when they leave one country for another. The aim is to avoid the loss of information on the minor's social and family situation. The experts would like to stress that under no circumstances should these files be used for criminal purposes.

## Sheet n° 2

### ASSESSMENT OF CHILDREN'S NEEDS

#### RECOMMENDATION N° 6

##### **Taking into account the specific issues of UFM's during the minority assessment, with an initial assessment of their health needs**

The experts recommend that a multidisciplinary team carry out an initial assessment of the health needs of UFM's. The difficulties identified in the context of drafting this guide (multiple traumas, exposure to abuse and violence, wandering, risk of exploitation, poly-drug use) justify appropriate medical care from the start of the educational process. Delaying care for any reason could aggravate the pre-existing disorders of these minors.

## Guaranteeing adapted protection and care that respect the specific needs of unaccompanied minors

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## Sheet n° 3

### LEGAL REPRESENTATION

#### RECOMMENDATION N° 7

##### **Encouraging the appointment of a legal guardian without delay for each UFM**

The experts noted that the appointment of a legal representative to a UFM can be subjected to delays. As UFM's are, by definition, separated from their legal representatives, it is essential that a legal guardian is appointed to them without delay. This swift appointment is likely to facilitate socio-educational care, and thus limit the risk of aggravating the pre-existing difficulties of these minors.

## Sheet n° 4

### SOCIAL CARE AND EDUCATION

#### RECOMMENDATION N° 8

##### **Guaranteeing a swift access to an appropriate care**

The experts stress that unaccompanied minors need access to accommodation offering appropriate socio-educational care. Providing an appropriate care to these minors needs to be done as quickly as possible after their arrival on European Union territory or after their first contact with the authorities.

#### RECOMMENDATION N° 9

##### **Guaranteeing access to schooling and trainings to UFM**

The experts wish to emphasise their commitment to the effective implementation of schooling or training from the start of the socio-educational care. Therefore, level tests should be carried out immediately. The experts consider that developing specialised tools to enable effective and appropriate schooling and training arrangements is essential.

#### RECOMMENDATION N° 10

##### **Developing mentoring for UFM in order to promote their social inclusion and support their schooling**

The experts recommend, based on the observations made, the development of mentoring and support systems for unaccompanied minors. These mechanisms, which must be based on the voluntary participation of members of the civil society (socially integrated peers, supportive families, etc.) should be encouraged insofar as that they promote the social and educational integration of UFM receiving socio-educational care.

#### RECOMMENDATION N° 11

##### **Training cultural mediators to facilitate communication and integration of UFM**

The observations made during the course of this project have established the undeniable usefulness of intercultural mediation mechanisms to promote the integration of UFM. It was observed that the language barrier and cultural differences are an obstacle to effective educational support. These mediators, thanks to the support offered (schooling/training, health, administrative procedures), enable UFM to overcome the difficulties they encounter in the host country and, consequently, to strengthen their integration. The development of harmonised training courses based on a European reference framework should be promoted.

## Sheet n° 5

### HEALTH

#### RECOMMENDATION N° 12

##### **Develop multilingual information tools on physical, mental and sexual health for UFM**

The implementation of information and prevention tools for UFM is essential. While the usefulness of such tools for adolescents is no longer in question, the specificities of the situation of UFM linked to the polytrauma observed, particularly at the psychological level, and the cultural differences, justify the need for a specific prevention action. In this sense, the development and dissemination of specific tools (written documents, audio presentations, short films) would be useful to all stakeholders, minors and professionals.

#### RECOMMENDATION N° 13

##### **Developing training actions for health professionals on the specificities of UFM**

The specificities described in the guide (polytrauma and cultural specificities) justify the implementation of training actions specifically dedicated to health professionals dealing with UFM.

#### RECOMMENDATION N° 14

##### **Creating care facilities for young people based on multidisciplinary care, with access to interpretation**

The experts noted that the structures or care protocols specialising in the medical care of UFM produced concrete and positive results. These specialised facilities allow full consideration of all the health needs of unaccompanied minors, taking into account their specificities, with the presence of interpreters. The experts believe that the care offered in these facilities should be multidisciplinary. Further, these structures enable unaccompanied minors to identify a single place where they can receive appropriate medical, psychological and even educational follow-up. The work carried out must allow for an individualised support in connection with the diagnosed issues (psychological issues linked to a history of violence and abuse, victims of trafficking in human beings, addictions).



## Sheet n°6

### TRAFFICKING IN HUMAN BEINGS

#### RECOMMENDATION N° 15

##### **Creating barnahus-inspired structures for UFM victims of violence and abuse**

The experts consider appropriate to set up care facilities for minors who are victims of violence and abuse, particularly in connection with trafficking in human beings, based on the Nordic Barnahus model. The aim is to offer these minors comprehensive care that respects their rights and is adapted to their needs in order to improve their situation for the better.

#### RECOMMENDATION N° 16

##### **Creating specialised and secure care facilities for UFM victims of trafficking in human beings**

The experts unreservedly recommends the creation of care facilities dedicated to the reception of minors, including UFM, who are victims of human trafficking, where professionals are specifically trained on the reception of UFM victims of trafficking. By providing personalised support and comprehensive educational assistance, these facilities will promote the social and professional integration of minors victims of trafficking, by offering them individualised attention tailored to their specific needs. The experts encourage the implementation of special precautions to ensure the safety of such structures (chosen geographical location, secret location).

Further, the question of geographical and numerical remoteness must also be addressed, and the experts recommend the development of harmonised national protocols to enable the development of such structures, which could, if needed, be specialised (for example UFM who are victims of sexual exploitation).

#### RECOMMENDATION N° 17

##### **Training the judicial actors and the professionals involved in the care of UFM in identifying all forms of trafficking in human beings**

The issue of identifying all forms of trafficking in human beings is essential. The transnational nature of these networks calls for a harmonised European response. The training of professionals in these issues is therefore critical. The experts recommend the development of a common European response amongst all actors (justice, investigation services, social services, schools, health professionals) in order to better identify potential victims of trafficking, to better receive, guide and support them. The development of partnerships between professionals should also be encouraged.

## Sheet n°7

### UFM IN CONFLICT WITH LAW

#### RECOMMENDATION N° 18

##### **Ensuring the existence of appropriate care facilities for UFM in conflict with the law**

Institutions where several professionals (educators, mediators, health professionals, legal experts) work together in the same place enable UFM in conflict with the law to gradually take part of the integration process. This multi-stakeholder approach will likely encourage the development of an educational link between professionals and minors, which is essential for their integration.

The experts recommend the creation of social/educational services adapted in the care of UFM in conflict with the law. The presence of professionals who speak several languages understood by the UFM appears essential. The designation of a referent for each minor is also crucial. The support provided must be individualised in order to better connect with the UFM. Reaching out should be understood as an approach that breaks with the idea that social intervention should systematically follow an expressed request<sup>63</sup>. In this respect, outreach work has proven to be effective.

The experts would like to stress that some UFM in conflict with the law, can also be victims of trafficking making the need to find an appropriate response essential. The experts recommend that the status of victim of trafficking, when appropriate, be taken into account in the judicial response.

63. Definition given by the special working group set up by the French Ministry of Health and Solidarity as part of the national strategy to tackle poverty

# Promoting empowerment

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## Sheet n° 8

### TRANSITION TO ADULthood

#### RECOMMENDATION N° 19

##### **Guaranteeing the continuation of educational care until effective autonomy is achieved depending on the needs of the UFM**

Like any other minors, UFM are rarely autonomous once they reach their majority. In the experts' view, the continuation of social/educational support until the age of 21, or even 25, in order to guarantee the socio-professional integration of minors and to encourage their gradual autonomy is necessary. The experts encourage the development of local protocols bringing together the actors concerned, in order to better support young adults' access to independence. This support should be individualised and modulated according to the needs of young adults. Promoting UFM autonomy must involve support in administrative procedures and support towards financial independence (vocational training, personal bank account).

## Sheet n° 9

### RESIDENCE PERMIT

#### RECOMMENDATION N° 20

##### **Safeguarding the right to seek asylum and to a child friendly asylum process, and the right to child protection regardless of asylum status**

Noting the existence of significant national differences with regard to the submission of asylum applications by unaccompanied minors, the experts recommend to facilitate the information provided to minors about their right to file an asylum application and the procedure to follow. The work carried out by the European Union Agency for Asylum (information materials, training) should be taken into account in this context. These procedures must be adapted to minors and take into account their best interests. The right to appropriate legal representation must also be guaranteed. Unaccompanied minors must also benefit from an adapted care whether they seek asylum or not.

#### RECOMMENDATION N° 21

##### **Securing the transition to majority for UFM under care by promoting access to simplified procedures to grant a residence permit**

Access to simplified procedures enabling to grant a residence permit should be encouraged. In view of the best interest of minors and the undeniable contribution to society made by young adults who have received trainings and have benefited from an appropriate and individualised care, the experts support the existence of national legislation providing for alternatives ways for obtaining a residence permit other than the ones based on international protection and asylum procedures. It is essential to consider other possibilities for these adults to obtain work and residence permits, the experts consider it appropriate to facilitate access to a residence permit for young adults initially accepted as unaccompanied minors and who are engaged in a professional integration program or are already professionally integrated in the host country.

# Appendix

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## European Union protection of unaccompanied minors “EUPROM”

### Charter of good practices

#### I) Framework of the project

##### A. Partners and work organization

###### i) The partners

The EUPROM project is composed of four partner countries: France (Ministry of Justice, Directorate of Judicial Child Protection), Italy (Ministry of Justice), Spain (Ministry of Inclusion, Social Security and Migration) and Sweden through three national agencies (National Board of Health and Welfare, County administrative Board Gävleborg and Sweden Agency of Gender Equality).

The French Ministry of Justice and more particularly the Directorate of Judicial Child Protection coordinates the project as the project piloting country.

Mandated by the French Ministry of Justice, Expertise France will ensure the administrative, logistical and financial monitoring of the project throughout its duration.

###### ii) The Steering Committee

The experts of the project will have to guarantee the project efficient execution through a Steering Committee.

The Steering Committee ensures the governance of the project content and guarantees the progress of the project. The role of the Steering Committee will also be to develop and validate all the main deliverables related to the project.

The Steering committee will be composed of at least one expert per partner State.

In order to facilitate the organization and preparation of the project, the International Officers of the Directorate of Judicial Child Protection and the EUPROM Task Officer from Expertise France are also to participate in the Steering Committee meetings.

##### B. The aim and the objectives of the project

The number of unaccompanied foreign minors has significantly increased during these five past years all over Europe. The EUPROM project aims at deepening the knowledge of policies regarding unaccompanied foreign minors within the European Union and at improving the care of these children in migration with the development of European common good practices.

As the project will have a direct impact on the rights of minors, the objectives of the above-mentioned project are in line with the recommendations of the EU institutions on the situation of children in migration





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as well as the right to child protection provided for by the Charter of Fundamental Rights of the European Union as well as by the United Nations Convention on the Rights of the Child.

i. Identifying the common needs

The partners will first have to make an inventory of their specificities in the care of unaccompanied minors and agree on a common framework for the project.

They will then have to identify common difficulties and good practices and define areas for improvement in the care of unaccompanied minors.

Partners will then have to provide in their own country training actions for child protection professionals in the light of the theoretical and practical information gathered.

Partners will then have to synthesize all the elements of the project in a European guide and ensure its dissemination.

ii. Guidelines at national and European level

During the last part of the project, the partners will formulate guidelines aiming at improving the care of unaccompanied foreign minors. These guidelines will be listed in a European guide and will be addressed to both the European Commission and the European partner countries. Wherever possible, these guidelines will be shared on a wider scale. These guidelines will aim to improve the care of unaccompanied minors.

At the end of the project, the professionals should have a better knowledge of the methods of care in the member countries of the consortium and, ultimately, of the migratory path of unaccompanied foreign minors.

**C. Duration of the project**

The project officially started at beginning of January 2021 and is to be terminated at the end of December 2022. However, due to the health crisis, the partners might be obligated to delay the work.

**II. Calendar**

As a first step, the four member states will each draw up in their native language, a short “country fact sheet” specifying their juvenile justice system, the difficulties encountered in the care of unaccompanied foreign minors and the modalities of their treatment.

In a second step, a two-day launching seminar will allow EUPROM project members to share country specificities, acquire a first cross-cutting view of the situation of unaccompanied minors within the consortium. The first day of the launching seminar will take place on 21<sup>st</sup> of April 2021 via videoconference due to the health crisis.





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As France is not to carry out a study visit, the French specificities regarding the care of unaccompanied minors will be highlighted during the second part of the launching seminar that will be organized in June via videoconference due to the health crisis.

In a third step, a study visit will be carried out in each member state of the consortium. The study visits will be organized in Italy, Spain and Sweden between October 2021 and January 2022 (in the countries or via videoconference depending on the development of the health crisis). The order of the study visits will be determined by the Steering Committee.

In a fourth step, each member state of the consortium will organize training actions for professionals in the field of educational care dealing with unaccompanied minors. The training actions will be organized by each Member States and are to be completed by June 2022.

Finally, in a fifth step, a European guide regarding the care of unaccompanied minors summarizing and analyzing all the elements of the project will be drafted and presented at a closing conference in Paris in December 2022.

### III. The methodology adopted

*Partners are sharing a common ethical position during all the steps of the project.*

#### A. The questionnaires

Throughout the project, two questionnaires are to be transmitted to the members of the consortium. The first questionnaire was transmitted in February 2021 and the answers allowed to identify the partners' expectations within the framework of the project.

The second questionnaire will be provided at the end to ensure that the project has met the partners' expectations.

#### B. Format of study visits

The study visits will take place in three partner countries (Italy, Spain and Sweden), for a period of three days per study visits. The study visits will be organized in English by the host state. The host country will freely define the content of the study visit program. However, a draft of the study visit programs will have to be submitted to the Steering Committee sufficiently in advance for information and comments.

The health crisis does not able to foresee the possibility of travelling to each member state for the study visits. Two options are to be considered by the partners: ability to travel to the host country and inability to travel to the host country:

- i) Ability for the experts to travel to the host country

The first two days of the study visits will be devoted to the investigation phase, during which the experts will visit appropriate facilities and meet with professionals involved with the care of unaccompanied minors. The list of speakers, people to be interviewed or institutions and structures to be visited will be defined by each host country and submitted to the Steering Committee beforehand.





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During those study visits, interpretation services will be provided in English and in the language of the host country. The expenses will be borne by the project coordinator, Expertise France, after requesting quotations from three service providers.

A Steering Committee will be organized the third day. It will aim to present the findings and prepare a report of the visit.

- ii) Unability for the experts to travel to the host country

Each host country will organize a two-day presentation/discussions/workshops via videoconference (Webinar) in English and in the language of the host country.

The list of speakers, people to be interviewed or institutions and facilities to be visited will be defined by each host country and submitted to the Steering Committee for information.

A Steering Committee will be organized the third day. It will aim to present the findings and prepare a report based on the presentations, the discussions and/or the workshops organized via videoconference.

### C. Training actions

*The partners highlight the necessity of a joint work regarding the content of the different trainings.*

Each member state of the consortium will organize training actions for fifty professionals in the field of educational care dealing with unaccompanied minors. The host country will have the possibility to invite participants from their own country to those training actions.

The partners agree that in case of inability to travel due to the health crisis, the list of fifty participants can be extended as the training actions will be organized via videoconference.

The list of people or institutions, which will participate to the training actions, will be defined by each host country.

The training actions will be organized in the language of the host country as the experts will not assist to the training actions. However, the program of the training actions has to be submitted in English for information to the Steering Committee sufficiently in advance.

A video will also be produced to serve as a communication tool during these training actions. This video, intended to visually support the training actions and subtitled in all the four languages, will be provided by Expertise France. The content of the video will be determined by the Steering Committee.

### D. The final guide

A European guide to the care of unaccompanied minors summarizing all the elements of the project will be drafted by the partners and a consultant will be hired by Expertise France to assist in the writing of the final guide. The Steering Committee will be responsible for the content.

### E. The closing conference

The final guide will be presented during the closing conference. The conference will be aimed at presenting the outcome of the project and in particular the identified guidelines. The closing conference is to be held in Paris at the end of year 2022.





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#### IV. Axes of analysis

The partners have identified several areas of study:

- Reflection on targeted group of the EUPROM project: as the definition varies depending on the legislation and on the case law in each of the partner countries, the use of the term “unaccompanied minors” and its national specificities has to be taken into careful consideration throughout the project. Therefore, in the EUPROM project, it was agreed by the partners that the use of the term, “unaccompanied minors” may also cover “unaccompanied and separated children”.
- Collecting quantitative data by each country : a common list of data on same items is to be established for comparison purposes
- Age assessment
- Key distribution
- The articulation between civil and criminal procedures
- Guardianship (appointment of a guardian/tutor)
- Unaccompanied minors victims of human trafficking
- Minors in transit
- Accommodation
  - Specific devices
  - Gender diversity
- Health care: national/regional protocols
- Specific measures for unaccompanied minors in conflict with the law
- Interpretation
- Specificities of educational support:
  - Multidisciplinary work
  - Cultural identity of the minors: how is it taken into account by the professionals ?
  - Links with families back home and work on parentage
  - Minors that go missing/abscond from reception facilities
  - The return of the unaccompanied minors to their country of origin hypothesis
  - The regularization procedures
  - Transition into adulthood : specific arrangements
  - Bilateral cooperation for the exchange of information : reinforced cooperation systems, memoranda of understanding with the countries of origin
  - European cooperation: use of European instruments (Brussels II a regulation, relocation of unaccompanied children from Greece ...) and proposal for the creation of new cooperation instruments.
  - Analysis of the existing European and international legal framework: aimed at helping the partner countries to clarify the legal and normative framework put in place for the care of unaccompanied minors.

This list is not exhaustive and may be supplemented and/or modified as the work progresses.

#### V. Deliverables of the project

The partners are committed to producing the following deliverables: a report of the launching seminar, country fact sheets, four reports of study visits, as well as a final European guide on the care of unaccompanied minors.



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The final guide will contain all the country fact sheets as well as all the reports from the study visits, the content of the training actions and final guidelines regarding the care and the treatment of unaccompanied minors

The deliverables will be sent to the European Commission, in accordance with the planned deadlines, via the electronic project management platform.

All the deliverables of the project are confidential and cannot be disseminated to third parties. The deliverables can only be disseminated to the European Commission and within the participating institutions of the project.

## **VI. The management of the documentation**

The management of the useful documentation for the project, the centralization of the working documents, the keeping of the list of people interviewed, the drafting of the reports and the preparation of the trips are ensured by Expertise France. The content of the documents will have to be validated by the Steering Committee.

France as the piloting country will, through its piloting institution, the Ministry of Justice, have to draft, in English, all the documents related to the content of the project. Each of these documents will then be submitted to the Steering Committee for comments and validation of the content.

## **VII. Working language**

In order to ensure better communication between the experts and a greater homogeneity of translations, the partners decide that:

- English will be used by all the partners for oral communication and the production of written documents, especially these submitted to the Steering Committee;
- The documents (the first and second questionnaires, country fact sheets, Charter of Good Practices, seminar reports, study visits reports, training actions reports, European guide, closing conference report) will be produced first in the official language of the project being English, then translated into the other languages.

The final guide will be written in English and will be subject to collective proofreading before being translated into French, Spanish, Italian and Swedish.

## **VIII. Data information and non-discrimination issues**

Throughout the project, the partners will not use, in any way, any personal data or information concerning minors.

The project activities will comply with national and European rules relating to the protection of personal data. If information relating to individual cases or situations were to be processed during one of the project activities, all the parties personal data would be anonymized. Experts from each Member State will also ensure that the project activities respect the fundamental rights guaranteed at national, European and international level.





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The dissemination of project deliverables will be done regardless of race, sex, age, religion or any other discriminating criterion.

### IX. The health crisis

At the time of the writing this Charter, the health situation is still uncertain and its consequences on the main stages of the project are difficult to assess.

In order not to delay the project, the partners agree that the use of videoconference will prevail for each step of the project as long as the health crisis situation remains.

Decisions on the next steps will be progressively taken by the Steering Committee in compliance with the health measures imposed by each Member State in order to guarantee the safety of all partners of the project.

\*\*\*

Signature:

The task officer will send the final version signed by all the Experts to the EU (the logo will be added to the Charter)

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Caterina D'Oswaldo

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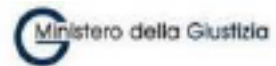
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Some of the experts have left and been replaced since the start of the project. The teams were thus composed of the following experts, appointed by the institutions of the consortium member states that participated in the project:

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**Karima Esseki**  
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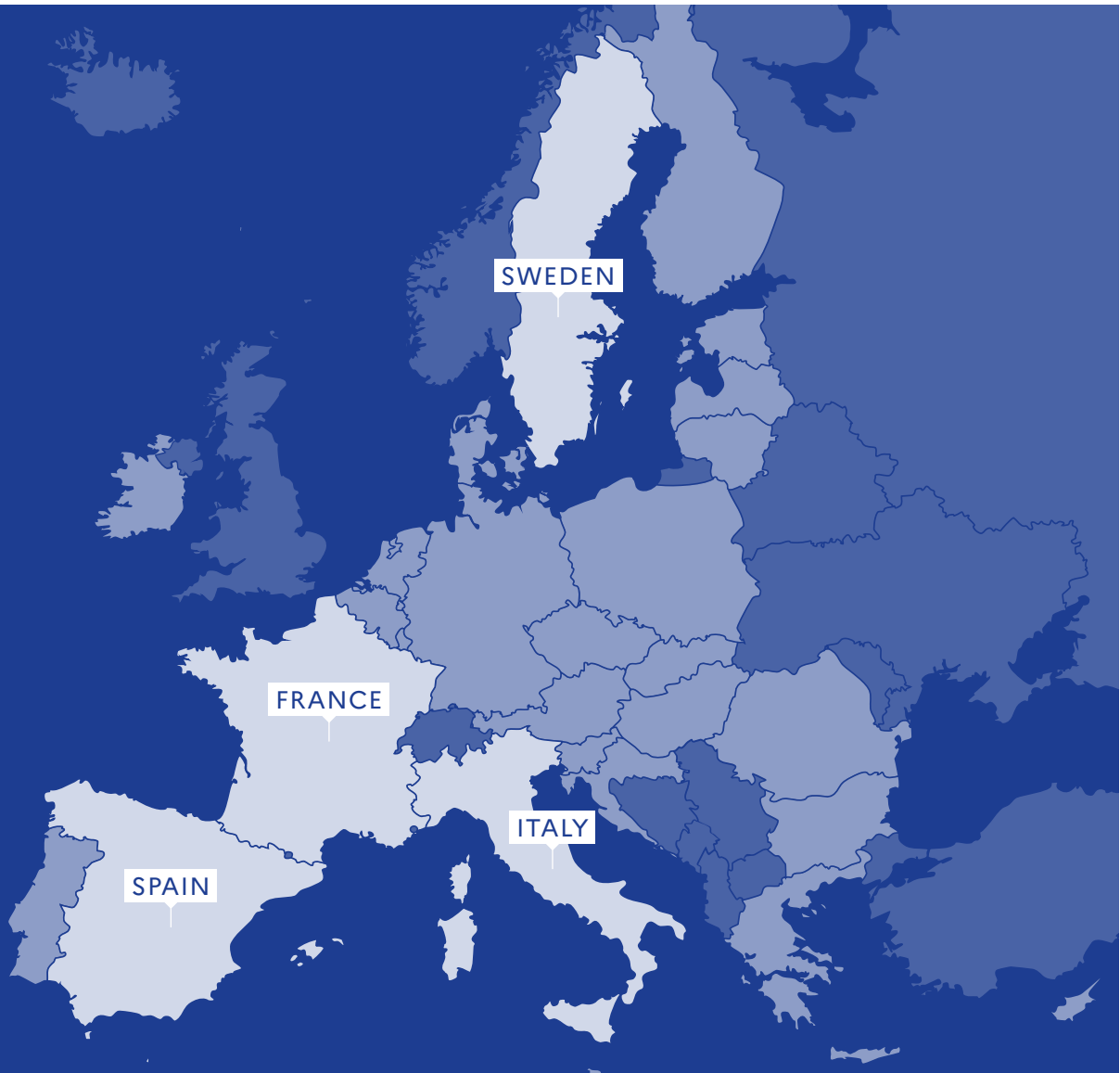
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### SWEDEN

Emanuel Hort  
**Yvonne Karlsson**  
**Marie-Anne Karlsson**

The experts whose names appear in bold were still experts at the time of the project closure.



## Country sheets

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# Spain



SECRETARY OF STATE OF MIGRATION  
GENERAL DIRECTION OF INCLUSION AND HUMANITARIAN CARE

## General introduction to the juvenile justice system in each Member State

### The civil and administrative law sectors provide protective measures for minors:

According with the Civil Code: when the Public Entity detects that a minor (whether national or foreign) is in a situation of neglect, it has by operation of law the guardianship of such minor and shall adopt the necessary protection measures his/her care, informing the Public Prosecutor, etc...

The assumption of the guardianship attributed to the Public Entity entails the suspension of the parental authority.

The guardianship will be carried out by means of family foster care and if this is not possible or convenient to the minor's interest, by means of residential foster care.

The Public Prosecutor shall oversee the guardianship, foster care or custody of the minors. For such purposes, the Public Entity shall give immediate notice thereto of any new entries of minors and shall forward a copy of the administrative resolutions and execution documents relating to the constitution, variation and cessation of any guardianship, custody and foster care. Likewise, it shall inform the Public Prosecutor of any interesting developments in the minor's circumstances... The Public Prosecutor shall verify the situation of the minor at least every half-year and shall propose to the Judge any protection measures deemed necessary.

### The legal framework:

#### Organic Law 1/1996, of January 15, 1996, on the Legal Protection of Minors.

This is the state framework law that regulates the protection system for all minors currently in Spain, whether they are nationals or foreigners.

Articles 10 and 11 regulate the Measures and Guiding Principles of the Public Administration in matters of protection of minors.

Articles 12 to 35 regulate the « Actions in situations of social unprotection of minors and institutions for the protection of minors ». The following articles should

be highlighted: Il convient de mettre en exergue les articles suivants :

- Article 19 bis «Provisions common to guardianship».
- Article 20. Foster care
- Article 20 bis. Rights and duties of foster cares.
- Article 21. Residential foster care.
- Article 21 bis. Rights of the fostered minors.
- Article 21 ter. Measures to guarantee the cohabitation and the security in the centers of protection to the childhood and the adolescence.
- Article 22 bis. Preparation programs for independent living.

**Law 1/2000, of January 7, of Civil Procedure**, which provides for a procedure of objection to administrative resolutions in matters of protection of minors that allows jurisdictional control.

Article 35.3 and 35.4 on unaccompanied minors of **Organic Law 4/2000, of January 11, on the rights and freedoms of foreigners in Spain and their social integration**.

**Articles 196 to 198 Royal Decree 557/2011, of April 20, which approves the Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration**, in accordance with its recent amendment by Royal Decree 903/2021, of October 19, in order to encourage the integration of unaccompanied minors and former young people under guardianship, and to prevent them from remaining in an irregular situation when they reach the legal age of majority.

**Organic Law 8/2021, of June 4, on the comprehensive protection of children and adolescents against violence** (hereinafter, «LOPIVI»).

LOPIVI, is enshrined as a means to ensure and promote respect for their human dignity and physical and psychological integrity, through the prevention of all forms of violence. In a large-scale response to the multidimensional nature of its risk factors and consequences, in order to combat violence against children, as well as, to promote the rights of children and adolescents established in the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on November 20, 1989 and signed and ratified by Spain in 1990.

Article 39 of the Spanish Constitution and different international treaties already recognize the priority obligation of the public authorities to ensure the comprehensive protection of minors, regardless of their filiation, being this law a means to consolidate it.

The important elements that must be highlighted in this law are the object, the scope of application and the description of the actions to be carried out by the protection centers.

Fist, as regards the object of the law, referred to in Article 1 of the LOPIVI, it is stated that its purpose is to guarantee the fundamental rights of children and adolescents to their physical, psychological, psychological and moral integrity against any form of violence. Ensuring the free development of their personality and establishing comprehensive protection measures, including awareness, prevention, early detection, protection and damage reparation at all levels in which their lives are developed. The concept of violence is understood as a wide spectrum specified in the law to ensure maximum protection.

Furthermore, the LOPIVI specifies the concept of "good treatment", understanding it as a behavior that, while respecting the fundamental rights of children and adolescents, actively promotes the principles of mutual respect, human dignity, democratic coexistence, peaceful conflict resolution, the right to equal protection under the law, equal opportunities and the principle of non-discrimination of children and adolescents.

Secondly, as regards the scope of application of the law, referred to in article 2 of the LOPIVI, it extends to minors who are in Spanish territory, regardless of their nationality and their administrative situation of residence, and to minors with Spanish nationality in foreign countries.

Thirdly, with regard to actions in protection centers, this is designated in articles 53 to 55 of the LOPIVI, which establish the protocols of action in the centers for the protection of minors. Pointing out that all the centers for the protection of minors will be safe environments and, regardless of their ownership, they are under the obligation to apply the protocols of action established by the Public Entity for the Protection of Minors. These protocols will describe the actions to be followed for prevention, early detection and intervention in the event of possible situations of violence within the scope of application of the law. These authorities will have to approve standards and indicators to evaluate the effectiveness of these protocols in their area of application.

In addition, it refers to the content of the protocols which will entail among others the following elements:

**a)** To identify the way to initiate the procedure, the communication systems and the coordination of the professionals responsible for each action.

**b)** To establish mechanisms for simple, accessible, safe and confidential complaints and reports to inform, so that children and adolescents are treated without risk of reprisals. Responses to these complaints shall be subject to appeal. In any case, minors shall have the right to submit complaints confidentially to the Public Prosecutor's Office, to the competent judicial autho-

riety and to the Commissioner of the state or to the corresponding autonomous institutions.

**c)** Guarantee at the time of admission that the protection center provides the minor, in writing and in a language and format that is understandable and accessible to them, the rules of coexistence and the disciplinary regime that applies in the center, as well as information on the mechanisms of complaint and communication available.

**d)** Specific actions shall be contemplated when the harassment is motivated by disability, racism or place of origin, sexual orientation, gender identity or expression. Likewise, these protocols should include specific actions when the harassment is carried out through new technologies of minors or mobile devices and when privacy and reputation have been undermined.

**e)** They must take into account situations in which it is advisable to transfer the minor to another center to ensure their best interests and welfare.

The Intervention in cases of sexual exploitation and trafficking of minors subject to protection measures is established, so that the protocols must contain specific actions for prevention, early detection and intervention in possible cases of abuse, sexual exploitation and human trafficking involving minors subject to protection measures and living in protection centers. Taking into account the gender perspective and the necessary coordination measures with the Public Prosecutor's Office, the Security Forces and Corps and the rest of the social agents involved.

It is important to highlight, finally, the legal reference to the supervision by the Public Prosecutor's Office, who will visit periodically in accordance with the internal regulations of the centers for the protection of minors. In order to supervise compliance with the protocols of action and to monitor the mechanisms of communication of situations of violence, as well as to listen to the children and adolescents who request it. In addition to the required communication between the public entities for the protection of minors and the Public Prosecutor's Office.

In addition to the foregoing, it should be pointed out that, in accordance with the territorial and administrative organization of the Spanish Government, the Autonomous Communities, with full respect for State regulations, have extensively developed in their own autonomous legislation the protection and promotion of the rights of minors in situations of neglect and/or threat.

The basic rule of the juvenile justice system in Spain is the Organic Law 5/2000, of 12 January, regulating the **Criminal Responsibility of Minors** (hereinafter, «LORPM»).

Thus, article 1 of the LORPM establishes that its subjective scope is limited to persons over fourteen and under eighteen years of age who have committed acts classified as offences under the Criminal Code or special criminal laws. Exceptionally, the Act extends its coverage to young people over the age of 18 and under the age of 21.

The LORPM establishes a mixed model, focusing on criminal responsibility and the re-education and re-social-

lization of minors, while respecting the Convention on the Rights of the Child. This model is built around the best interests of the child.

Juvenile criminal proceedings are a judicial process conducted by a specialized judge, the juvenile judge, and involve a number of specialized actors.

The measures that may be imposed on minors include custodial measures, non-custodial measures and therapeutic measures.

With regard to the actors involved in the juvenile justice system, the LORPM specifically contemplates in several articles the participation of the social services competent in the protection and reform of minors: execution of measures, adoption of precautionary measures, participation in the hearing, choice and modification of the measure or decision to suspend the execution of the sentence.

Regarding the distribution of powers between the General State Administration and the Autonomous Communities, Article 45 of the LORPM attributes to the Autonomous Communities the execution of the measures adopted by the Juvenile Judges in their decisions, with the exception of terrorist offences. In this way, the Autonomous Regions will carry out, in accordance with their respective organisational rules, the creation, direction, organisation and management of the appropriate services, institutions and programmes to guarantee the correct execution of the measures foreseen in the law.

This distribution of competences, in which the execution of the measures imposed is left in the hands of the Autonomous Communities and each one of them is left with the power to establish its own organisational model, means that there is no common management model at a national level, but rather there are different models, some very different from each other, unlike what happens in the penitentiary field, where, for the moment, only Catalonia has assumed the competences in penitentiary matters. While juvenile justice enforcement systems were initially integrated within social services departments, the development of the autonomous regions has led to the separation of both fields and the development of different organizational models within the Autonomous Communities.

#### **Unaccompanied foreign minors (UAFM) present in Spain.**

Whenever the Security Forces and Corps detect an unaccompanied foreigner whose minority of age is indubitable due to his documentation or physical appearance, he or she shall be placed at the service of the competent services for the protection of minors, and this fact shall be reported to the Public Prosecutor's Office. The identification data of the minor will be registered in the Registry of Unaccompanied Foreign Minors.

In the circumstance, that the minority of age of an undocumented foreigner cannot be established with certainty, the State Security Forces and Corps, as soon as they become aware of this circumstance, or locate the presumed minor in Spain, shall report to the autonomous services for the protection of minors, so that,

if necessary, they may provide the required immediate attention, in accordance with the provisions of the legislation for the legal protection of minors.

It shall be immediately reported to the Public Prosecutor's Office, which shall arrange, as soon as possible, the determination of the age of the child, in collaboration with the corresponding health institutions, which, as a matter of priority and urgency, shall carry out the required examinations.

Once the subject's age has been determined, in the case that he is a minor he shall be entrusted by the Department of the Public Prosecutor to the competent agencies for the protection of minors.

When it is not possible to determine the age of majority of a person, that person shall be deemed to be a minor whilst his or her actual age is determined.

The Administration of the State, in conformity with the principle of family reunification of the minor and on the report of the minor protection agencies, shall resolve what is necessary in relation to the return to his country of origin or to the country in which his family may be found or, that failing, to his continued residence in Spain.

The residency of minors under the guardianship of a Public Administrative Body shall be considered legal in all respects. At the request of the organization which exercises this guardianship and once the impossibility of the return to the subject's family or country of origin has been proven, a residency permit will be granted, retroactive to the moment at which the minor was placed at the disposition of the minor protection agencies.

Under the new rules (Royal Decree 557/2021), unaccompanied migrant minors can obtain documents after a three-month stay in Spain instead of nine months, as has been the case so far. Those who turn 18, or have done so in the last five years, only need to prove that they receive € 470 a month, for example from a social assistance program, in order to obtain a permanent residence and work permit.

#### **Management and difficulties encountered by each member states in the care of unaccompanied minors**

One of the problems faced by the system of guardianship of unaccompanied foreign minors (hereinafter «MENAs») is the disproportion of numbers between the different Autonomous Communities. As at 31 December 2020 the number of children registered as unaccompanied foreign minors in Spain reached 9,030: 8161 boys, 869 girls.

According to the 2020 Annual Report of the State Attorney General's Office, the majority are under the guardianship of the Andalusian Community (2507 minors); 1,168 are in Catalonia; 798 in Melilla; and 11 in the Rioja.

Although there is an inter-territorial coordination table on Unaccompanied Foreign Minors set up in 2018, each Autonomous Community has an action protocol for its minors' centres, which can make coordination between them difficult.

Besides, the general practice is that children under the age of 16 years are enrolled in an educational institution, while those over 16 years of age are enrolled in occupational training courses. The difference in the educational level of the MENAs with the course they join causes adaptation problems. Similarly, lack of knowledge of the language hinders their incorporation into the education system.

Likewise, given the open nature of the reception centres, there is a high turnover of children who voluntarily leave the centre to resort to family or social networks that sometimes lead them to precariousness. There is a big difference between first reception centres and residential centres. In the former, dropouts are higher, due to lack of information and uncertainty. This poses a problem when it comes to developing a comprehensive intervention programme.

There are several problems that affect reception centres for unaccompanied minors, such as the unpredictability and volume of MENA arrivals, the saturation of resources, the lack of a migration and educational project for the youngest minors, the difficulty of adapting to a context of control and protection, high rates of staff turnover in the centres, insufficient specific training for some professionals and the fact that some minors have behavioural disorders and substance abuse problems that require complementary resources.

The consumption of narcotic substances by MENAs is one of the biggest problems that affect them and that makes them a vulnerable group of children and adolescents being placed in a position of social disadvantage or exclusion. On the other hand, the existence of clandestine networks of labour and sexual exploitation of minors is an added difficulty for the inclusion of minors.

#### **Management and difficulties encountered with regards to children victims of human trafficking**

Spain is for the most part a destination for victims, mainly from Eastern Europe (mainly Romania), Africa (mainly Nigeria), Asia (mainly China) and South America (mainly Paraguay), as well as for transit to other destinations, chiefly European countries such as France and the United Kingdom.

#### **Relevant legal instruments**

##### **Framework Protocol for the Protection of Victims of Trafficking in Human Beings.**

The object of this protocol is to establish operational guidelines for the detection, identification, support and protection of victims of human trafficking, to foster coordination among the institutions involved in these processes and to define the mechanisms for the relationship among authorities with responsibilities in the field. The territorial scope of application is the entire State.

The noteworthy recent approval of **Organic Law 8/2021, of 4 June, on comprehensive protection of children and adolescents against violence**, intended to guarantee the fundamental rights of children and adolescents to their physical, mental, psychological and moral integrity against any form of violence, ensuring the free development of their personality and establishing comprehensive protection measures, which include raising awareness, prevention, early detection, protection and redress of damage in all spheres in which their life develops. The Law establishes trafficking in human beings for any purpose, prostitution, child pornography and forced marriage as forms of violence, among many other

It should be noted that there is a lack of in-depth data on this phenomenon given the nature of the offence. The data published by the Ministry of the Interior on this offence focus on trafficking for the purpose of sexual exploitation, excluding trafficking for the purpose of begging, petty crime or forced marriage. According to this source, only 5 trafficking victims were recorder in 2020.





# France

## Juvenile justice in France: general introduction

The juvenile judge is competent both to protect minors in danger and to deal with minors in conflict with the law. Often, the minor in conflict with the law is or has been in care under civil law as a minor in danger.

### 1. The minor in danger

The objectives of child protection are to ensure that the basic needs of the child are taken into account, to support the child's physical, emotional, intellectual and social development by ensuring the preservation of the child's health, safety, morals and education. General policy on child protection is conducted by the Ministry of Solidarity and Health and more specifically by the Directorate-General for Social Cohesion (DGCS), as well as by the Secretariat of State for Child Protection. Child protection is then implemented on a decentralised basis by the Child Welfare Service (ASE) teams of the local area councils or via public bodies, establishments or authorised services (material care of minors for the purposes of prevention and protection).

**Administrative protection** is put in place at the request or with the agreement of parents experiencing difficulties in caring for their children. Measures ranging from educational assistance at home to temporary placement of the child in a foster family or institution can be put in place.

By virtue of the principle of subsidiarity established by law, a situation will only be reported to the public prosecutor by the local council (via the *Cellule de recueil, de traitement et d'évaluation des informations préoccupantes - CRIP*) if administrative intervention is not sufficient to remedy the family's difficulties or if it is impossible to put the necessary measures in place (often in the event of refusal by the parents). As an exception to the principle of subsidiarity, the public prosecutor will be directly informed in cases of serious and immediate danger to the child.

**Judicial protection** (educational assistance procedure) will be sought as soon as the child is considered to be in danger within the meaning of Article 375 of the French Civil Code, which stipulates in particular: *"If the health, safety or morals of an unemancipated minor are in danger, or if the conditions of his or her education are seriously compromised, educational assistance measures may be ordered by the court at the*

*request of the father and mother jointly, or of either one, or of the guardian or tutor, the minor himself or herself, or the Public Prosecutor"*. The juvenile court judge will therefore deal with situations of educational deficiencies (care, schooling) and/or situations of physical or psychological violence.

Unaccompanied minors are provided with administrative care pending the implementation of judicial protection.

### 2. The minor in conflict with the law

General policy on issues relating to minors in conflict with the law is the responsibility of the Ministry of Justice and more specifically of the Directorate of Criminal Affairs and Pardons (DACG) and the Directorate of Judicial Protection of Youth (DPJJ).

The Order of 2 February 1945 governs criminal law and the procedure applicable to minors. It enshrines the existence of a justice system that is primarily educational, managed by specialist judges, according to a specific procedure, in the interest of the minor. It also establishes a principle of mitigating the criminal responsibility of minors according to their age. A reform of the criminal procedure applicable to minors will come into force on 30 September 2021 by repealing the Order of 1945 and creating a code of juvenile criminal justice. The expected objectives of this reform are to shorten the time taken to bring a case to trial, to improve the continuity and understanding of educational care and to improve the consideration given to victims. The code of juvenile criminal justice remains in line with the Order of 1945 in terms of the main principles applicable to procedure for minors but introduces a certain number of new features including in particular the introduction of a simple presumption of no criminal responsibility for minors under the age of 13.

French juvenile criminal law does not provide for specific measures for unaccompanied minors who therefore have the same rights and obligations as any other minor.

## 2. Care arrangements for unaccompanied minors and difficulties encountered (civil/criminal)

The global health crisis has had an impact on the number of UAM in the care of the judicial authorities. 9,524 UAM were taken into care in 2020 compared with 16,760 in 2019, 17,022 in 2018 and 14,908 in 2017. In total, there are approximately 40,000 UAM and young adults (former UAM) in the care of the local councils on the grounds of child protection. The law guarantees UAM the same rights and protection as any other child in the country.

A minor is considered to be unaccompanied when *“no adult is legally responsible for him or her within national territory or effectively takes charge of him or her and does not show his or her willingness to be entrusted with the child on a long-term basis, in particular by referring the matter to the competent judge<sup>64</sup>”*. The concept of isolation is given a broad interpretation. A minor may therefore be considered to be unaccompanied even though he or she is still in contact with the holder of parental authority present abroad. Moreover, the presence on French territory of adults with whom the child is in contact does not make it possible to set aside the qualification of isolation.

### 1. The National Referral and Support Unit for Judicial Placement Decisions

As mentioned above, the civil law process for the care of UAM is not centralised. However, a National Referral and Support Unit for Judicial Placement Decisions has been operational since 1<sup>st</sup> June 2013. This was created in order to limit disparities between local areas with regard to the arrival of persons recognised as UAM by the courts, to provide UAM with all guarantees relating to the respect of their rights and to harmonise the practices of local areas during the protection, assessment and orientation of young people. Once the age and isolation have been established by the local area and confirmed in a decision by the public prosecutor or the juvenile court judge, the Unit is contacted by the judicial authority to suggest a proposal regarding the minor's referral to a local area in application of a national distribution system that is reviewed annually according to the overall population of the local area and the number of UAM taken into care by the same local area. The minor may stay in the local area in which he or she first arrived. Despite the establishment of this Unit, which is run by the Unaccompanied Minors Taskforce (MMNA) within the DPJJ, there are still major disparities between local areas and the care offered can vary greatly from one local area to another.

### 2. Assessment of age and isolation

#### a) Assessment: a prerogative held by local councils

In an emergency and when the holder of parental authority is unable to give his or her consent, the

minor is taken into temporary care for five days by the child welfare service of the local area in which the person concerned is located. During this protection phase, the person presenting themselves as an UAM is assessed in the context of individual interviews conducted by the department's services or by any public or voluntary sector service to which the task has been delegated. The statements made by the person concerned regarding his or her identity, age, birth family, nationality and state of isolation are taken into account. The aim is to assess the reality of the alleged age and isolation, the protection needs and the specific elements of vulnerability requiring special protection. This assessment is a prerequisite for access to the protection system dedicated exclusively to minors in danger.

If doubts remain following the social assessment and the person presents documents whose authenticity or reality appear doubtful, the chairman of the local council may request a documentary expertise procedure (birth certificate, passport, identity card or supplementary judgement) from the central directorate of the French border police. Response times vary from department to department. Article 47 of the French Civil Code establishes a presumption of authenticity for civil status documents drawn up abroad. It is up to the authorities to overturn this presumption in the event of a dispute and, if necessary, to provide proof showing that the document is non-conform, falsified or not in line with reality.

If doubts regarding the child's age still persist after the social assessment and the potential verification of documents, the chairman of the local council may refer the matter to the judicial authority so that, if deemed necessary, a bone X-ray examination may be ordered in accordance with article 388 of the French Civil Code. The examination, used as a last resort, consists of an X-ray of the teeth, the left hand and, if necessary, the collarbone. The clinical examination of the development of sexual characteristics is prohibited. The results must state the existence of a margin of error surrounding the conclusions of this examination. The X-ray examination cannot be the sole basis used to determine the age of the person. If the conclusions of the X-ray examinations are in contradiction with the other assessment elements referred to above and if doubts persist in the light of all the elements collected, any doubt as regards age must be to the benefit of the person concerned.

After being assessed as an adult in one local area, some individuals move to another local area for a new assessment in the hope of being classed as a minor. In order to limit this phenomenon, the so-called «AEM» (Support for the Assessment of Age and Isolation) file was recently deployed<sup>65</sup>: the chairman of the local council can request the assistance of the Prefecture in order to complete the assessment of the person declaring him/herself to be a UAM. This person will then be invited to come to the Prefecture so that his or her fingerprints can be collected in the AEM processing, which will be cross-checked with data from the AGDREF2 and VISABIO files.

64. Order of 17 November 2016 on the detailed methods for the assessment of minors temporarily or permanently deprived of the protection of their family.

65. Decree no. 2019/57 of 30 January 2019 relating to the detailed methods for assessing those declaring themselves to be minors and temporarily or permanently deprived of the protection of their family and authorising the creation of personal data processing relating to such persons.

#### b) Difficulties identified in terms of assessment

The difficulties encountered in the field are multiple. Tensions between local areas are more marked because of the lack of harmonisation of practices in terms of assessment or protection procedures. In fact, many local councils report resistance encountered with other local areas: failure to take charge of minors despite the fact that they have been entrusted by the courts, failure to provide shelter in certain areas leading to a shift in the flow of arrivals to the neighbouring area, re-assessments or additional expert appraisals followed by a refusal to accept responsibility, questioning of the quality/reliability of the assessments carried out by other local areas, referrals of minors proposed by the MMNA to local areas which had previously declared the same individuals to be adults or difficulties in exchanges between local areas.

In addition, the use of bone x-ray examinations varies from one region to another. The MMNA observes disparities depending on the local council, the judicial authority or the medico-judicial units (UMJ). In some areas, this recourse by the judicial authority may be systematic, even though other elements point to the individual being underage. On the other hand, some judicial authorities may refuse a request to carry out medical examinations both because of the margin of error and the questioning of the reliability of the method used.

In this context, the number of appeals, both to the administrative courts to force the local areas to implement judicial decisions and by direct referral to juvenile court judges for educational assistance by young people seeking protection, has increased in recent years. Many young people are continuing to bring cases before the urgent applications relief judge attached to the administrative court of the local area in which they find themselves on the grounds of failure to respect their fundamental rights, most often for lack of accommodation and schooling.

#### c) The best practice guide on assessment: harmonisation of practices sought

In an attempt to remedy the difficulties relating to assessment, an order dated 17 November 2016 created a "national reference framework" setting out the arrangements for the assessment of persons declaring themselves to be unaccompanied minors. These guidelines, updated in 2019, specify the conditions under which the ASE teams and the Prefect work together, the training and experience requirements for the professional assessors, as well as the way in which the elements produced by applicants are assessed. It is now available in the form of a guide published on 23 December 2019 and entitled "Guide to best practice on the assessment of minority and isolation of persons presenting themselves as UAM". The harmonisation of practices sought contributes to ensuring better equality of treatment throughout the country.

### **3. The protection contexts**

#### a) Civil law judicial protection

- Protection as educational assistance

UAM are initially cared for by the local councils during the protection and assessment phase, without any judicial decision. This is the so-called «administrative»

care. If the individual is confirmed as being a minor within the five-day period, the public prosecutor, after receiving a referral from the local council, uses the national referral system to designate the local council of the place of final placement, to which he or she entrusts the minor by means of a provisional placement order on the basis of article 375 of the French Civil Code. The public prosecutor of the local council carrying out the assessment relinquishes jurisdiction in favour of the public prosecutor in the area in which the minor is finally placed. The latter refers the matter to the juvenile court judge with territorial jurisdiction for a decision on permanent placement within 15 days. If, at the end of the five-day protection period, the assessment must be continued, the chairman of the local council refers the matter to the public prosecutor with territorial jurisdiction so that the young person can be entrusted to him or her by means of a temporary placement order. The public prosecutor's office in the place of placement then refers the matter to the juvenile court judge who must give a ruling within 15 days. The minor may also apply directly to the juvenile court judge without going through the assessment phase or after having been declared an adult, if he or she persists in presenting himself or herself as a minor. The person concerned has the right to appeal against a decision to refuse care and may refer the matter directly to the juvenile court.

- Protection provided in the context of the local guardianship exercised by the chairman of the local council

Guardianship is launched by the family court judge responsible for the guardianship of minors, at the request of the public prosecutor or the minor's care structure for any minor where both the father and the mother are deceased or deprived of the right to exercise their parental authority. UAM may benefit from guardianship exercised by an ASE service acting by delegation of the chairman of the local council appointed by the judge as guardian.

- Interaction between the educational assistance procedure and guardianship

Generally, UAM are first granted emergency protection by the juvenile court judge on the basis of educational assistance. The local councils refer the matter to the family court judge at the same time or at a later stage for the establishment of a guardianship. Article 390 of the French Civil Code provides for the establishment of guardianship in the event of the death of both parents or when the parents are deprived of the right to exercise their parental authority. Unlike the educational assistance procedure, the danger to the child does not have to be established; the guardianship measure allows the minor to benefit from legal representation. When the guardianship is established, the educational assistance case before the juvenile court judge is closed, except in exceptional cases, as the minor is no longer considered as being in danger. Some local councils refer cases directly to the public prosecutor for referral to the family court, without going through the juvenile court judge. Some prosecutors refer the matter to the family court themselves after having been informed of the situation by the juvenile court judge. Each court is free to adopt the procedural scheme that it deems most appropriate according to the specificities of its territory and in compliance with the provisions of law.

#### b) International protection: asylum

Certain UAM may have grounds on which to seek asylum. This request is consistent with the civil law protections referred to above. If no legal representative has been appointed for the minor, an ad hoc administrator is appointed by the public prosecutor.

#### **4. UAM and administrative status**

A minor cannot be forced to leave French territory. On the other hand, once the person concerned has reached the age of majority, the Prefect may issue an order requiring such person to leave the country. The procedures for obtaining a residence permit must therefore be launched early enough by the ASE, before the child reaches the age of majority.

Many local councils are reporting difficulties in the context of the regularisation procedure. Access to regularisation varies according to the age at which the young person arrived in France. A young person who arrived before the age of 16 may therefore claim a residence permit, subject to the assessment made by the relevant Prefecture. For a young person who arrived after the age of 16, access to regularisation is more difficult. In addition, there are very significant disparities in the practices of Prefectures when issuing a residence permit to a young person recognised as an unaccompanied minor when he or she reaches the age of majority, due to different assessments of the legal framework. Finally, difficulties have been observed in obtaining identity documents issued by the country of origin allowing the filing of a residence permit.

#### **5. Support for UAM**

As a preliminary remark, it is important to specify that, as for all minors, care arrangements via criminal proceedings are not exclusive of those via civil proceedings and vice versa.

##### a) Support for UAM in a civil law context

UAM are supported until the age of 18. A young person will sometimes remain in care until the age of 21 thanks to the “young adult agreement”. The agreement, signed by the young person and the local council, is most often granted on the condition of an integration plan, although each local council sets its own criteria.

UAM handled in a civil law context are mostly in need of assistance and are anxious to integrate successfully into society in France. They will generally be supported in the completion of all their administrative procedures, even if many local councils regularly complain of a shortage of resources allowing these young people to be given the best possible support.

While many UAM are accommodated in suitable accommodation, many others are put up in hotels due to a shortage of places. Some local areas are experimenting with new types of care, particularly in families.

With regard to schooling and training, an assessment is carried out by the Academic Centre for the Education of Newly Arrived Allophone Children and Children from Itinerant and Travelling Families (CASNAV) which forms part of France’s Ministry of Education. The minor will be given guidance according to his or

her level of French and schooling and may, if necessary, be integrated into a class in one of the Educational Units for newly arrived Allophone Pupils (UPE2A). However, the waiting lists are long and many young people are not in school.

Health needs are identified during the social assessment which should identify specific risks or vulnerabilities. Some local areas (a minority) will automatically set up a thorough medical follow-up, while others will provide a medical examination or a simple offer of a medical visit. Some departments will emphasise the need for medical follow-up, but will not encourage it. An analysis of the assessments reveals that the vast majority of the young people have had a complicated migration pathway, with more than half suffering from psychological trauma. UAM have access to State medical aid. The *Haute Autorité de Santé*, an independent public authority, issued recommendations with regard to professional best practice in this area<sup>66</sup>.

##### b) The specificities linked to UAM in care via the criminal justice system

Any UAM in conflict with the law is the subject of criminal law support which is not provided for the processing of child protection care. They moreover do not have the same profile as the UAM handled in a civil law context. Sometimes heavily influenced by their immediate environment, these young people may refuse the help offered. Most of them live in conditions that are precarious and dangerous for their health and safety. Often suffering from multiple addictions, their health situation is damaged. While they may be a threat to law and order, they are often themselves victims of violence and in the power of various networks (participation in drug trafficking, cigarette smuggling, telephone theft, burglary, exploitation in particular of a sexual nature, etc.). Moreover, the educational relationship is difficult to build because of the distrust observed towards institutions, absences from required meetings and episodes of running away. The almost systematic severance of family ties and the language barrier make educational work with minors, who are often «elusive», more complex. Moreover, when there is an «educational hook», the steps towards integration are difficult to take within a reasonable timeframe because of the often uncertain identity of these young people and their fragile administrative situation.

A significant increase in the number of UAM in conflict with the law has been observed in recent years, particularly in major cities.

These UAM are more often incarcerated than other minors in conflict with the law, due to the lack of a place of residence or a guarantee of representation, the use of numerous aliases that make it difficult to identify them and their refusal to accept educational care within educational establishments, under the influence of the networks by which they are being exploited. In 2015, UAM represented nearly 10% of all teenagers in prison. As of 3 February 2021, there were 208 UAM in detention out of 737 detained minors, i.e. 28.2% of the detained minor population.

<sup>66</sup> [https://www.has-sante.fr/upload/docs/application/pdf/2018-03/rbpp\\_mna\\_web.pdf](https://www.has-sante.fr/upload/docs/application/pdf/2018-03/rbpp_mna_web.pdf)

UAM in conflict with the law benefit from the same care arrangements in PJJ establishments and services as other minors. Educational follow-up is thus provided by an open environment service, a social integration service, a placement establishment or an educational service working in detention.

Although there is no specific centre for UAM, the city of Paris, the DPJJ and the Regional Health Agency are currently planning to open a 30-place day centre in 2022 in particular to support UAM with addictive behaviour patterns.

The memorandum from the Ministry of Justice on the situation of UAM subject to criminal prosecution published on 5 September 2018 gives a reminder of the rules applicable to the criminal law response to UAM who commit acts of delinquency. It insists on the need to appoint a legal representative as soon as possible, either by immediately establishing a guardianship or by starting an educational assistance procedure to prepare for the future guardianship measure, in order to carry out for them the steps necessary for daily life (medical care, school enrolment and integration, application for asylum, etc.). However, here again there is still a lack of harmonisation in terms of practice across French national territory.

Cooperation actions have been undertaken between the French and Moroccan Ministries of Justice and the Interior to facilitate the identification of young Moroccan UAM and the search for their families in Morocco. In particular, a procedural framework was drawn up and distributed to all courts on 8 February 2021: it allows the French juvenile court judge to decide to return the minor to Morocco, his or her country of origin, as soon as a reception structure suited to the minor's profile has been identified or as soon as the young person's family, which is able to take care of him or her in an appropriate manner, requests his or her return.

## 6. Training of professionals

Because of all the special points mentioned, dedicated training courses have been set up by all of the various training schools for professionals working with UAM including the National School for Youth Judicial Protection Services (ENPJJ) which emphasises the importance of cross-departmental training enabling meetings and discussions between professionals from different bodies.

## 3. Care arrangements for child victims of human trafficking

The expansion of the phenomenon of human trafficking in recent years is alarming. Minors represent 4% of all victims<sup>67</sup>. Because of their particular vulnerability, UAM are particularly at risk. Whether in civil or criminal law care, the identification of these minors is particularly difficult given that there is no specialist investigation service for identification. As soon as a judicial investigation targeting the perpetrators of human trafficking has been opened, an ad hoc administrator is systematically appointed to represent the identified minor victim.

67. [https://www.ihemi.fr/sites/default/files/publications/files/2020-02/3e\\_enquete\\_annuelle.pdf](https://www.ihemi.fr/sites/default/files/publications/files/2020-02/3e_enquete_annuelle.pdf)

A training booklet for child welfare and judicial youth protection educators was developed in 2016 by the inter-ministerial mission for the protection of women against violence and the fight against human trafficking (MIPROF)<sup>68</sup>. Its aim is to help providing a better understanding of human trafficking, to facilitate its detection and to improve its management. Dedicated training courses are also organised by the various schools.

On 1<sup>st</sup> June 2016, a Parisian multiparty agreement was signed in order to offer, on an experimental basis, specific and customised care for minors who are victims of human trafficking (not necessarily UAM), relying on relevant local partners and stakeholders. The aim was to encourage the identification and placement of vulnerable minors who are victims of human trafficking in appropriate facilities, by keeping them away from active networks in geographical terms and providing them with comprehensive support, particularly in terms of medical and administrative assistance, by specially trained staff. The convention has already enabled the protection of 91 minors and victims of human trafficking, mainly young girls from Niger between the ages of 15 and 18 who are victims of sexual exploitation. A dispatch issued on 8 February 2021 allows the Paris system to be extended to the whole of France by proposing a coordination of cooperation between the various stakeholders (public prosecutors, ASE, PJJ, juvenile court judges, associations, investigation services), monitoring procedures through the setting up of a committee, as well as procedures for financing the care process.

One experience of bilateral cooperation is also worth noting. An unaccompanied minor present on French territory was in fact able to benefit from a cross-border placement in Belgium on the basis of Article 56 of the Brussels IIa Regulation<sup>69</sup>. This placement, which was not successful because the minor ran away, could have allowed her to be removed and taken in by an institution specialising in supporting minors who are victims of trafficking. Based on the model of the Belgian facility, an experimental centre for the assessment and care of victims of human trafficking should open in France in June 2021. The establishment will provide continuous care for twelve young people in two separate units: eight places in collective accommodation and four places in semi-autonomy.

68 [http://www.justice.gouv.fr/art\\_pix/1\\_1\\_livret\\_milprof.pdf](http://www.justice.gouv.fr/art_pix/1_1_livret_milprof.pdf)

69. Règlement (CE) n°2201/2003 relatif à la compétence, la reconnaissance et l'exécution des décisions en matière matrimoniale et en matière de responsabilité parentale, dit « Bruxelles II bis ».



# Italy



Ministero della Giustizia

DEPARTMENT OF JUDICIAL AFFAIRS DIRECTORATE GENERAL  
FOR INTERNATIONAL AFFAIRS AND JUDICIAL COOPERATION  
- OFFICE II - INTERNATIONAL AFFAIRS

## The juvenile justice system in Italy

Since the 1970s, a new professional figure (the “sponsor judge”) has established himself in the Italian juvenile justice system, particularly attentive to listening to the child and aware of the need to acquire skills in the fields of psychology and education in order to understand the problems of this important age in terms of development.

The reform of family law (Law no. 151 of 1975) and the Law on Adoption and Fostering (Law no. 184 of 1983) have subsequently contributed to defining this specialist profile, providing for the stable interaction of the Judicial Authority with local services, Regions and Municipalities.

The Italian legal system assigns jurisdiction in juvenile matters to multiple bodies: the **Juvenile Courts** (or “JC”), the Ordinary Courts (or “OC”) both civil and criminal, the **Guardianship Judge**, the **Attorney General** and the **Public Prosecutor’s Office attached to the Ordinary Courts**.

In the civil law sector, Law no. 219 of 10 December 2012 reduced the potential jurisdiction of the JC, granting ordinary judges the right to examine disputes on the custody and maintenance of children born out of wedlock. In criminal matters, the JC has jurisdiction over crimes committed by a minor, while the OC, the Court of Assises or the Magistrates Court have jurisdiction when the offence is committed by an adult (even if the victim is a minor).

The 1942 Code established the **office of the judge responsible for guardianships**. This is a judicial body which combines administrative and some judicial functions. The Guardianship Judge deals in particular with:

- The appointment and, if necessary, revocation of the guardian if the minor has no parents or has parents who are not in a position to exercise their parental responsibility; supervision of asset management under guardianships and ward of court arrangements; - authorisation to parents to carry out certain acts exceeding the ordinary administration of the assets inherited by a minor; - matters involving minors having left the parental home without permission;
- The appointment of a special guardian for minors in case of conflicts of interest between them or with

their parents; - supervision of compliance with the conditions set by the Court for the exercise of parental responsibility;

- Issuance of the enforcement order for any family custody measures ordered by Social Services; - possible referrals to the Juvenile Courts for further measures in the interest of the minor when a foster placement comes to an end.

The main judicial body for juvenile protection is the **Juvenile Court** established in each seat of the Court of Appeal or section of the Court of Appeal. The Court has jurisdiction in civil and criminal matters and in relation to re-education (or, in other words, administrative) matters.

In relation to **civil law**, the matters under the jurisdiction of this court are listed in Art. 38 of the provisions for the implementation of the civil code, according to which “matters not expressly entrusted to the jurisdiction of a different judicial authority are handled by the ordinary courts”.

The rule identifies some of the proceedings falling within the jurisdiction of the Juvenile Court which are **non-contentious voluntary jurisdiction proceedings** as listed below: -authorisation for the marriage of the minor (art 84 CC); - appointment of a special guardian to assist the minor in the drafting of pre-nuptial agreements (art. 90 CC); - forfeiture of parental authority (art. 330 CC); - reinstatement of parental responsibility (art. 332 CC); - monitoring of the exercise of parental responsibility (art. 333 CC, which provides for actions to protect minors in situations of hardship); - removal of parents from the administration of the child’s property (art. 334 CC); - reinstatement of parents previously excluded from the administration and enjoyment of legal usufruct (art. 335 CC); - authorisation granted to the guardian to continue a commercial enterprise in the interests of the minor (art. 371, final co. CC).

**In the administrative field**, the Juvenile Court may impose re-education measures on minors who evidence behavioural problems and has the power to order protective measures in favour of minors involved in prostitution or victims of crimes of a sexual nature.

Regarding **adoption and availability for adoption**, the Juvenile Court is responsible for procedures relating to the declaration of availability for adoption (art. 8 et seq., L. 184/1983), the procedures for declaring mi-

nors of unknown parents available for adoption (art. 11 et seq., L. 184/83), the withdrawal of this availability for adoption (art. 21 et seq., L.184/83), domestic adoptions (acknowledgement of legitimacy and in special cases, art. 25 et seq. and 44 et seq., L.184/1983 respectively), international adoptions (art. 29 et seq., L.184/1983).

In terms of **criminal law**, the Juvenile Court has full jurisdiction for offences committed by minors: there are no exclusions in relation to the offences committed. In addition, the jurisdiction of this court exists with respect to the minor even when the offence has been committed in complicity with adults.

The JC operates in a mixed composition, as the law provides for the presence of "expert" judges alongside professional judges (see art. 50 of the Judiciary Act, decree of 30 January 1941, no. 12, as amended by Art. 5 of L. 27 December 1956, n. 1441).

**The Public Prosecutor attached to the Juvenile Court.** An autonomous prosecutor's office is established in each Juvenile Court as the legislature deemed it necessary to ensure the autonomy and specialisation not only of the judging body but also of the prosecuting body. The Public Prosecutor attached to the Juvenile Court is also required to carry out important duties in the context of civil law jurisdiction.

**The Juvenile Division of the Court of Appeal.** Jurisdiction over complaints or appeals against orders handed down by the Juvenile Courts is granted to a division of the Court of Appeal which operates with a panel of five members: three professional judges and two honorary judges. While in the Juvenile Courts the professional judges are assigned by the Superior Council of Magistrates on the basis of an assessment of their specific ability to rule on the juvenile court cases and perform these duties on an exclusive basis, in the divisions of the Court of Appeal, the judges are assigned by the President of the Court of Appeal on the basis of the Court's internal organisational considerations and examine both juvenile cases and ordinary cases, which deprives the body of any particular specialist role.

#### **Unaccompanied foreign minors (UAFM) present in Italy**

The General Directorate of Immigration and Integration Policies at the Ministry of Labour records and processes all of the information obtained on UAFM in the database established under art. 4 of Decree no. 535/1999 of the President of the Council of Ministers and publishes monthly statistical reports.

According to the semi-annual report published on the website of the Ministry of Labour in June 2020<sup>70</sup>, Sicily is confirmed as the region with the largest number of UAFM (894 minors, or 17.8% of the total), followed by Lombardy (673, or 13.4%), Emilia-Romagna (486, or 9.7%), Friuli-Venezia Giulia (484, or 9.6%), Tuscany (339, or 6.8%) and Lazio (335, or 6.7%).

Regarding the geographical distribution of minors within Italian national territory, there is a greater concentration of minors from Albania in the regions of Central-Northern Italy (Tuscany, Emilia-Romagna, Lombardy, Veneto, Lazio, Liguria, Piedmont and Friuli-Venezia Giulia), minors from Bangladesh in Sicily and Friuli-Venezia Giulia, minors from Egypt in Lombardy and Lazio, minors from Pakistan in Friuli-Venezia Giulia, minors from Tunisia in Sicily and Emilia-Romagna and minors from Ivory Coast in Sicily. Therefore, Sicily, the region which receives the greatest number of UAFM, sees the greatest concentration of minors from Bangladesh, Ivory Coast and Tunisia and other African countries (Ivory Coast, Tunisia, Guinea, Somalia, Gambia).

#### **Management of unaccompanied foreign minors - Italian legislation**

Italy has reorganised and strengthened the system of protection measures for UAFMs through two important legislative texts: a) **Legislative Decree no. 142 of 18 August 2015 (also known as the Support Decree)**, which provides for some specific rules regarding unaccompanied foreign minors, such as specific support measures (Articles 17, 18 and 19) and the procedure for their identification (Article 19 bis); b) the **Law of 7 April 2017 no. 47 on "Provisions on measures for the protection of unaccompanied foreign minors" (known as the "Zampa Law")**, which has strengthened the guardianship tools provided by the system by introducing:

- 1)** the prohibition of refoulement (art. 3), the issuance of residence permits for minors (art. 10) and the regulation of assisted and voluntary repatriation (art. 8)
- 2)** the creation of primary care and reception facilities with a maximum stay of 30 days (instead of 60) for minors (article 4);
- 3)** identification of UAFM (article 5) and family searches (article 6)
- 4)** the possibility of using fostering schemes (article 7) as a priority over admission to a care structure;
- 5)** the creation of a National Information System for Unaccompanied Foreign Minors (SIM);
- 6)** the creation at each Juvenile Court of a list of volunteer guardians (article 11) used to register private citizens selected and given adequate training in order to take on the guardianship of one or more unaccompanied foreign minors.

Finally, article 20 contains specific provisions aimed at fostering international cooperation through bilateral agreements and the financing of development cooperation programmes in the countries of origin in order to harmonise the regulation of the protection system for UAFM.

70. <https://www.lavoro.gov.it/priorita/pagine/minori-stranieri-non-accompagnati-in-italia-pubblicato-il-report-semestrale-di-monitoraggio-aggiornato-al-30-giugno-2020.aspx>

## Child protection services

The current care system provides<sup>71</sup>: 1) **Governmental emergency accommodation facilities for the needs of rescue and immediate protection**, specifically intended for minors, who are housed for a maximum of 30 days, strictly necessary for the identification, the possible assessment of age, the provision of information on the rights of the minor including the right to seek international protection. 2) **SIPROIMI secondary accommodation facilities**<sup>72</sup>, for the accommodation of those with international protection status and UAFM, to which minors not entering the asylum system have also been transferred since 2015. 3) **Care facilities, given various names, in agreement with the Municipality in which the minor is located** and which is responsible for their care if there are no places available in the care structures described above. There are also **Emergency Care Centres (CAS) for minors managed by the Prefectures** where, in exceptional cases, UAFM aged over 14 can be hosted for the time strictly necessary for their transfer to dedicated facilities.

## Unaccompanied foreign minors as offenders

Based on the data collected by the competent Office of the Department for Minors of the Ministry of Justice, in 2019, the percentage of UAFMs taken into care by the Social Service Offices was 29% of the total number of foreign (non-EU) minors. The offenses committed are mainly offenses against property (37%) such as theft, damage, robbery and receiving stolen goods, and offenses against the person (31%) such as voluntary personal injury. Other types of offense include drug use, violence, resisting and insulting a public official, threats, bodily harm and forgery.

## Difficulties encountered<sup>73</sup>

A distinction can be made between **systemic** and **local criticalities**. The former include in particular (1) the lack of provision, at the regulatory level, of **ad hoc reception facilities**, (2) **the delayed or non-adoption of the implementing decrees for Law 47 of 2017** (in particular those relating to the issuance of residence permits for unaccompanied foreign minors), (3) the absence of any data collected at a national level in an exhaustive and systematic matter in relation to transits that would allow for targeted interventions to offer ad hoc solutions that take into account migration flows, (4) the absence or incomplete nature of the information provided to the minors themselves on the possibilities available under the Italian protection system, (5) the absence of any effective identification mechanism makes traceability difficult and often results in the opening of multiple protection proceedings for the same minor in Italy and in subsequent transit countries. Weaknesses were also found with respect to age assessment procedures due to the fai-

lure to adopt protocols to be followed in the presence of reasonable doubts.

It was also noted that there are no ad hoc integration projects (known as "life projects") but only generic literacy courses. As for the mechanisms for family reunification, relocation and assisted voluntary repatriation, operators complain about the slowness of procedures and bureaucratic difficulties. There are also local criticalities that are affected by the specific characteristics (e.g. climate and geological) of the different border territories and by the different types of reception facilities.

One problem is the limited number of governmental structures in the border territories and the use of emergency type structures (such as "Parco Roja" in the Ventimiglia area on the border with France) where minors live in unsafe conditions with adult strangers and poor hygiene.

## Minors victims of trafficking

In implementation of the EU Directive 2011/36 on "preventing and combating trafficking in human beings and protecting its victims", the Italian Council of Ministers adopted, for the two-year period 2016-2018, the National Action Plan against trafficking in human beings and serious exploitation of human beings (hereinafter referred to as the "NAP"), which aims to strengthen the prevention and punishment of the crime on the one hand and provide protection for victims on the other.

Children may be exploited for sexual or labour purposes. They may be involved in the illegal forced labour market, forced marriages or begging. Even more dramatic is the phenomenon of child trafficking in connection with the organ trade. One of the less explored and less known scenarios of exploitation, despite being on the increase, appears to be that in which young people, often minors, are forced to participate in illegal activities managed by transnational criminal networks that use threats and violence to obtain - both in Italy and in the country of origin - the subjugation of adolescents to the point of almost total coercion of their will. The complexity of the phenomenon described is manifested in the fact that these children come to the attention of the authorities as offenders, which makes it difficult to investigate their potential status as victims. For years now, the teams at the Department for Juvenile and Community Justice at the Ministry of Justice (or *DGMC*) have been devoting greater attention to the identification, detection and handling of these particular forms of child exploitation.

The statistical data<sup>74</sup> concerning the minors who have been the victims of exploitation taken into care by the *USSM* for civil law support interventions are as follows:

71. Cf. ISMU Foundation (2019), *At a crossroads. The transition to adult life of unaccompanied foreign minors in Italy*. UNICEF, HCR et OIM, Rome, p. 45.

72. Protection System for Persons with International Protection Status and Unaccompanied Minors, new name adopted by the Legislative Decree of 4 October 2018, no. 113, converted into the Law of 1st Dec. 2018, no. 132 of the already existing Protection System for Asylum Seekers, Refugees and Unaccompanied Foreign Minors (SPRAR). Today, access to the System is reserved for holders of international protection and all unaccompanied foreign minors. In addition, the new regulatory provision allows access to the integrated reception services of SIPROIMI for holders of residence permits as: victims of violence or trafficking, victims of domestic violence, health reasons, victims of labour exploitation, disasters, acts of special civil value.

73. The information in this paragraph is taken from the following publications: - Childhood and Adolescence Protection Authority "Movements of unaccompanied foreign minors at the northern borders", Study and proposal document dated February 2019, pp. 25 et seq.

- ISMU Foundation (2019), *At a Crossroads. The transition to adult life of unaccompanied foreign minors in Italy*. UNICEF, UNHCR and IOM, Rome, pp. 126 et seq.

74. Données traitées par la section statistique du bureau I du chef du département pour la justice des mineurs et des communautés et publiées sur le site Web du DGMC.



### Child victims of sexual offences - 2020

Period of reporting and taking into care	Italians			Foreigners			Total		
	m	f	mf	m	f	mf	m	f	mf
Minors reported in 2020	5	28	33	3	2	5	8	30	38
Minors in care from previous periods	23	48	71	7	3	10	30	51	81
Minors for whom social services were involved for the first time in 2020	5	28	33	3	2	5	8	30	38

### Child victims of other forms of exploitation and mistreatment<sup>75</sup>, 2020

Period of reporting and taking into care	Italians			Foreigners			Total		
	m	f	m + f	m	f	m + f	m	f	m + f
Minors reported in 2020	29	37	66	1	1	2	30	38	68
Minors in care from previous periods	49	54	103	12	8	20	61	62	123
Minors for whom social services were involved for the first time in 2020	29	36	65	1	1	2	30	37	67

These data lead to two observations. First of all, the cases that emerged are only a partial, and probably small, representation of a phenomenon characterised by the high number of situations that, on the other hand, are not brought to the attention of the Department of Juvenile and Community Justice.

In fact, situations of coercion and subjugation of the most vulnerable individuals are usually self-perpetuating and become widespread precisely because of the ability of exploiters to remove young victims from the control of the institutions responsible for protecting their rights (e.g. judicial authorities, health authorities, educational institutions).

Secondly, the surveys refer only to some, symptomatic, types of crimes and also concern Italian or foreign minors born within Italian national territory (not only unaccompanied foreign minors). Therefore, any more specific data on child victims of trafficking that can be acquired from other Ministries could be significantly different and, in any case, the DGMC statistics do not define the extent of a phenomenon whose seriousness lies precisely in the substantial scale of the hidden reality.

#### Management difficulties and possible interventions

The main difficulties in managing and taking care of children involved in criminal exploitation concern:

**1)** The complexity of communication due to linguistic diversity. In this regard, operators of juvenile services make use of cultural mediators to overcome lexical misunderstandings.

**2)** Children's resistance to providing data useful in re-establishing contacts with their relatives. It has been found that young foreigners who are drawn into exploitative circumstances often tend to hide what is happening from their families (unless the relatives are themselves responsible for this situation) because they feel the burden of disappointed expectations in the face of the profound aspirations for a comfortable life cultivated at the origin of a migration path.

**3)** The lack of personal identification documents is an insurmountable obstacle especially for the activation of the multi-agency services used to help young people joint the world of work.

**4)** The absence of valid points of family-related reference in Italian national territory that makes it difficult to implement educational projects and inclusion in the world of work.

**5)** The shutdown of the International Social Services Office (active in the past) which provided valuable support in the search for family members of children without ties in the national territory.

The new juvenile penitentiary system, introduced by Legislative Decree 121/18, has provided for a wide range of alternative measures to detention, which offer the possibility of residential accommodation to unaccompanied foreign minors who have joined the criminal world.

75. Il s'agit de mineurs victimes de mauvais traitements, d'esclavage, de prostitution des enfants, de pédopornographie, d'initiatives touristiques visant à exploiter la prostitution des enfants, de traite des êtres humains, d'achat et de vente d'esclaves, de sollicitation et de persécution.

Finally, among the **standard instruments prepared for the protection of foreign victims of trafficking and serious exploitation**, it is worth mentioning the institution governed by Legislative Decree 286/98, art. 18, which establishes: *"The residence permit described in this article can also be issued, at the moment of release from the penal institution, as well as further to a proposal from the Public Prosecutor or of the Supervisory Judge at the Juvenile Court, to any foreigner having served a prison sentence imposed for crimes committed while under age and who has given concrete proof of participation in a programme of assistance and social integration"*.

The peculiarity that makes this one of the most advanced and effective models in the international ambit for the protection of the victims of trafficking and, as a consequence, for the fight against the individuals and the criminal organisations dedicated to such crimes, consists of the intention to overcome the notion that sees the social protection conditioned by the collaboration of the victim with the Judicial Authority.

The characteristics of the regulation are the prevision for the so-called "twin track", i.e. the possibility of obtaining a residence permit - and access to the connected benefits - independently from the cooperation with the Judicial Authorities and the guarantee of the victim's complete and definitive integration into the social context thanks to his entry into a programme of assistance and social integration and to the possibility of converting the residence permit into another type of permit.

#### **The appointed experts**

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# Sweden



## 1. Unaccompanied minors and young people

### Définition

Unaccompanied minors are persons under 18 years of age who, on arrival in Sweden, are separated from both their parents or another adult who has taken the place of their parents. If a child is without parents or a guardian after arrival in Sweden, the child is also considered an unaccompanied minor.

Both unaccompanied children and children travelling with a relative or other adult are considered as unaccompanied minors and are subject to the same rules.

Unaccompanied minors are persons who have reached 18 but not 21 years of age and who have been granted a residence permit after having arrived in Sweden as minors.

### Number of unaccompanied minors seeking asylum

The number of unaccompanied minors seeking asylum in Sweden has decreased year on year since 2015.

In 2016, more restrictive temporary asylum legislation was introduced, which, together with restrictions on entry into the country, has affected the number of unaccompanied minors seeking asylum coming to Sweden. The temporary legislation expires on 19 July 2021 and is scheduled to be replaced by new long-term asylum legislation.

The current temporary legislation grants residence permits of 13 months for beneficiaries of subsidiary protection and three years for recognised refugees.

The COVID-19 pandemic has affected the ability of non-EU asylum seekers to reach Sweden and in 2020 only 500 unaccompanied minors applied for asylum in Sweden.

### Number of unaccompanied asylum-seeking children by gender

	2015	2016	2017	2018	2019	2020
Girls	2 847	435	293	249	257	157
Boys	32 522	1 764	1 043	695	645	343
<b>Total</b>	<b>35 369</b>	<b>2 199</b>	<b>1 336</b>	<b>944</b>	<b>902</b>	<b>500</b>

Most children seeking asylum in Sweden are in their late teens (16–17 years of age). However, the trend since 2015 has been towards a higher proportion of younger children. In 2020, the share of children under 13 years of age was 25%.

The share of girls among unaccompanied asylum-seeking children was eight per cent in 2015. From 2016, the share of girls has increased each year to 31% in 2020.

The most common countries of origin of unaccompanied minors seeking asylum in 2020 were Syria (22%), Afghanistan (17%), Somalia (14%) and Morocco (12%). The same countries have been the most common countries of origin for the last five years.

In addition to the group of unaccompanied minors seeking asylum in Sweden, the group of unaccompanied minors resettled through the UNHCR resettlement scheme has increased in recent years. Before 2017, there were only a few each year, but by 2020 there were more than 200. This development is linked to an increased international need for resettlement of this target group, but also to the fact that Sweden has increased its annual quota during this period from the previous level of 1,900 to 5,000 per year.

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### Reception of unaccompanied asylum-seeking children

When an unaccompanied minor arrives in Sweden to apply for asylum, it is the Swedish Migration Agency that receives and is responsible for processing the asylum case.

The Swedish Migration Agency assigns the child to one of the country's 290 municipalities for practical reception, i.e. for accommodation, daily care, any

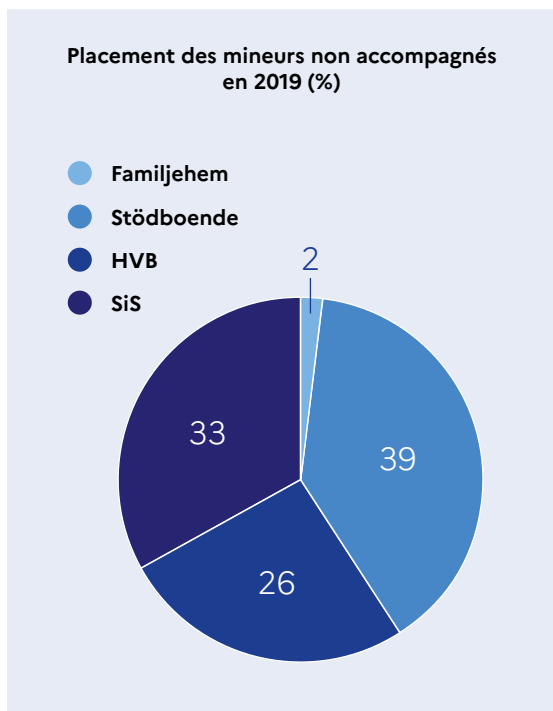
special support, a guardian (legal representative) and schooling. If the child has a relative accompanying him or her at the time of application, the assignment is made to the same municipality as the relative, unless this is deemed inappropriate in the individual case. Otherwise, the assignments are made according to a special system in order to achieve as even a distribution as possible among the country's municipalities.

The basis for the municipal reception of unaccompanied minors is the so-called normalisation principle. This means that all children residing in Sweden should, as far as possible, be covered by the same social care system.

The municipal social services are responsible for making an individual assessment of the child's need for support and protection. Depending on the child's needs, the child is placed in a residential care home (HVB), in a family home or in assisted living accommodation.

If the child exposes his or her health or development to a significant risk of harm through substance abuse, criminal activity or other socially disruptive behaviour, the child may be taken into compulsory care. Compulsory placement can be in open forms or in secure institutions (SiS – National Board of Institutional Care).

Social services are responsible for regularly monitoring the child's well-being, development and needs. During follow-up, social services should pay particular attention to the child's health, development, social behaviour, school attendance and relationships with relatives and other close persons



The chart shows the proportion of placements in each type of placement in 2019 for both unaccompanied asylum-seeking children and unaccompanied children and young people who have a residence permit in Sweden.

HvB is a form of residential institution. A family home can be in a family that is foreign to the child or in a family that the child or the child's parents know from their home country, a so-called network home. Assisted living accommodation is a form of independent living preferably for young people aged 18–21. SiS is a state-owned secure institution.

### Right to healthcare and education

Asylum-seeking children have the right to the same level of health and dental care and under the same conditions as children residing in the country. All children in Sweden have the right to free healthcare, even if they are asylum seekers or do not have permission to stay in the country.

Children aged 6–16 who live in Sweden are obliged to attend school. Asylum-seeking children are not obliged to attend school but have the same right to education as children who are obliged to attend school. Education is free of charge and should be equivalent to that provided to other children.

### The unaccompanied minor receives a residence permit

If the child is granted a residence permit, the responsibility of the Swedish Migration Agency ceases. The municipal social services then have ultimate responsibility for the child's maintenance and continue to be responsible for the child's accommodation and for any investigation of family members. When an unaccompanied minor is granted a residence permit, he or she must be registered and given a personal identity number.

Unaccompanied minors who have been granted a residence permit as refugees or persons enjoying subsidiary protection have the opportunity to be reunited with their parents in Sweden.

Young people who have reached the age of 18 and who have been granted a residence permit as unaccompanied minors can apply for and be granted continued placement in an HVB, family home or assisted living accommodation.

### In case of rejection of asylum application

If the child's asylum application is rejected, the municipality's responsibility for accommodation and other services remains with the child as long as he or she is a minor until the decision on removal or expulsion has been enforced. The guardian's mandate remains the same and the main rule is that the child has the right to continue his or her schooling or remain in pre-school despite a deportation order as long as the child remains in the country. The right to healthcare also continues until the child leaves Sweden.

### Anyone who reaches or is registered as 18 years of age is considered an adult in the asylum process

When an asylum-seeking child reaches or is registered as 18 years of age, responsibility for reception is, in most cases, transferred from the municipality to

the state, and the Swedish Migration Agency is then responsible for maintenance and accommodation, which means that the young person often needs to move to another location.

If the young person needs compulsory care, for example because of substance abuse or criminal activity, this remains the responsibility of the municipality.

The guardian's mandate ends and the right to health and dental care is limited to care that cannot be postponed.

### **Examples of challenges in dealing with unaccompanied minors**

Mental illness is widespread in the target group.

Child marriage. There is currently no information on the number of children arriving in Sweden who claim to be married, but in 2016, the Swedish Migration Agency identified 132 children who claimed to be married. All of them were or had been unaccompanied minors when they arrived in Sweden.

Network placements. Swedish and international research shows evidence that placement in the child's network is good for the child's health and development. At the same time, there are risks associated with network placements for unaccompanied minors. For example, risk of isolation, lower school performance, exploitation, honour-related violence, and oppression.

Children who come to Sweden with an adult who claims to be a relative may be the one exploiting the child.

Children and young people who run away/go missing. The problem of unaccompanied minors who run away or go missing in some way from accommodation and family homes has been identified for several years.

Children staying in the country without legal rights

## **2. Children in international trafficking and exploitation**

Swedish legislation on the crime of human trafficking is based on international law. The crime of human trafficking involves several different stages or elements. In order for an act to be classified as a trafficking offence against a child, the law requires that the following two conditions be met:

- The perpetrator has committed some form of trafficking.
- The perpetrator has an intention to exploit the child.

Exploitation does not have to have taken place for a person to be convicted of human trafficking; an act with the purpose of exploiting the child is sufficient.

In the case of children, there is no legal requirement that the offender has used coercion, deception, or similar means, as is the case for adults. Children are in such a vulnerable situation that any action aimed at exploiting them is trafficking.

It is not possible to say how many children are trafficked in Sweden, as the number of unreported cases is probably high.

## **National Task Force against Prostitution and Human Trafficking (NMT)**

The National Task Force against Prostitution and Human Trafficking, NMT, is coordinated by the Swedish Gender Equality Agency and consists of agencies involved in the support and protection process in cases of suspected human trafficking. NMT develops and streamlines coordination between authorities and NGOs. The aim is to prevent prostitution and human trafficking for all purposes in Sweden. An important part of this work is to improve the protection of the vulnerable and to increase the prosecution of perpetrators.

Within the framework of NMT, a specific support process for trafficking cases has been created, targeting municipalities, government agencies and NGOs. The support process applies to both adult and child cases. The support includes a helpline for professionals who need guidance on individual cases. It also includes a return programme for victims of human trafficking who want to return to their home country. The programme is run jointly with the UN agency International Organization for Migration (IOM).

Regional coordinators against prostitution and human trafficking are spread across the country and are represented in the country's seven police regions. They will assist the authorities, such as the police and social services, by providing support in individual cases and knowledge about prostitution, human trafficking, and exploitation.

### **Challenges for trafficked children**

Children who have been exploited to commit crimes find it difficult to seek support and help as they risk being punished for these crimes as there is no non-punishment clause.

There are no coordinated systems between local authorities and the police to detect children who have gone missing from residential care or between municipalities.

There is a lack of specialised shelters in Sweden with specific expertise for children who are exposed to or at risk of being exposed to human trafficking.

Confidentiality legislation between authorities can make it difficult to pass on information about early indications and suspicions of a risk of child exploitation.

## **3. Children and young people in the Swedish justice system**

The starting point under the current Swedish criminal justice system is that children and young people who have committed offences should be treated differently and primarily be the subject of social services interventions. Young people are defined as those under 21 years of age. This means that these persons are treated differently both in sentencing and in the choice of sanction. It also means that they are treated differently when the police, prosecutors and courts deal with cases involving young offenders..

### **Children under 15 years of age**

Children who have committed offences before the age of 15 cannot be punished because they do not have the legal capacity to commit a crime. A person

under the age of 15 can therefore commit a crime but cannot be charged with it and cannot be punished. Instead, the main responsibility for assessing the need for support and for taking action rests with social services. This means, for example, that a preliminary investigation may not be opened against a suspect under 15 years of age.

A child under the age of 15 may not be arrested, detained, or held in custody.

#### **Children over 15 and young people under 21 years of age**

Children aged 15 or over are criminally responsible and can therefore be sentenced for an offence. Preliminary investigations against children for offences that may lead to imprisonment shall be conducted with particular urgency. A personal investigation should normally be conducted in parallel with the criminal investigation. A personal investigation consists of a statement either from the Swedish Prison and Probation Service or from social services.

Children aged 15–17 can be detained under certain conditions. For children 15–17, in addition to the basic conditions for detention that always apply, detention may only be used if it is clear that adequate supervision cannot be arranged, and if there are also exceptional reasons.

When a preliminary investigation concerning a person over 15 years of age is completed, the prosecutor must decide whether or not to prosecute. Instead of prosecuting, the prosecutor may, under certain condi-

tions, impose a fine, issue an order of summary punishment and issue a caution. A caution is something that the prosecutor can use with children and means that the prosecutor does not press charges, but instead the child receives a warning that a penalty may be imposed if the child reoffends.

#### **Sanctions**

For children aged 15–17, there are special sanctions. These sanctions are called special youth sanctions. They include youth care, youth probation and institutional youth care.

Children aged 15–17 can in some cases be sentenced to the same sanctions as adults. Fines are a common punishment for both children and young people, but other sanctions can also be imposed, such as imprisonment, probation, and a suspended sentence. However, there are rules to avoid imprisonment in the first place for young people under 21 years of age.



# EUPROM PROJECT

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