



# **European Migration Network**

## **Belgian Contact Point**

### **Unaccompanied minors in Belgium Reception, return and integration arrangements**

**July 2009**

# Table of contents

## Executive Summary

- 1. Introduction: purpose and methodology followed**
  - 1.1 Purpose of this study
  - 1.2 Definition of Unaccompanied Minors
  - 1.3 Legislative Framework
    - 1.3.1 *Belgian legislation*
    - 1.3.2 *International rules, norms and recommendations*
  - 1.4 Sources, materials and methodology followed
- 2. Motivations for seeking entry into Belgium**
- 3. Entry procedures, including border control**
  - 3.1 Actors involved in the treatment of UMs
  - 3.2 Entry procedures
  - 3.3 Guardianship
    - 3.3.1 *Competences of Guardianship Service*
    - 3.3.2 *Competences of the guardian*
    - 3.3.3 *Taking charge of the UM*
    - 3.3.4 *Identification of the minor and age assessment*
    - 3.3.5 *Assignment of the guardian*
- 4. Reception arrangements**
  - 4.1 Reception in three phases
    - 4.1.1 *Observation and orientation phase*
    - 4.1.2 *Transitional phase*
    - 4.1.3 *Stable housing or reception in autonomy*
    - 4.1.4 *Statistical information*
    - 4.1.5 *Financial costs reception*
  - 4.2 Residence possibilities of the UM
    - 4.2.1 *If the UM is asylum seeker*
    - 4.2.2 *If the UM is victim of trafficking*
    - 4.2.3 *Circular Letter of 15 September 2005*
    - 4.2.4 *Illegal Stay*
    - 4.2.5 *Regularisation*
    - 4.2.6 *Overview*
  - 4.3 Turning 18
  - 4.4 Detention
  - 4.5 Provisions to access to legal representation
  - 4.6 Psychological Care
  - 4.7 Integration measures for UMs
  - 4.8 Conditions and provisions of making an asylum application by UMs
  - 4.9 Family Reunification
  - 4.10 European Unaccompanied Minors
  - 4.11 Disappearances
- 5. Return practices including reintegration**
  - 5.1 National (suspensive) measures to organise the return of UMs
    - 5.1.1 *Removal at the border*
    - 5.1.2 *Removal orders*
  - 5.2 The voluntary return of UMs
    - 5.2.1 *Voluntary return of UMs: the IOM REAB Programme*
    - 5.2.2 *The Immigration Department initiatives towards a sustainable return*

- 5.3 The European Community Framework: specific activities within Dublin II, the Readmission Agreements and the Return Directive
- 5.3.1 *UMs within Dublin II*
  - 5.3.2 *Existence of Readmission agreements and safeguards contained therein*
  - 5.3.3 *The Return Directive: current practices in the remits of Arts. 10,14 and 17*

## **6. Concluding Remarks: best practices and lessons learned**

### **Bibliography**

#### **Annexes- Statistics**

- Annex 1: Number of UMs in Belgium
- Annex 2: Age distribution of UMs
- Annex 3: Gender distribution of UMs
- Annex 4: Statistics on asylum applications
- Annex 5: Statistics on return
- Annex 6: Numbers of UMs that initiated the procedure “human trafficking”
- Annex 7: European UMs
- Annex 8: Interceptions of UMs
- Annex 9: Identification form for UMs

# European Migration Network

This report has been produced by the Belgian Contact Point (BE NCP) of the European Migration Network. The BE NCP is a mixed contact point composed of experts of: the Immigration Department (policy support unit); the migration observatory of the Centre for Equal Opportunities and Opposition to Racism; the Office of the Commissioner General for Refugees and Stateless Persons (international unit); and of Statistics Belgium.

The EMN has the objective to meet the information needs of Community institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. The EMN also serves to provide the general public with such information.

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## Executive Summary

The current study is undertaken in the first half of 2009 in the framework of the European Migration Network (EMN). It concerns the policies on reception, return and integration arrangements for unaccompanied minors (UMs) in Belgium, and contains statistical information thereof. The overall objective of this study is to assist political decision-makers at European level and within the Member States to compare the situation of unaccompanied minors in the various EU countries; to fill a knowledge gap on their policies; and to draw from this comparison such conclusions as might then be used for making targeted improvements in the treatment of unaccompanied minors. On the Belgian level this study is also intended to raise awareness on the challenges and problems Belgium is facing in dealing with unaccompanied minors.

On average there are around 1,800 unaccompanied minors per year in Belgium that are registered by the Guardianship Service. The majority of them (60-70%) does not apply for asylum and are in most cases intercepted by the police authorities. The largest group in this category originates from Algeria, Morocco or India and from other European countries (Serbia, Bosnia and Romania and they often belong to the Roma population). Their rationale for seeking entry into Belgium would require further research, but a few reasons can be discerned: Belgium is used as a transit country to the UK or Scandinavian countries; they are street children wandering around Europe who decide to stay in Belgium; or they belong to the Roma population and travel around. On the other hand, there is the category of those who apply for international protection (30-40%) as they are fleeing their country of origin for fear of persecution. Mainly 5 countries make up around 50% of all asylum applications of UMs: Afghanistan, Guinea, DR Congo, Russia and Iraq.

Since May 2004 the **Guardianship Act** specifically foreseen for UMs is applicable. It provides specific provisions to deal with UMs on the Belgian territory or at the border. Any authority that comes to know about the presence of an UM on the Belgian territory or arriving at the border has the obligation to inform the Guardianship Service. This should be done by filling out a specific identification form for UMs. Every UM, regardless of its administrative status (asylum seekers, undocumented children, European UMs) will at first be placed in a so-called Observation and Orientation Centre (OOC). This will allow the Guardianship Service to identify the UM; and if necessary, to undertake an age assessment by means of a medical test. This OOC can also function as an extraterritorial place (for a limited time) for those UMs intercepted at the border. The OOC is a secured, though open reception facility. Belgium does not detain UMs.

The Guardianship Service and the guardian will be important for the UM residing in Belgium. Once identified, a guardian will be assigned to every UM. The guardian will have to see to it that the authorities find a durable solution for the UM in the best interest of the child. He/she will assist the UM in all legal duties, all residence procedures and any other legal or administrative procedure. Two types of guardianship exist in parallel in Belgium: the professionalised system and the benevolent/voluntary system; with the majority being in the voluntary system.

The **reception system** for UMs in Belgium consists of three phases. A first phase in the Observation and Orientation Centre for 15 days, renewable once. The UM will then be transferred to the second reception phase; but here a distinction is made between the UMs applying for asylum (federal competence) and UMs not applying for asylum (competence of the Communities). Asylum seeking UMs will be placed in a reception centre for asylum seekers with a special area for UMs, organised by Fedasil or one of its partners. They can stay in this centre during the course of their asylum procedure. UMs who do not seek asylum fall under the authority of the Communities' (Flemish, French) Youth Welfare Services. They will be considered as minors in a "problematic upbringing situation" and should be placed in specialised centres. However, places are hard to find within the Communities. As a practical solution it was arranged that Fedasil (federal level) becomes responsible for the reception of non-asylum seeking UMs only when the Communities lack sufficient reception places. In this way, it is guaranteed that an UM will always have a reception place; although this will not always be one that is best adapted to his/her situation. The aim of this second phase is to provide the UMs with a longer period of rest (of maximum 1 year). UMs will have the chance to go to school, learn the language and if necessary receive appropriate medical/psychological attention. During the third reception phase a more 'durable solution' for the UM is envisaged. UMs will receive a more stable housing or reception in autonomy that is best adapted to their specific profiles.

When it comes to the **residence situation** of UMs in Belgium, several options are open. (1) an UM can apply for **asylum** and will, in case of a positive decision, be recognised as a refugee or receive the status of subsidiary protection; (2) an UM can be a **victim of human trafficking** and initiate a specific procedure. Although, the conditions are hard to meet and few UMs receive a residence status as victim of human trafficking; (3) the **Circular Letter of 15 September 2005** provides a specific procedure for UMs to apply for an authorisation to reside on the Belgian territory. It is only applicable for those minors who are not involved (any more) in another residence procedure (asylum, victim of human trafficking, regularisation). This procedure aims to find a “durable solution” for all UMs who initiate it. The Immigration Department, together with the guardian, will investigate the different options: family reunification in Belgium; return of the UM to his/her country of origin; or unlimited stay or settlement in Belgium. These three options are considered on an equal basis. The determination of the durable solution for the UM is done on a case by case basis. This investigation might take some time and options might change over time. Meanwhile the Immigration Department can issue or prolong temporary residence documents. If after a period of three years, no durable solution has been found, and the UM fulfills the conditions set by the Immigration Department (e.g. attend classes, provide identity documents, etc.) a residence permit of unlimited duration can be issued. (4) In case the UM does not meet the conditions, he/she can end up being in an **irregular residence situation**. However, he/she will be able to stay in the reception facility until the age of 18 is reached. (5) UMs not meeting the conditions of the Circular Letter can also introduce an application for **regularisation** on basis of Art 9bis (exceptional reasons) or Art 9ter (medical reasons) of the Aliens Act.

As for the **integration process** a great deal of work is done in the reception centres by the social workers and with the help of the guardian. The UM will have to develop a ‘life project’ and this will often require an individualized approach for each UM, depending on its capabilities. School will play an important factor in the integration process. In Belgium, education is compulsory from 6 to 18 years old and the UM is entitled to receive this education. The various Communities have developed a system of so-called separate “reception classes” for newcomers, with the main aim of teaching them the language, as well as the socio-cultural system in Belgium. Afterwards they can progress to the mainstream education.

In the **asylum procedure** for UMs, the criteria for recognition as a refugee do not differ from those of adults. However, special attention is given to the fact that the person is a minor. The guardian will always have to be present, otherwise the interview cannot proceed. The interview at the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) will be adapted to the degree of mental development and maturity of the UM. There are caseworkers who received specialised training; standardised interview forms and guidelines are used; they are interviewed in an adapted interview room. When examining the asylum application the fact that the applicant is a minor is taken into consideration, and the principle of “the benefit of the doubt” will have a larger field of application.

Two other important issues are also highlighted in this study. On the one hand the fact the minors from the **European Economic Area** Member States (especially Romania) are well represented in the statistics. This is important to mention as those UMs do not fall within the scope of the Guardianship Act and thus do not receive the same treatment. To deal with this situation the Belgian authorities have created a special service for “European Minors in a vulnerable situation”, that allows them to assist these minors, who are often prone to be victims of human trafficking. Another issue closely related to this, is the fact of **disappearances of UMs**. In 2007 there were 902 disappearances of UMs out of one of the Observation and Orientation Centres (first reception phase). These numbers are substantial but should be put into perspective. Most of these minors are not demanding to be taken care of, and are considered by the OOCs more as ‘voluntary leavers’ (e.g. they have another final destination). This does however not mean that these minors are less vulnerable and so policy measures for this group are being discussed. However, there are also ‘worrying disappearances’ (e.g. victims of human trafficking) and in those cases help of Child Focus can be provided.

Another focal point are the **return practices** of UMs. In Belgium there are **no forced returns** as the best interests of the child will always have to be taken into account. Voluntary return is however considered as one of the possible durable solutions. It is organised in collaboration with IOM through the REAB programme. The UM can also make use of the Reintegration Fund, and reintegration activities in the country of origin will be adapted to the specific needs of the child and the return process will be monitored and evaluated over a period of one year. The **numbers of voluntary returns are relatively low** (16 in 2007; 22 in 2008). The Belgian Immigration Department has also

organised ad hoc initiatives for voluntary return of UMs (e.g. Congo), however, with little success. They also have set up prevention and information actions in targeted countries of origin.

By way of conclusion this study develops some **best practices and lessons learned**. Many recommendations were made by various stakeholders during the course of making this study, and the most recurring ones are mentioned. The introduction of the Guardianship Act and guardianship system is considered as a major step forward. However, it is widely agreed that an impact assessment should be conducted in the near future. The uniform status of guardians and more specialisation, continued training and more exchange of information between the guardians are often requested. It is however mentioned that the Guardianship Service has an important role, but lacks the means to fully execute its legal duties. The procedure according to Circular Letter of 15 September 2005 can provide a solution for a lot of UMs, however some NGOs consider the role of the Immigration Department to decide on the durable solution in the best interests of the child, to be too big. Another conclusion is the fact that the reception system in three phases provides accommodation for all UMs, however due to a lack of places, not all UMs can receive the best reception in their situation. The quality of the reception centres also seems to differ. On the issue of victims of trafficking in human beings Belgium has done some pioneering work by providing a specific procedure. However it is widely agreed that the conditions are sometimes hard to meet for UMs, and necessary policy measures are being proposed. Last but not least, it can be observed that different services have statistical material on UMs, however there is no uniform system in Belgium. So, it is often hard to find reliable and comparable statistics. Efforts to improve the statistical information are undertaken. In general, it can be concluded that there is always room for a better exchange of information between the various stakeholders.

# 1. Introduction: purpose and methodology followed

## 1.1 Purpose of this study

The number of unaccompanied minors (UMs) arriving in the different Member States of the European Union is on the rise. As for all migrants, UMs all have their personal reasons to leave their country of origin. They enter the EU either legally or illegally, sometimes as victims of human trafficking. Some of them apply for international protection. However, the fact that they are minors not accompanied by their parents or legal guardians, puts them in a specific, vulnerable situation. Dealing with them requires specific attention from the authorities and other actors involved.

This study in the framework of the European Migration Network (EMN) is intended, together with the studies carried out in the other Member States, to collect relevant information concerning the respective national practices and procedures for the reception, integration and return of unaccompanied minors, and to compile statistics relating to their number and provenance. The overall objective of this study is to assist political decision-makers at the European level and within the Member States to compare the situation in the various EU countries; to fill a knowledge gap on policies towards unaccompanied minors; and to draw from this comparison such conclusions as might then be used for making targeted improvements in the treatment of unaccompanied minors. Within this framework, this study will picture the situation, procedures and practices in Belgium.

The results of this study will, together with the studies carried out by other participating Member States, be integrated in a joint “Synthesis Report”. As such, the results from the individual countries will be compared, and their common points and differences highlighted and placed into a European context. At some point later, this study might, if appropriate, provide a basis for the development of common EU standards for the treatment of unaccompanied minors.

In Belgium several actors are involved and the topic of unaccompanied minors is widely discussed. However, this study is also intended to provide an overview of the current situation and to increase awareness on the challenges and problems Belgium is facing in dealing with unaccompanied minors. This study will thus also elaborate some more on the situation of so-called European unaccompanied minors, as well on the issue of disappearances, even though it has not been put explicitly in the study specifications.

## 1.2 Definition of Unaccompanied Minors

For the purpose of this study we will refer to the definition mentioned in the so-called Guardianship Act of 22 December 2002. An unaccompanied minor refers to a person that meets the following four conditions:

- 1) Being under 18 years old;
- 2) without the guidance of a person with parental authority or a person that has guardianship over the minor;
- 3) originating from a country that does not belong to the European Economic Area (EEA);
- 4) who has applied for asylum or does not fulfill the conditions to enter or reside on the Belgian territory.

So, this means that the following categories of unaccompanied minors do not fall under the definition of the Guardianship Act.

- UMs who are nationals of the EEA. In Belgium this is of specific interest as UMs from Bulgaria and Romania accounted for a relative big number of UM (before their accession in 2007). As a consequence the Service SEMK was created.<sup>1</sup>
- UMs who enter the Belgian territory with valid travel documents (e.g. with visa for student, family reunification, tourism, etc.). However, once e.g. the validity of the visa expires, it is possible that these persons can be considered as an UM.

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<sup>1</sup> See: 4.10 European Unaccompanied Minors

## 1.3 Legislative framework

### 1.3.1 Belgian legislation

In the area of treatment of unaccompanied minors the following Belgian legislation is applicable:

- Law of 15 December 1980 and the Royal Decree of 8 October 1981 on entry, residence, settlement and removal of foreign nationals (a.k.a. Aliens Act)
- Guardianship Act of 24 December 2002 (Title XIII, Chapter VI « Unaccompanied minor aliens », of the Programme Law of 24 December 2002 (Belgian Official Gazette of 31 December 2002). Modified by the Programme Law of 22 December 2003 and the Programme Law of 27 December 2004.
- Asylum Seekers and Certain other Categories of Aliens Act of 12 January 2007.
  
- Royal Decree of 8 October 1981 on the entry, residence, settlement and removal of foreign nationals.
- Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI «Unaccompanied minor aliens », of the Programme Law of 24 December 2002.
- Royal Decree of 13 Mai 2005 modifying the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI «Unaccompanied minor aliens », of the Programme Law of 24 December 2002
- Royal Decree of 9 April 2007 determining the regime and rules for functioning of the Observation and Orientation Centres for UM.
- Royal Decree of 7 December 2007 to change the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI «Unaccompanied minor aliens », of the Programme Law of 24 December 2002
  
- Circular Letter<sup>2</sup> of 19 April 2004 on the taking charge of and identification of unaccompanied minor aliens by the Guardianship Service.
- Circular Letter of 23 April 2004 on the identification form “unaccompanied minor alien”.
- Circular Letter of 30 April 2004 on the cooperation between the Immigration Department and the local administrations on the residence of UM.
- Circular Letter of 15 September 2005 on the stay of unaccompanied minors. Steps are currently being undertaken to modify this Circular letter.
- Circular Letter of 2 August 2007 on European unaccompanied minors in a vulnerable situation.
- Circular Letter of 25 July 2008 modifying the Circular Letter of 23 April 2004 on the identification form “unaccompanied minor alien”.
- Circular Letter of 26 September 2008 on the introduction of a multidisciplinary cooperation in the field of victims of human trafficking and/or certain other aggravated forms of trafficking in human beings.<sup>3</sup>

### 1.3.2 International rules, norms and recommendations

The policy on unaccompanied minors in Belgium is also influenced by binding and non-binding international rules, norms and recommendations.<sup>4</sup>

#### 1.3.2.1 Binding rules of law

- International Convention on the Rights of the Child (1989)
- European Convention on Human Rights (1950)
- UN Convention Relating to the Status of Refugees (1951 Geneva Convention)
- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)

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<sup>2</sup> A Circular Letter includes all the rules that a public administration imposes on its civil servants and that have to be respected in individual cases. Some circular letters are published in the Official Gazette and thus offer more legal security. See: Jollet Christophe, La procédure des MENA. Comparaison avec les demandeurs d'asile adultes. Mémoire de stage. SPF P&O- IFA. Août 2008, p.8.

<sup>3</sup> This circular letter tries to raise awareness with the first line actors regarding the specific measures that should be applicable to UMs and insists on the necessity of taking their vulnerable situation into account. This Circular Letter was published in the Belgian Official Journal of 31 October 2008.

<sup>4</sup> Kinderrechtencommissariaat. Heen en Retour, kinderrechten op de vlucht, September 2007, pp.22-29.

- Resolution of the European Council of 26 June 1997 on unaccompanied minors from third countries
- Regulation Dublin II (2003)
- EU Directive 2003/9/EC (Reception Act)
- EU Directive 2004/81 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities
- EU Directive 2004/83/EC (Qualification Directive)
- EU Directive 2005/85/EC (Procedures on Asylum)

### **1.3.2.2 Non-binding instruments and recommendations**

- UNHCR Guidelines on Protection and Care of Refugee Children (1994)
- UNHCR Guidelines on Policies and Procedures dealing with Unaccompanied Children Seeking Asylum (1997)
- UNHCR Report on the High Commissioner's five global priority issues for refugee children, 6 June 2006
- Committee of the Rights of the Child. General Comment nr.6, treatment of unaccompanied and separated children outside their country of origin, 2005
- European Network of Ombudspersons for Children (ENOC)

## **1.4 Sources, materials and methodology followed**

The present study has been based on the most recent research literature dealing with unaccompanied minors. The manual of the Guardianship Service<sup>5</sup> and the practical guide<sup>6</sup> of Charlotte van Zeebroeck on the administrative, judicial and social situation of unaccompanied minors; and the recent report of IOM on the exchange of information and best practices on first reception, protection and treatment of unaccompanied minors<sup>7</sup> proved to be valuable starting points.

Contacts with the relevant stakeholders within the various government departments were also a main source of information. First of all, within the *Immigration Department*, the Bureau MINTEH was of prime importance; but also other departments like Bureau Asylum, Border Inspection, Immigration Liaison Officers, Legal Department. Other essential sources of information were the *Guardianship Service* within the Ministry of Justice for more details on the guardianship system; *Fedasil* for more information on the reception of unaccompanied minors; the *Office of the Commissioner General for Refugees and Stateless Persons* regarding the UMs seeking asylum.

We also made use of a questionnaire that was sent to different governmental and non-governmental stakeholders. Contacts were also made with people working in a reception centres; guardians; caseworkers at the CGRS; and academics.

The search for statistics was more complex as each institution has statistics for their internal use, so a complete and more general overview of the situation of the UMs in Belgium is still unavailable. With the growing importance of the issue of the UMs, the different services try to adapt their systems and start to collaborate more closely on the level of statistics.<sup>8</sup>

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<sup>5</sup> Federale Overheidsdienst Justitie, Dienst Voogdij. Vademecum voor voogden van niet-begeleide minderjarige vreemdelingen. Eerste uitgave – bijgewerkt op 31 augustus 2007.

<sup>6</sup> Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique. Mars 2008.

<sup>7</sup> International Organization for Migration. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of best practices and recommendations. September 2008.

<sup>8</sup> e.g. internal meetings within the Immigration Department; meetings on the level of the National Commission for the Convention of the rights of the child; task force minors (Cabinet of the Minister of Migration and Asylum Policy).

- The **Guardianship Service (GS)** could provide statistics on the number of unaccompanied minors that was reported to them on basis of the identification form of UMs. They also have a clear view on the age and gender distribution as well as on the countries of origin. As the GS was only established in May 2004, the data go only back to this date.
- The **Office of the Commissioner General for Refugees and Stateless Persons (CGRS)** could provide statistics on the number of positive and negative decisions in asylum cases. We could compare these figures with the numbers of asylum applications (provided by the Immigration Department). One has to bear in mind that an asylum application made in a certain year, is not always treated in the same year.
- The **Immigration Department, Bureau MINTEH** has also a wide range of statistics:
  - Statistics of the specific department within the Immigration Department that reports the presence of an unaccompanied minor on the territory. This provides some basic insight in the number of intercepted UMs by the police authorities as they report to ID's Bureau C and Bureau Permanency.
  - The Bureau MINTEH is also responsible for the specific procedure according to the Circular Letter of 15 September 2005. However, the Bureau does not have exact figures on how many UMs make use of this procedure. Only the number of residence documents that have been issued and prolonged according to this procedure are registered. One has thus to take into account that an UM can have several residence documents issued or prolonged in one and the same year. Also, the procedure is applicable to UMs that are new arrivals, as well as those who have already passed another procedure(s), e.g. asylum.<sup>9</sup>
  - The Immigration Department also keeps records of persons (including minors) who have requested the application of article 9bis and 9ter of the Aliens Act, the so-called regularisation procedure. However, in these statistics no distinction is made between accompanied and unaccompanied minors.
  - The Bureau Asylum has statistics on UMs who introduce an asylum application at the border as well as within the territory.

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<sup>9</sup> Timmerman C., Vandehole W., Vanheule D.(eds.). Kinderen zonder papieren: feiten en rechten. Juli 2009.

## 2. Motivations for seeking entry into Belgium

On average Belgium receives about 1.800 unaccompanied minors per year. This figure is based on the identification form used by the Guardianship Service that registers every UM that is reported to it. However, as the figures show, a lot of UMs are intercepted within the territory and thus never had the intention to report themselves to the authorities. This shows that probably a substantive number of UMs remains undetected and thus unprotected.<sup>10</sup> The group of UMs is quite heterogeneous, so it is therefore difficult to have an exact image of “the UM”. There is a great diversity when it comes to countries of origin, and this picture can change accordingly when the situation in certain regions of the world changes. In general terms it can be said that the population of UMs is mainly male (more than 70%) and 16 years or older (more than 60%).

The majority (60 to 70%) of UMs arriving in Belgium does not apply for asylum. In most cases they are intercepted by the Police as there are in an irregular residence situation. The largest group originates from non-EU European countries (Serbia, Bosnia, and Romania) and often belongs to the Roma population; or from Algeria, Morocco and India.

Between 30 and 40% of the UMs applies for international protection via the asylum procedure that can offer the refugee status or subsidiary protection status. They are fleeing their country of origin because they fear persecution for reasons of religion, political or ethnical affiliation, nationality or because they belong to a specific social group (criteria of the Geneva Convention). Additionally this can be for reasons of national or international conflict and their fear of becoming a victim of blind violence. In the Belgian statistics of the last few years we see that 5 countries make up around 50% of all asylum applications of UMs: Afghanistan, Guinea, DR Congo, Russia and Iraq. In 2007 almost 20% of the asylum applications of UMs came from Afghanistan.

The rationale for seeking entry into Belgium would require further research. Therefore, we would like to highlight the overall profile of UMs in Belgium. Among the few relevant studies, one can refer to a Fedasil and Child Focus study in 2004 where the trajectory in Belgium of 683 asylum seekers was followed.<sup>11</sup> It showed that 85% arrived in Belgium with the help of traffickers and 25% of them used an alias.<sup>12</sup> Only 10% of the asylum seekers made their applications at the border. The majority was placed in a reception centre, but 15% stayed at a private address, which shows they already had family, or relatives in Belgium. What is also remarkable is that 161 persons out of this sample disappeared. They were mainly boys older than 17 coming from Eastern and Southern European countries (Romania, Moldavia, Russia, Albania, Serbia, Kosovo,...). The disappearances happened quite rapidly after their detection: 13% within 24 hours, and up to 75% within three months.

In another publication Margot Cloet<sup>13</sup> divides the UMs present in Belgium into eight subgroups.

- (1) Unaccompanied minors that have left their country of origin accompanied by their parents, their guardian or other family members. In times of conflict the departure is often impulsive and family members can lose one another easily along the way. Sometimes the UM is left behind in the country of destination because e.g. the parents received a negative decision in the asylum procedure and they no longer see a way out. They leave their child in the knowledge that their child will have more rights as an unaccompanied minor;
- (2) Some UMs have been ‘chosen’ by their parents to travel to the country of destination, to live the dream they had. Often the parents have high expectations for the UM;
- (3) Another group encompasses the victims of human trafficking who are recognised as such by the government. These UMs are sent to the country of destination for sexual exploitation, for illegal labour, for domestic labour, etc;
- (4) The group of potential victims of human smuggling, who have never filed a procedure and are thus not recognised as such;
- (5) A fifth group consists of the runaways and drifters. They often take up different identities and move around in different groups of companions in misfortune. They are mainly boys between the ages of 14 to 18, with little or no education; they left on their own initiative and still have contact with their family;

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<sup>10</sup> Derluyn, I & Broekaert E. (2005); Niet-begleide buitenlandse minderjarigen. Tijdschrift voor Jeugdrecht en Kinderrechten, 6, 1, 12-21.

<sup>11</sup> Child Focus & Fedasil. Het profiel en de traject-monitoring van de niet-begleide minderjarige asielzoeker in België. Juli 2005.

<sup>12</sup> Someone who uses an alias, takes up another identity e.g. a false passport with another name or date of birth.

<sup>13</sup> CLOET, M., Voldongen feit? Opvang en begeleiding van buitenlandse, niet-begleide minderjarigen, Garant, Antwerpen- Appeldoorn, 2007.

- (6) A sixth group consists of those minors in transfer. They do not have the intention to stay in Belgium, but are on their way to another country, e.g. United Kingdom, and are intercepted along the way;
- (7) Some UMs are on their way to join their parents, family members. As the procedure for family reunification is sometimes complicated and takes a long time, UMs try it in another way;
- (8) Last but not least, UMs who travel around in group, people of the same community. Most of these youngsters belong to the community of the Roma, and often work in the informal economy.

According to various stakeholders who are in contact with UMs on a daily basis, UMs usually have various reasons to come to Belgium, but will rarely reveal them, or will indicate other reasons in their contacts with the Belgian authorities. For instance, UMs would claim asylum pretending they had been persecuted, when they are actually looking for better education.

It can also be pointed out that:

- UMs originating from e.g. DR Congo, Guinea, Angola often already have a good education as they might have wealthy families and come to Belgium for the well-developed schooling system. The fact that Belgium has colonial links with DR Congo is also an important factor.
- UMs coming from Maghreb-countries (Morocco, Algeria) have another profile: they are often street children, who have little or no expectations in their country of origin and come to Europe to find a better future. They sometimes wander in Europe for several years until they decide to settle in Belgium where they usually have a network of friends and relatives. This group is difficult to help as they are not used to a well-structured life, and they are thus prone to disappear from the reception structures.
- Another group that is well-represented is the one of the Roma communities that originate from the former-Yugoslavia. Many 14 to 15 year old girls belong to this group and are often part of a network that obliges them to undertake certain offences (begging, petty crime, etc.). This group also tends to disappear from the reception structures.
- As is reflected in the statistics European minors, more specifically from Romania make up a substantial part of the UMs (205 in 2006; 90 in 2007 and 30 in 2008). They often belong to the Roma population. This is of specific importance as with accession of Romania to the European Union in 2007, these UMs do not longer fall under the definition of Unaccompanied Minor as mentioned in the Guardianship Act.<sup>14</sup>
- Other UMs come from countries where the overall security situation is bad. They come to Belgium to seek international protection (refugee or subsidiary protection). Afghanistan is on top of the list of the asylum applications of UMs. These are mainly young boys older than 16, who had been living in Afghanistan or the neighboring countries and consider it not safe to return to Afghanistan due to conflicts over property, political opposition, blood feuds, honor killings and because of the involvement as a child soldier.<sup>15</sup> Moreover, asylum seekers from DR Congo mention most often political reasons and war in the Eastern-Congo as reasons for fleeing. In Guinea the group consists mostly of girls fleeing because of fear for forced marriages and genital mutilation.
- The majority of the UMs arriving in Belgium are between 15 and 18 years old. In case of really young children we can, by way of example, indicate that if they originate from China or Latin American countries, they often already have family members (e.g. aunt, uncle, distant family) present in Belgium.

As already mentioned a lot of UMs are intercepted by the Police authorities on the Belgian territory on their way to the United Kingdom and Scandinavian countries. As Belgium has important sea connections with the UK it is used as an important migration transit zone. For many migrants and refugees the UK is their 'promised land' as they perceive the UK to offer favourable employment opportunities, along with other perceived attractions, such as better benefit payments, better access to health care and better social conditions than certain other EU states. In addition, the existence of ethnic communities or the presence of family members in the UK who can provide support and employment appeal to many migrants.<sup>16</sup> The standard profile of these intercepted UMs is that they are mainly males

<sup>14</sup> See: 4.10 European UMs

<sup>15</sup> De Grave Ilse. Het profiel van Afghaanse minderjarigen in België. Eindverhandeling. FOD P&O- OFO. Augustus 2008.

<sup>16</sup> Derluyn, I. & Broekaert, E. (2005). On the way to a better future : Belgium as a transit country for trafficking and smuggling of unaccompanied minors. International Migration, 43 (4), 31-56.

between the age of 15 to 18 years old, coming from an Asian or Eastern European country. Most of them do not want to be transferred to a reception centre, and many- although not all- disappear from these centres. They are persistent in reaching the UK and therefore they are often intercepted multiple times. On the other hand, some choose to stay temporarily or definitively in Belgium.

It should also be mentioned that specific protection procedure for UMs is also prone to abuse. An internal study of the Immigration Department reveals that the rising influx of UMs in Belgium (mainly UMs who gain irregular access to the territory and then make an application for the specific procedure for UMs) is in contrast with the decreasing influx of irregular entries in general (asylum seekers and intercepted illegal residing immigrants). One could have expected this number to decrease with the accessions of the new member states to the European Union since a great number of UMs from these countries disappeared from the statistics. It is suggested that the motivations to use this procedure for UMs is to bypass the other legal entry procedures and thus come to Belgium for studies; family reunification; adoption; guardianship or medical treatment.<sup>17</sup> Another indication to improper use of the procedure is the fact that 17-year olds are overrepresented in the statistics. Taking into account that the medical test applies a two year margin, it can be stated that a lot of these persons are in reality over 18 years old.

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<sup>17</sup> Dienst Vreemdelingenzaken, intern document, terugkeer niet-begeleide minderjarigen 13/06/2008.

## 3. Entry procedures, including border control

### 3.1 Actors involved in the treatment of UMs

The treatment of the unaccompanied minors in Belgium involves several actors. The collaboration between these services is extremely important in the light of finding a durable solution in the best interests of the child. The guardian, as direct contact point of the UM, plays a pivotal role in this.

#### 3.1.1 Immigration Department

The Immigration Department (a.k.a. Aliens Office) belongs to the Federal Public Service (FPS) of Home Affairs and is responsible for the management of the entry of foreign nationals to the Belgian territory, their stay, their settlement and (potential) removal of from the Belgian territory.

Within the Immigration Department several services are involved when it comes to UMs.

##### A) Bureau Interviews and Decisions of the Direction Asylum

The Immigration Department is responsible for the registration of the asylum applications and the check according to the Dublin Convention. In case an UM applies for asylum, it will be this Bureau that fills out the identification form for unaccompanied minors in order to inform the Guardianship Service of the presence of an UM on the territory. In case of doubt on the age, the Immigration Department will indicate on the form that a medical investigation is necessary. The Bureau will just register the asylum application as the UM has the legal capacity to apply for asylum by oneself. However, the Bureau will await the appointment of a guardian to proceed with the next steps in the asylum procedure (e.g. interview in which the UM can indicate the main reasons for fleeing his country of origin).

##### B) Bureau Minors of the Direction Entry and Stay (MINTEH)<sup>18</sup>

This Bureau Minors has the task to find a 'durable solution' in the best interests of the child and in due consideration of the fundamental rights for all UMs on the Belgian territory who cannot benefit from another procedure (e.g. irregular residence situation after a failed asylum procedure). Its duties are described in the Circular Letter of 15 September 2005.<sup>19</sup> In order to find this durable solution the Bureau tries to investigate the family situation of the UM in Belgium as well as abroad. This durable solution can be either (1) family reunification in the country of origin or in Belgium; (2) return to the country of origin; (3) unlimited stay in Belgium. In practice it is the guardian who proposes this durable solution to the Bureau, which will nevertheless have the final word on the decision.

Therefore this Bureau is responsible for granting residence documents, for the search for the family in cooperation with the Ministry of Foreign Affairs; with IOM for the voluntary return; with the police services and Child Focus in the fight against economic and sexual exploitation of UM; and for initiating cooperation agreements with other stakeholders on UMs. It will also ensure that a family reunification will take place with the necessary guarantees on the family link and the reception conditions.

Within this Bureau there is also the Cell Victims of Trafficking in Human Beings (THB), responsible for all victims of human trafficking: minors and adults. There is a specific procedure to obtain a residence permit for victims of trafficking in human beings, with the judicial authorities deciding if there are sufficient elements to deliver the status of victim of THB.<sup>20</sup> The Bureau MINTEH does the follow-up of the residence situation while the procedure is ongoing and the judicial file is followed up by the Public Prosecutor. The Bureau MINTEH delivers the residence document depending on the state of the judicial procedure. If the UM is not recognised as a victim of THB, the file will then be examined under the procedure of the Circular Letter of 15 September 2005 at the explicit and written request of the guardian.

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<sup>18</sup> See also 4.2.3 Circular Letter of 15 September 2005.

<sup>19</sup> Circular Letter of 15 September 2005 on the stay of unaccompanied minors. Belgian Official Journal 07/10/2005.

<sup>20</sup> See also EMN Study 2008: The organisation of asylum and migration policies in Belgium. 2008, 4.1.2 Admission conditions.

C) Border Inspectorate<sup>21</sup>

This department organizes and monitors the set-up of border controls in close cooperation with the Federal Police. It controls the correct application of the entry into the Schengen-territory at the external borders (airports, seaports, and Eurostar train station). This service checks whether a foreign national fulfills the entry conditions, as well as whether a minor is accompanied by someone who exercises the parental authority or guardianship, or whether someone who's authorised (e.g. uncle, aunt, etc) awaits the minor.

This department therefore takes decisions regarding the entry on the territory of UMs who present themselves at the border and is also responsible for UMs who filed an asylum application at the border. It will also inform the Guardianship Service about the presence of the UMs at the border.

In case the UM has valid entry documents, the access to the territory will be granted if there is a certitude that the person will be awaited for: the UM will not be assigned to this person until documents are provided to prove the family link. In practice, it is not always verified thoroughly.<sup>22</sup> The objective of these measures is to avoid the traffic in human beings and to have the necessary guarantees that the UM can enter the territory, or transit, in a legal way.

D) Bureau C

This Bureau is responsible for all foreign nationals who reside on the territory without valid residence documents. In case a UM is apprehended by the police inside the territory, the Bureau C will check his/her situation of residence and if necessary contact the Bureau Minors of the Direction Entry and Stay and the Guardianship Service.

E) Bureau Permanency

This Bureau ensures the tasks of the Immigration Department during the closing hours of the offices. They will often be the first to fill out the identification form for UMs.

### 3.1.2 Guardianship Service

The Guardianship Service (GS) belongs to the Federal Public Service (FPS a.k.a. Ministry) Justice and has the mission to ensure judicial protection of all UMs - asylum seeker or not - staying in Belgium, by systematically appointing a guardian. The provisions for guardianship of foreign UMs are laid down in the so-called Guardianship Act of 24 December 2004.<sup>23</sup> It was a deliberate choice of the policy makers to create this service within the FPS Justice, so that this service have a more independent position vis-à-vis the instances competent in migration and asylum affairs. This service will be further explained in: "3.3 Guardianship."

### 3.1.3 Office of the Commissioner General for Refugees and Stateless Persons (CGRS)

The CGRS<sup>24</sup> is the independent administrative instance with the competence to examine all asylum cases, be they for UMs or adults. However, special attention will be given to the UM during the procedure at the CGRS (specialised case workers, assistance of a guardian and lawyer; profile, age and maturity will be taken into consideration, etc.). The CGRS automatically examines all asylum applications first within the framework of the Geneva Convention, then subsidiary protection status within the framework of the Qualification Directive<sup>25</sup> and can accordingly grant or refuse the status. An appeal against the CGRS' decisions can be lodged with the Aliens Litigation Council; and eventually with the Council of State. The asylum procedure will be further explained in: "4.8 Conditions and provisions of making an asylum application by UM."

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<sup>21</sup> Grensinspectie/Inspection frontières. Child Focus. De luchthaven, een veilige plek voor alleenreizende minderjarigen? Verkennend onderzoek naar het risico op slachtofferschap en misbruik op Brussels Airport. November 2007, p.47-56.

<sup>22</sup> See: Child Focus. De luchthaven, een veilige plek voor alleenreizende minderjarigen? Verkennend onderzoek naar het risico op slachtofferschap en misbruik op Brussels Airport. November 2007.

<sup>23</sup> Title XIII, Chapter VI « Unaccompanied minor aliens », of the Programme Law of 24 December 2002 (Belgian Official Gazette of 31 December 2002). A Royal Decree was approved on 22 December 2003 to implement the above-mentioned Chapter VI.

<sup>24</sup> [www.cgvs.be](http://www.cgvs.be)

<sup>25</sup> Directive 2004/83/EC

### 3.1.4 Fedasil

Fedasil<sup>26</sup> is the Federal Agency for the Reception of Asylum seekers. This Agency which resorts under the Programatory Public Service (PPS) of Social Integration, manages and coordinates a network of asylum reception centres, including the Observation and Orientation Centres.<sup>27</sup> Fedasil is also the coordinator of the programme on Assisted Voluntary Return, in cooperation with IOM.

### 3.1.5 Federal Police

The Federal Judicial Police<sup>28</sup> focuses on supra-local and organised crime which has a destabilizing effect on society as well as on offences requiring a specialised approach. Its goal is to find out about the existence of (emerging) forms of crime and report it in time to the proper authorities, to contribute to reduce the growth of the likelihood of criminal offences being committed; to conduct (proactive and reactive) investigations or preliminary investigations and to struggle against criminal organisations. At the airport, the Federal Judicial Police executes i.a. active controls in the terminals. This service has a quite broad expertise in the area of unaccompanied minors, given the (detected) scope of the problem at Brussels Airport.

In this framework, the main mission of the Air Police division border controls<sup>29</sup> is to conduct border controls at the six Schengen Airports in Belgium. The division carries out checks at external frontiers, enforces the Schengen rules, enforces the national immigration policy and search for false and falsified travel documents.

It is organised in 4 sections:

- section border control/immigration
- section false or falsified documents
- section removals
- section “phenomena” which executes pro-active controls in the terminals to detect immigration trends and to combat the trafficking of human beings.

### 3.1.6 Youth Welfare Services

These centres depend on regional authorities (Communities), as they are competent for the reception of non-asylum seeking UMs from the second phase<sup>30</sup> on. They will also be responsible for the reception of victims of trafficking in human beings.

### 3.1.7 FPS Foreign Affairs

The Belgian embassies and consulates abroad will cooperate to find the UMs families (family tracing). They will verify if the information provided by MINTEH is correct; contact the members of the family once they have been found; assure safe reception conditions if the UMs voluntary return, e.g. for the UM to be awaited by a family member and a member of the embassy.

### 3.1.8 Juvenile court

In the youth care, two institutions are responsible: on the one hand, the Comité Bijzondere Jeugdzorg (CBJ) (NL) or Service d’Assistance des Jeunes (SAJ) (FR) responsible for minors in ‘problematic educational situations’, and are only able to intervene when all parties involved agree with the intervention; and on the other hand, the juvenile court responsible for minors who committed a crime, and for those minors in a ‘problematic educational situation’ for whom parties involved don’t agree regarding the intervention that should be taken. For unaccompanied minors, the CBJ/SAJ receives a role when the guardian asks the CBJ/SAJ to place the minor in an institution of the youth care (foster care, residential institution, ...). The juvenile court is only involved for those unaccompanied minors who committed a crime, and sometimes for victims of trafficking.

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<sup>26</sup> [www.fedasil.be](http://www.fedasil.be)

<sup>27</sup> see 4.1.1 observation and orientation phase

<sup>28</sup> [www.polfed-fedpol.be/org/org\\_dgj\\_en.php](http://www.polfed-fedpol.be/org/org_dgj_en.php)

<sup>29</sup> [www.polfed-fedpol.be/org/org\\_dga\\_lpa\\_en.php](http://www.polfed-fedpol.be/org/org_dga_lpa_en.php)

<sup>30</sup> see “4.1 reception in three phases”

### 3.1.9 Child Focus

The European Centre for Missing and Sexually Exploited Children, operating under the name of Child Focus,<sup>31</sup> is a foundation which acts on an independent basis only in the interest of children. At both national and international level its mission is, on the one hand, to provide active support in the investigation of disappearance, abduction or sexual exploitation of children and, on the other hand, to prevent and combat these phenomena. Child Focus supports and encourages the investigation and the legal measures, ensures the follow-up to the cases that are entrusted to the foundation and participates in the counseling of victims.

It is important to mention that in most cases of a so-called ‘worrying’ disappearance, this is signaled immediately to Child Focus and a maximum of information is provided. In that respect, the Bureau MINTEH of the Immigration Department and the police services are important sources of information. However, not all cases of disappearance of UMs are taken up by Child Focus.

### 3.1.10 International Organisation for Migration (IOM)

In collaboration with Fedasil, the Brussels Regional Office of the International Organization for Migration<sup>32</sup> is responsible for the practical organisation of the voluntary return programme REAB. It is also involved in the reintegration projects in the countries of origin for people who returned voluntarily. More information on this programme will be provided in: “5. Return practices including reintegration.”

### 3.1.11 Non-governmental organisations (NGOs)

In 1999 a group of non-profit organisations involved in the area of UMs founded the ‘Platform minors in exile’ (kinderen op de dool/mineurs en exil)<sup>33</sup> with the aim of exchanging information on the intervention of each of the non-profit organisations, to improve the treatment of UMs and to propose changes in the legislation related to UMs, as well as related administrative rules and procedures.

Some twenty non-profit organisations or institutions that work directly or indirectly with UMs are involved. The Platform has regular meetings, a monthly newsletter, organises conferences and seminars and training sessions, does lobbying, has a pool of specialized lawyers, publishes on the subject and has a website and undertakes legal actions. It acts as a pressure group and is a very useful forum to get up-to-date information about practices, legislation and hot topics which are being addressed at a political level.

### 3.1.12 National Commission for the Rights of the Child

This Commission, which started its activities in 2007, is the result of a cooperation agreement between the Federal authorities, the Regions and the Communities. It has been set up in due line with the recommendations of the Committee of the Rights of the Child, a body that has been created by the United Nations in the context of the Convention on the rights of the Child. Several working groups have been founded, all involved with the rights of the child. Recently they started coordination meetings to map and improve the available statistics on UMs in Belgium.

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<sup>31</sup> [www.childfocus.be/en/about\\_1.php](http://www.childfocus.be/en/about_1.php)

<sup>32</sup> [www.belgium.iom.int/Index.asp?Static\\_ID=1](http://www.belgium.iom.int/Index.asp?Static_ID=1)

<sup>33</sup> For an overview of these organisations we refer to the website of the platform: [www.mena.be/mineurs\\_en\\_exil\\_03.php](http://www.mena.be/mineurs_en_exil_03.php) (in French) or [www.nbm.be/kinderen\\_op\\_de\\_dool\\_03.php](http://www.nbm.be/kinderen_op_de_dool_03.php) (in Dutch)

## 3.2 Entry procedures<sup>34</sup>

The rights of foreign nationals to enter, reside and settle in Belgium are governed by the Law of 15 December 1980 and the Royal Decree of 8 October 1981 on entry, residence, settlement and removal of foreign nationals (a.k.a. Aliens Act), and by numerous amendments to both the Law and the Royal Decree.

It is the Minister of Home Affairs<sup>35</sup> who is responsible for the implementation of this legislation. The authorised agent of the Minister in dealing with the policy on foreign nationals is the Immigration Department. At the level of protection of the external borders, there is close cooperation with the Federal Police (Maritime Police, Air Police Service and Railway Police) and the Ministry of Foreign Affairs. These two departments have been mandated by the Minister of Interior to put into practice part of the external borders policy (physical control of the external borders and issuing of visas).

All foreign nationals -including UMs- who are non-EU citizens, should fulfill the conditions set in the Aliens Act. The following conditions have to be met prior to their entry in Belgium:

- be in the possession of identity and travel documents (passport) that remain valid for at least three months subsequent to their planned period of stay in Belgium;
- be able to produce documents justifying the purpose and conditions of the planned stay;
- have adequate means of subsistence, both for the duration of the planned stay and for the return trip;
- not have been flagged for non-admission to Belgium (i.e. known criminals);
- not be considered a threat to public order, national security or the international relations of Belgium or the other Schengen countries.

According to the Schengen Agreement and the Schengen Implementation Agreement, border controls only take place at the external borders of the Schengen area. As for Belgium, this means that six seaports and airports as well as the Eurostar station in Brussels qualify as an external border. The Border Inspectorate of the Immigration Department, in close cooperation with the Federal Police, organizes and sets up the border controls.

A distinction should be made for travel extra-Schengen or intra Schengen. In case of an intra-Schengen journey there is no real border control. The only control travelers have to pass is the customs control where the luggage can be checked for the possible undeclared or illegal import of goods. The staff from the section Phenomena of the Federal Police circulates in the departure/arrival hall and can do identity controls in order to combat the trafficking of human beings and human smuggling, also of UMs. However, these are at random controls. For extra-Schengen flights, controls of the identity documents will be done at the border control post. Additional controls can be done at the gate.

An UM can travel to Belgium for a short stay (less than three months) for different reasons: tourist; illness that cannot be treated in country of origin; professional sportspeople who are participating in competitions; performers or musicians performing in Belgium. They will have to apply for a type C visa at the Belgian embassy or consulate abroad. In case of a minor, this application should be done by his/her legal representative.

UMs who fulfill the entry conditions, will be allowed access to territory on the condition that the pick-up person who is waiting can prove, by means of documents, the family ties with the UM. No immediate access can be granted to the UM who are not being awaited. A more thorough investigation will then be organised regarding the origin (airport of departure) and the purpose of the journey of the UM. In practice this situation is sometimes not thoroughly investigated.

In case the UM does not fulfill the entry conditions (e.g. does not have valid travel documents), additional questions on the journey of the UM can be asked. In principle, a person who does not fulfill the entry conditions can be

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<sup>34</sup>Child Focus. De luchthaven, een veilige plek voor alleenreizende minderjarigen? Verkennend onderzoek naar het risico op slachtofferschap en misbruik op Brussels Airport. November 2007, pp.99-104.

Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non accompagnés en Belgique. Mars 2008, pp.348-352.

EMN National contact point Belgium: The organisation of asylum and migration policies. 2008, pp.21-24.

<sup>35</sup> Minister van Binnenlandse Zaken/ Ministre de l'Intérieur

returned. However, UMs benefit from a specific protection because of their vulnerable situation, in the framework of the Guardianship Act. These UMs will have an extraterritorial status and will be placed in an Observation and Orientation Centre<sup>36</sup> for 15 days (prolonged with 5 days in exceptional circumstances). During this period the UM will be considered as not having accessed the territory. The Immigration Department will check whether the Chicago Convention<sup>37</sup> can be applied.

The Guardianship Service will be informed and an identification form for UMs will be filled out. Subsequently a guardian will be appointed (see supra). If the border police think the person is over 18 years old, he/she will be sent to a closed centre. The Guardianship Service will then be responsible to proceed with an age assessment by means of a medical test. This test must be done within three days of arrival in Belgium. This period can be extended by another three days in case of 'exceptional circumstances'. Within this extended period, in cases of utmost urgency,<sup>38</sup> a provisional guardian can be assigned. If the age assessment test concludes that the person is under 18 years old, he/she will be transferred to the Observation and Orientation Centre (OOC) within 24 hours. In case it is concluded that the person is over 18, he/she will have to stay in the closed centre until the Immigration Department decides whether the person can be admitted to the Belgian territory or not. The person can ask the provisional guardian or the lawyer to appeal against the results of the medical test.

UMs also have the possibility to make an asylum application at the border. The asylum procedure will be further explained in: "4.8 Conditions and provisions of making an asylum application by UM."

#### Interception within the territory

If UMs are intercepted within the territory, they are handed over to a local police unit, which must handle all administrative and legal procedures when a person without legal documents to stay on the Belgian territory and/or to travel (to e.g. the UK), is intercepted on Belgian territory. This involves the identification of the person (name, age, nationality); taking fingerprints, photographs; and seizing the documents and all other items the person is carrying. The latter is done because the police try to find evidence or tracks of (networks) of human traffickers and smugglers. After the identification process, the Immigration Department is contacted. The Bureau MINTEH will fill out the identification form for UMs, if this has not already been done by the police. From then onwards the specific procedure of the Guardianship Act will be followed.

#### Minors traveling alone

The last few years the Federal Police at Brussels Airport noticed a rising number of so-called minors traveling alone. This group can include minors coming back from a holiday or family visit, and traveling alone or accompanied by airport personnel; but it also includes unaccompanied minor migrants as mentioned in the definition of the Guardianship Act. Against this background, a study under the coordination of Child Focus<sup>39</sup> analysed the situation at the airport and formulated some recommendations. A first conclusion was that it is very difficult to detect whether a person accompanying an UM has the parental authority or not, which renders it very difficult to examine the relationship between the minor and the adult. Another conclusion was that there was insufficient awareness with the airport personnel. The Minister of Asylum and Migration Policies decided in January 2009 to set-up a task force on UMs that should first of all put into practice the recommendations mentioned in the study, and if desired look at other means to improve the situation of the UMs in general.<sup>40</sup>

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<sup>36</sup> see 4.3.1 Observation and Orientation phase

<sup>37</sup> Convention on International Civil Aviation, Chicago, 7 December 1944. This Convention foresees i.a. that the costs of removing a persons that has not entered the national territory can be charged to the airline company.

<sup>38</sup> e.g. in case the UM is suspected to be a victim of human trafficking: Bouckaert Steven, Documentloze vreemdelingen. Grondrechtenbescherming doorheen de Belgische en internationale rechtspraak vanaf 1985,2007, p.814

<sup>39</sup> Child Focus. De luchthaven, een veilige plek voor alleenreizende minderjarigen? Verkennend onderzoek naar het risico op slachtofferschap en misbruik op Brussels Airport. November 2007.

<sup>40</sup> De Standaard, "task force bekijkt dossier niet-begeleide minderjarigen". 16/12/2008

### 3.3 Guardianship

According to the Guardianship Act any authority (Police, Immigration Department) that comes to know about the presence of an UM on the Belgian territory or arriving at the border has the obligation to inform the Guardianship Service (GS). This should be done by filling out a specific identification form for the UMs. From that moment onwards the Guardianship Service, together with the guardian it has appointed, will play an important role in assisting the UMs.

Prior to the entry into force of the Guardianship Law, the issue of unaccompanied minors was not addressed within the Belgian legislation. Thus, no specific law protected UMs. Like other European countries, Belgium was confronted with a rising number of UM arriving on the territory. The policy makers were aware that initiatives had to be taken. The so-called “Tabitha-case” proved that the Guardianship Act came at a right time. The case was related to a five-year old Congolese girl who wanted to rejoin her mother in Canada. Arriving in Belgium she was held in a closed reception centre at the border for two months and was finally returned to Congo (alone). The case was brought before the European Court of Human Rights and Belgium was condemned for breach of Art 3, 5 and 8 of the European Convention on Human Rights.<sup>41</sup>

#### 3.3.1 Competences of the Guardianship Service<sup>42</sup>

The Guardianship Service resorts under the FPS of Justice and not under the FPS of Interior, to guarantee a certain independence regarding the questions of residence on the territory. The Guardianship Service is more in charge of the general coordination and supervision of the guardians, while the guardians are the ones who have direct contact with the UM on a regular basis. Its competences include:

- taking charge of the UMs: the GS will take charge of the UM as soon as they are informed about their presence at the border or within the territory;
- identification of the UMs and age assessment;
- assignment of a guardian;
- coordination of the contacts between the different instances on asylum, migration, reception, housing, as well as with instances in the country of origin of the UM;
- supervision on the search for a ‘durable solution’ for the UM;
- coordination of the material activities of the guardians, their supervision and training;
- consultation of other stakeholders in the field.

#### 3.3.2 Competences of the guardian

As mentioned, the Guardianship Service plays an important role in the protection of the UM on the Belgian territory. The most common duties of the guardian include:<sup>43</sup>

- to ensure that all decisions taken are in the best interests of the child
- to ensure that a separated child is being offered suitable care, accommodation, education and health care provisions;
- to ensure that the child has suitable legal representation to deal with her or his immigration status or asylum claim, or any other jurisdictional or administrative procedure;
- to consult with and advise the child;
- to appoint a lawyer for the child;
- to contribute and make proposals for a durable solution in the child’s best interests (voluntary return/local integration/resettlement);

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<sup>41</sup> European Convention on Human Rights: art 3 (prohibition of torture); art 5 (right to liberty and security) and art 8 (Right to respect for private and family life).

[www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/The+European+Convention+on+Human+Rights+and+its+Protocols/](http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/The+European+Convention+on+Human+Rights+and+its+Protocols/)

<sup>42</sup> Federale Overheidsdienst Justitie, Dienst Voogdij. Vademecum voor voogden van niet-begeleide minderjarige vreemdelingen. Eerste uitgave – bijgewerkt op 31 augustus 2007.

<sup>43</sup> International Organization for Migration. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of best practices and recommendations. September 2008, pp.164-166.

- to assist the minor to integrate into the new country and environment;
- to advocate on the child's behalf where necessary;
- to explore the possibility of family tracing and reunification with the child;
- to administer the minor's assets.

In general it can be stated that a guardian needs to assist the UM in all legal duties, all residence procedures and any other legal or administrative procedure. The guardian cannot receive any orders from the Guardianship Service or the Immigration services. The guardian carries out his/her assignment completely independently but remains under the supervision of the judge (justice of the peace) and the GS who may, in the event of negligence of the minor, bring an end to the guardianship or withdraw approval. The guardian must develop a relation of confidence with the UM, which implies some kind of professional secrecy.<sup>44</sup> He cannot repeat anything without prior consent of the UMs.

Two types of guardianship exist in parallel in Belgium: the "professionalized system" and the "benevolent or voluntary system".<sup>45</sup> In the professionalized system one can find the so-called 'employee-guardian' who is an employee of an NGO in the social and legal sector. In the voluntary system one can find private persons who take up these guardianships as an independent profession; as well as private persons who take up a few guardianships and are registered as a volunteer. In 2008 there were 416 registered guardians of which 233 were on active duty.<sup>46</sup> The majority of guardians are found in the voluntary system.

Each guardian receives a yearly lump sum payment of 500 euros for a guardianship, as well as a lump sum expenses payment of 85 euro and a reimbursement of travel expenses. The guardian often has the fiscal and social status of self-employed. In case of a professional guardian, the payments will be made to his/her organisation. A guardian can have up to 40 UMs, in practice this will seldom be the case. Most guardians only take up 1 to 2 guardianships, while professional guardians will have around 25 guardianships on average.

Guardians are required to participate in compulsory training prior to taking up guardianship and have to attend a continuous training for guardians at least once a year. Each guardian also receives a basic training before starting his/her first assignment. After that, the GS provides yearly more specialised training courses. In order to support the guardians in this complex matter, the GS also provides them with a manual (vademecum)<sup>47</sup> providing information on the different services and procedures. However, in practice the guardians do not receive a lot of training and a lot of guardians would welcome more extensive training on a regular basis.

The guardianship will end i.a. when the UM reaches the age of 18, or when the durable solution in the best interests of the child has been found.

### 3.3.3 Taking charge of the UM

The Circular Letter of 25 July 2008 modifying the Circular Letter of 23 April 2004 on the identification form "unaccompanied minor foreign national" obliges the police forces and Immigration Department to complete an *identification form*<sup>48</sup> for unaccompanied minors at the moment they intercept the minor or when they have contact with him/her for the first time. This form has to be sent to the Immigration Department (Bureau MINTEH) and the Guardianship Service in order to inform both authorities immediately about the presence of the unaccompanied minor who is a third country national within the territory or at the border.

The following information must be included in the form:

- a photograph of the minor with a description of his physical characteristics
- fingerprints (normally only for those over 14 years of age)

<sup>44</sup> The question of whether a guardian is bound to professional secrecy has not yet been decided on and is under evaluation by the Guardianship Service.

<sup>45</sup> Professionalized guardians work for e.g. Caritas and Red Cross and are also called employee guardians (werknemersvoogd/ tuteur salarié). The other statuses are Independent guardians (zelfstandigen); and Voluntary guardian (vrijwillige voogden) who will receive a volunteers fee.

<sup>46</sup> Le Plateforme Mineurs en exil en Belgique: présentation 10ans platform 13/05/2009.

<sup>47</sup> Federale Overheidsdienst Justitie, Dienst Voogdij. Vademecum voor voogden van niet-begeleide minderjarige vreemdelingen. Eerste uitgave – bijgewerkt op 31 augustus 2007.

<sup>48</sup> An example of the identification form for UMs is added in annex 9 of this study.

- name and first name
- place and date of birth
- nationality
- domicile or residence in Belgium
- information about his family and about members of his/her family in Belgium
- the circumstances of his/her interception
- the reasons why he/she came to Belgium
- an information on the question whether or not the authority completing this form considers the minor to be a possible victim of human trafficking
- facts regarding the minority (in case of doubt)

Any other person or service (e.g. school principal, youth assistance organisations, social welfare centres, social services, etc.) that comes in contact with an UM who is a third country national can (but this is no obligation) also direct this UM to the Guardianship Service in order to take charge of this person.

The Guardianship Service can be joined 24/7 and should intervene immediately when they are informed about the presence of a person who appears to be or declares to be a minor, and who appears to fulfill the conditions as set in the definition of an UM within the territory or at the border. Consequently, a person who declares himself/herself to be an UM as well as a person who declares to be an adult, but looks to be minor will be directed to the Guardianship Service.

In a first phase the Guardianship Service will take the UM under its responsibility. It will identify and verify the age of the UM and arrange for the first reception of the UM.

#### 3.3.4 *Identification of the minor and age assessment*

The Guardianship Service is responsible for determining whether the person falls within the criteria foreseen by the law to be considered an UM (under 18 years of age; not being accompanied by a person with a parental guardianship; non-EEA citizen; having introduced an asylum application or not fulfilling the conditions of stay on the territory).

The ‘UMs identification form’ that was filled out will be used as a starting point for the identification of the UMs. The GS will try to get confirmation of the name, nationality, family ties, etc. of this person. It will be based on the declarations of the person; on the identity/travel/other documents in his possession; on information obtained via consulates or embassies; or on any other relevant information. The GS will investigate the documents (e.g. authenticity).

In case of doubt, e.g. when no identity documents are presented, the age assessment can be done by means of a medical test. This test is organised by and under the control of the GS and can be done on the demand of the Immigration Department, the CGRS or Guardianship Service. The GS has a collaboration agreement with certain hospitals.<sup>49</sup> The costs are at the charge of the instance requesting the test.<sup>50</sup> A so-called “triple test” is done whereby the UM is referred to a forensic odontologist. The age assessment is based on the clinical impression of an experienced dentist and the radiological examination of the dentition, the hand wrist of the non-dominant hand and the medial ends of both collarbones. The procedure for psycho-affective tests (such as personality and intelligence test) is foreseen in the Royal Decree, but is not in place yet, due to problems of reliability. According to the Law on the Patient Rights the minor will have to give his/her consent to the medical examination.<sup>51</sup>

Belgium opted for a combination of these three tests, since there is some criticism regarding validity and reliability on all these tests. The average age of the results of these three tests will be approximate and will always indicate a “scale” with a margin of error. In case of any doubt the lowest attested age will be taken into consideration. E.g. in case the medical test concludes that the UM is less than 18 years old or is between 17,5 and 18.5 years old he/she is

<sup>49</sup> VUB (Jette), KU (Leuven), UZ (Gent)

<sup>50</sup> It can be noted that also the Immigration Department and the Public Prosecutor can order a medical test with regard to the age determination. However, it will only be the medical test established by the GS that will be legally binding.

<sup>51</sup> Austria BMI, IOM; Resource Book for law enforcement officers on good practices in combating child trafficking, March 2006 p.46.

considered as a minor and will be assigned a guardian. In case the medical test concludes that the UM is more than 18 years old, he/she has no legal right to a guardian and he/she will be considered as an adult.

In some cases the GS will also have to establish the authenticity of family ties. E.g. in case a minor is accompanied by an uncle, aunt, grandparents, etc. the GS will verify the parental/family link (this can also be done by DNA-testing). If this is not the case, the minor will fall under the definition of UM.

The procedure for age assessment and identification can take some time, during this time the GS will take charge of the person and in principle no guardian will be appointed yet. Exceptionally, a person can already be assigned a so-called “provisional” guardian, before it has been established that he/she qualifies to be an UM. This can be done in cases of extreme urgency and the reasons for this must be properly stated.<sup>52</sup> This will e.g. also be done if the procedure for the age determination takes longer than expected (e.g. because documents have to be verified).

Once the Guardianship Service has decided on the age assessment (that the person should be considered an UM or an adult) the immigration and asylum services should respect this. This decision is an administrative decision which can only be appealed with the Council of State. However, the Guardianship can take new elements into consideration and issue a new decision. These new elements can be brought forward by the UM or his/her guardian, but also by the Immigration Department (information that raises a doubt on the age).

It should also be pointed out that there is also some controversy on the use of the medical test to determine the age.<sup>53</sup> Some NGO’s are opposed to it as there is scientific evidence<sup>54</sup> that the medical tests are not reliable because there is often a margin of error of two years and because factors such as the socio- economic situation, ethnical or geographical descent, illnesses, etc. can have an influence on the development of the child. It is said that the Guardianship Services continues this medical test by lack of an alternative. Additional research is being undertaken by scientists and medical researchers.

Age assessment tests organised by the Guardianship Service<sup>55</sup>

	Number of tests	Results minority	Results Majority
2004-2005	302	112	190
2006	238	85	153
2007	242	88	154
2008	406	156	245

Source: Guardianship Service

### 3.3.5 Assignment of the guardian

Once the Guardianship Service has decided that a person can be considered as an UM, it will contact one of the guardians on its list, who can accept or refuse the guardianship for this specific person. In practice geographical proximity to the UM, availability of the guardian, and the ability of a guardian to cope with a certain profile of UMs are important factors that should be taken into account. The assignment of the guardian is notified to the UM, the reception centre, FEDASIL, the Immigration Department, the CGRS and the judge and to any other instance that is involved.

<sup>52</sup> Guardianship Act article 6§3 and article 6§4

<sup>53</sup> Bouckaert Steven, Documentloze vreemdelingen. Grondrechtenbescherming doorheen de Belgische en internationale rechtspraak vanaf 1985, 2007, pp.757-775.

<sup>54</sup> See: advise Nr.88 of the Comité Consultatif National français d’Ethique pour les Sciences de la Vie et de la Santé regarding methods of age assessment in a judicial context, 23 June 2005, [www.ccnne-ethique.fr](http://www.ccnne-ethique.fr)

See also: the report of Académie nationale française de médecine regarding the reliability of medical investigations for age assessments and the possibility to improve the situation of isolated UM, 16 January 2007, [www.mena.be](http://www.mena.be)

See also : J.P.Jacques, “Quand la science se refroidit, le droit éternuel!” et O.Diamant-Berger, « Détermination médico-légale de l’âge d’un adolescent » ; J.D.J, november 2003, nr.229.

<sup>55</sup> Number of age assessment tests by the Guardianship Service. As the Service only came into existence from 1/5/2004, the year 2004 is not complete, and therefore combined with 2005.

The guardian will as soon as possible meet the UM and discuss with him/her the personal situation. The guardian will also assume his/her duties (see 3.3.2) and work towards the search for “a durable solution” in the interests of the child. To this end the guardian will need to gain the confidence of the UM, to search for the parents or other family members, to analyse the situation in the country of origin and make an assessment of the different possibilities: a stay in Belgium or a return to the country of origin. Together with the UM he/she will work towards the best option and meanwhile make an application for one of the different procedures that make (temporary) residence in Belgium possible (asylum; victim of human trafficking; regularisation; procedure of Circular Letter of 15 September 2005; or opt for the irregular stay if one has exhausted all other procedures). These options will be further explained in “4.2 Residence possibilities of the UM.”

## 4. Reception arrangements

### 4.1 Reception in three phases

One of the duties of the guardian is to ensure that the competent authorities find a suitable accommodation that is adapted to the specific needs of the UM. Belgium has developed a reception procedure consisting of three phases:

- 1) observation and orientation phase
- 2) transitional phase
- 3) stable housing or reception in autonomy

#### 4.1.1 Observation and orientation phase<sup>56</sup>

Whenever the Guardianship Service receives the notification of the presence of an UM at the border or within the territory, it contacts Fedasil in order to find a place for the accommodation of the concerned UM. The UM will in a first phase be placed in a so-called Observation and Orientation Centre (OOC). There are two OOCs, which are managed by the federal government (through Fedasil):

- Steenokkerzeel (Dutch speaking - 50 places)<sup>57</sup>
- Neder-over-Heembeek (commonly known as NOH - French speaking - 50 places)<sup>58</sup>

These centres are open for all UMs regardless of their administrative status (e.g. asylum seekers, undocumented children, European UM). Priority is given to the best interests<sup>59</sup> of the UM and not to his/her administrative status. The UM will in principle stay here for 15 days (renewable once), period within which the GS will conduct the registration and identification of minors and assign a guardian. In the OOC each UM is assigned a personal coach who will follow-up the UM during his/her stay in the centre. Through conversations, activities and his daily functioning the coach can get a view on the UM and his possible needs. The coach will write a report in the perspective of orientation to a second reception facility, based on his/her impression and a medical, psycho-social evaluation.

The OOCs will not only welcome UMs who are already within the territory, but also UMs arriving at the border without (valid) entry documents and who are thus not allowed entry on the territory. In practice they will receive an equal treatment in the OCC, but their administrative status can differ. UMs arriving at the border without valid entry documents will have an *extraterritorial status*. If there is no doubt on the age of the UM, he/she will be transferred to the OOC within 24 hours. In case there is a doubt on the age of the UM the GS must undertake a medical test for the age determination within three days. During these three days the person will stay in a detention centre near the airport. Once the minority has been established by the GS the UM will be transferred to the OOC within the 24 hours of the notification of the age determination.

This UM with extraterritorial status, i.e. during the assessment at the border, will be placed in the OOC for 15 days (prolonged with 5 days in exceptional circumstances). During this period he/she will be considered as not having accessed the territory. In this case the OOC equals a place at the border. This has been put in the legislation to allow the application of the Chicago Convention. During this period the Immigration Department will investigate whether to allow the UM on the territory or proceed to his/her return. However, the return will only be possible if it is proven that this is the durable solution for the UM. If no decision has been taken within these 15 days the UM will be allowed on the territory. The OOC will in that case no longer be an extraterritorial place, but a place on the territory. The UM will be able to stay in the OOC for another 15 days.

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<sup>56</sup> Dermine Céline. L'accueil des mineurs étrangers non accompagnés en Belgique. E-migrinter nr.2-2008. [www.mshs.univ-poitiers.fr/migrinter/e-migrinter/200802/emigrinter2008\\_02\\_089.pdf](http://www.mshs.univ-poitiers.fr/migrinter/e-migrinter/200802/emigrinter2008_02_089.pdf) AND

Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non accompagnés en Belgique. Mars 2008, p.147 AND

Federale Overheidsdienst Justitie, Dienst Voogdij. Vademecum voor voogden van niet-begeleide minderjarige vreemdelingen. Eerste uitgave – bijgewerkt op 31 augustus 2007, p.147.

<sup>57</sup> [www.fedasil.be/Steenokkerzeel/home](http://www.fedasil.be/Steenokkerzeel/home)

<sup>58</sup> [www.fedasil.be/Neder-over-Heembeek/home](http://www.fedasil.be/Neder-over-Heembeek/home)

<sup>59</sup> this is conform article 3 of the International Convention of the Rights of the Child

During this reception phase, certain categories of vulnerable UMs can already be transferred to more specialised reception centres to allow for a better care of their specific needs (e.g. pregnant UMs, young children, children with psychological problems, potential victims of human trafficking...).<sup>60</sup>

An OOC is not a closed centre, but has some specific security measures mainly to ensure protection against human smugglers. It often happens that UMs, also with an extraterritorial status, escape from the centre and (illegally) gain entrance to the Belgian territory. Disappearances are a serious issue which will be further detailed in: “4.11 disappearances.”

#### *4.1.2 Transitional phase*

In this second phase, a distinction is made between UM who are applying for asylum and those who are not. This fact will have a consequence on the reception facility they get allocated. As Belgium is a federal state, the Communities and Regions have certain competences with regard to the reception of UMs. In principle it can be stated that it is the federal agency for the reception of asylum seekers (FEDASIL) that is responsible in case an UM applies for asylum. The Youth Welfare Services of the Communities (Flemish and French) are responsible for UMs who do not apply for asylum. In practice the transfer from the first to the second phase for an UM who applied for asylum is 15 days. An UM who does not apply for asylum or needs a more specific help will be transferred after 1 month maximum as the search for an accommodation outside of the network of Fedasil or an adapted accommodation might take more time.<sup>61</sup>

##### *4.1.2.1 When UMs seek asylum*

In case an UM applies for asylum, the competence for the reception will stay at the federal level. The UM will be transferred to one of the so-called collective “open centres” or to local reception initiatives organised by Fedasil or one of its partners.<sup>62</sup> Reception facilities include:

- federal reception centres (8)
- centres organised by the Red Cross (3)
- Local Reception Initiatives dependant of the Public Social Welfare Centre (14)
- reception facilities run by an NGOs (Vluchtelingenwerk, Ciré)

The Fedasil centres have a special area for the UMs –who are separated from adults, with personnel specifically assigned to them. The designation of a centre is done according to availability and depends on the language regime in the asylum procedure (Dutch or French). Afterwards an UM can also be transferred to a guest family or with distant relatives in Belgium.

UMs stay about 4 months, up to maximum 1 year in the collective reception centre, however in practice this maximum period is often not kept. They can stay in the reception facility either the time needed to be oriented to a Local Reception Initiative (known as the third phase); to a specialised follow-up aiming at autonomy (e.g. Mentor Escale or Youth Assistance); until they are 18 years old, or until the end of the current school year. If an asylum seeker happens to be a victim of human trafficking, he/she will be transferred to one of the three specialised centres.<sup>63</sup> During this phase the UM will, in collaboration with his/her guardian, have to take steps regarding his residence situation, and work towards the so-called durable solution.

Collective reception facilities mean that UMs are living in community together with other UMs. These centres are “open structures” so the UM is also able to leave the centre during the day. The assistance provided to the youngsters is both individual and collective. Reception is organised in order to motivate these youngsters to become an autonomous and a responsible person (autonomy, responsibility and sense of civic awareness). As in the first

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<sup>60</sup> Kinderrechtencommissariaat. Heen en retour. Kinderrechten op de vlucht. September 2007,p.56.

<sup>61</sup> L’Observatoire. Revue d’action sociale et medico-sociale. Nr57/2008. Juillet 2008, p.39.

<sup>62</sup> For a list of the different centres: see Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique. Mars 2008, pp.159-168.

<sup>63</sup> See: 4.2.2 When a UM is victim of trafficking

reception phase, material assistance is provided. In addition, minors are registered at school (as there is a compulsory school attendance up till the age of 18).<sup>64</sup> They are prepared to live in autonomy under supervision.

As for all asylum seekers, the UM has the right to refuse the accommodation offered by FEDASIL, and to choose to live with an adult, often a member of the (extended) family. However, in this case, verifications will be done on the “bona fide” character of the adult and to see if this adult can adequately accommodate the UM. If this cannot be guaranteed, the UM will be placed in an adapted reception centre.<sup>65</sup>

In case the asylum application of the UMs results in a negative decision, FEDASIL will in principle no longer be responsible for providing support to the UM, but it will be the respective Communities by means of their Youth Welfare Services. In practice the UM, if he/she so desires, can stay in the reception centre until he/she reaches the age of 18. The UM will have to make the necessary steps to start the specific procedure on the stay on the territory under Circular Letter of 15 September 2005 preferably before reaching the age of 18.<sup>66</sup> In case of a positive decision, the UM will no longer qualify as an UM under the definition of the Guardianship Act, however the role of the guardian can be taken over by a civil guardian. The UM will in principle have to leave the reception centre and find accommodation, if so desired with the help of the Public Social Welfare Centre. In practice the UM can stay in the reception centre until they reach the age of 18.

#### **4.1.2.2 When UMs do not file an asylum application**

The reception of UMs who have not filed an asylum application or whose application has been rejected fall under the authority of the Communities, through their respective Youth Welfare Services (YWS)<sup>67</sup> It is considered that UMs belong to the category of minors in a “problematic (educational) upbringing situation” (namely being a minor without parents in a foreign country) which is YWS’ responsibility. However, a lot of these facilities of the YWS were created for ‘minors’ in general and not so much specifically for UMs. The places are thus often hard to find and the Flemish Community will not automatically consider all UM to be in a “problematic upbringing situation”. UMs will only be allowed in a YWS if they are not only in need of material shelter, but also have a need for “other assistance”. However, more specialised initiatives for UMs exist: e.g. Minor Ndako, Juna and Esperanto who can take care of victims of human trafficking. UMs might also stay in a foster family; live in autonomy under supervision; or with the help of the Public Social Welfare Centre.

The aim of this second phase is to provide the UMs with a longer period of rest. UMs will have the chance to go to school, learn the language and in case it is necessary, UMs will receive medical and/or psychological treatment. An integral approach is envisaged: decisions, also on a more definitive solution, should in principle be made in consultation with the UM.<sup>68</sup>

However, it should be highlighted that Belgium does not have a formal legal framework (yet) for the reception of UMs who do not apply for asylum and that everything is done on the basis of informal arrangements and goodwill of the partners. This framework is currently being discussed between the Federal, Flemish and French Community governments. According to a Royal Decree<sup>69</sup> passed in 2007 Fedasil was given the responsibility for the reception of all UMs, including those who had not applied for asylum, in this latter case only if the Flemish and French Communities lack sufficient reception places. In practice, the Communities barely welcome UMs entering the second phase. When places are available, the French community welcomes only the most vulnerable UMs (e.g. very young, victims of human trafficking) regardless of their status; while the Flemish Community welcomes also minor non-asylum seekers. Mostly due to a lack of places, UMs have to stay in the first assigned reception centre for asylum seekers for extended periods of time. It also means that some UMs who have specific needs are lodged in

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<sup>64</sup> International Organization for Migration. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of best practices and recommendations. September 2008, p. 112.

<sup>65</sup> Jollet Christophe, La procédure des MENA. Comparaison avec les demandeurs d’asile adultes. Mémoire de stage. SPF P&O- IFA. Août 2008, pp. 35-36.

<sup>66</sup> Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique. Mars 2008, pp. 167-168.

<sup>67</sup> For the Flemish Community this is “Jeugdbijstand” and the “Comités voor bijzondere jeugdzorg”; for the French Community this is “Aide à la Jeunesse”

<sup>68</sup> Lejeune Julie, CGKR, presentatie 20/7/2007 : Op zoek naar de opvang voor niet begeleide minderjarigen.

<sup>69</sup> Royal Decree of 9 April 2007 determining the regime and rules for functioning of the Observation and Orientation Centres for UM.

collective asylum reception centres. This might create some problems since UMs often have difficulty to adapt to house rules and obligations, e.g. UMs who lived on the streets for a long time, drug addicts, psychological problems, etc. To overcome this issue and better accommodate the UMs, Fedasil is currently trying to conclude agreements with specialised reception centres outside the Fedasil-network.<sup>70</sup> Another issue which has to be dealt with is the saturation of the Fedasil network, with a priority list thus being set up to accommodate the most vulnerable UMs whereas the others are referred to e.g. emergency relief.

#### 4.1.3 Stable housing or reception in autonomy<sup>71</sup>

During this third phase a more “durable solution” for the UM is envisaged. The reception facility where UMs will be sent should ideally be adapted to their specific profiles, as they will be staying there for a relatively long term. It will be the place where they can realize their ‘life project’ and are prepared to live in autonomy. UMs will receive a more stable housing or reception in autonomy that is best adapted to their situation. On medium or long term, the aim is to set up a system where each UM, regardless of its status, will have an accommodation by the most appropriate instance. The federal and regional authorities will do this in mutual consultation.

Different forms exist:

- Housing organised by the Communities through their respective Child Protection Services;
- In case a UM has applied for asylum and is staying in a collective reception facility, he/she can after four months apply for a more individual reception facility. This will then be in a Local Reception Initiative – smaller facility with individual housing units- where there is a possibility of living in autonomy but with follow-up (organised by FEDASIL). In practice, this will often depend on the availability of these places.
- Settle alone and live in autonomy. This will be organised with the assistance of the UMs’ guardian, the reception center’s education team, the Social Welfare Services or by the Youth Services. The process of living in autonomy can be supervised by a service recognised by the Flemish or French Community.

In the case UMs could not follow this classic path of three phases, the following forms of reception exist:<sup>72</sup>

- Emergency relief. The UM can find himself temporarily in a situation without a place to stay. Therefore there are possibilities to stay in emergency shelters for homeless or vulnerable people, independent of Fedasil reception facilities;
- Reception with a host family:<sup>73</sup> UMs are sometimes placed in a host family. This can be a family member of their extended family (sister, aunt, uncle, etc.) or with another family assigned by the social services. This kind of reception is given in priority to the youngest UMs. Foster care is one of the measures that can be taken both by the Youth Assistance Services (CBJ/SAJ) or the Juvenile Court. When a child is placed in foster care, the foster family is supported by a foster care service.;
- Specific reception of victims of human trafficking;<sup>74</sup>
- Beneficiary of a state benefit. In certain cases UMs will be able to benefit from a minimum income (equal to the states benefits for people without income) provided by the Public Social Welfare Centre (OCMW/CPAS);<sup>75</sup>
- Rental of a personal housing: some UMs live alone. The rental contract will then be signed by the guardian. UMs can ask for the support of several non-profit organisations that can help them to get installed (gifts, loans without interest, rental guarantee, furniture).<sup>76</sup>

The Belgian system thus has different possibilities to accommodate UMs. In the ideal situation the UM should be able to benefit from accommodation that corresponds to his/her specific needs.

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<sup>70</sup> e.g. Fedasil has an agreement with Synergie 14 to accommodate and assist UMs who have been living on the streets before

<sup>71</sup> International Organization for Migration. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of best practices and recommendations. September 2008, pp.112-113.

<sup>72</sup> L’Observatoire. Revue d’action sociale et medico-sociale. Nr57/2008. Juillet 2008, p.37.

<sup>73</sup> research by Child Focus proved that approximately 35% of the UMs stays at a private address

<sup>74</sup> there are three specific centres to deal with victims of human trafficking Payoke (Antwerp), Pag-asa (Brussels), Sürya (Liège), Esperanto (hidden centre, related to Sürya)

<sup>75</sup> Openbaar Centrum voor Maatschappelijk Welzijn/ Centre Public d’ Action Sociale

<sup>76</sup> Dermine Céline. L’acueil des mineurs étrangers non accompagnés en Belgique. E-migrinter nr.2-2008. [www.mshs.univ-poitiers.fr/migrinter/e-migrinter/200802/emigrinter2008\\_02\\_089.pdf](http://www.mshs.univ-poitiers.fr/migrinter/e-migrinter/200802/emigrinter2008_02_089.pdf)

#### 4.1.4 *Statistical information*

A study<sup>77</sup> published in 2005 illustrates the trajectory of the UMs who seeks asylum with regard to their accommodation. Out of a sample of 552 UMs almost 15% immediately stayed at a private address (Group I). The rest (85% or 441 persons) was assigned to a reception facility (Group II). At the end of the follow-up period of 20 months the following was concluded:

- almost 40% of group II still stayed in the reception centre; 35% moved to a private address; 10% stayed at an unknown address; 10% lived in autonomy under supervision; 5% lived with a foster family; 1 UM stayed in a specialised reception centre for victims of human trafficking.
- In Group I: 75% still stayed at a private address; 2 UMs went to a reception facility; 3 UMs stayed at an unknown address and 4 minors lived with family members.

It is significant that after 20 months, almost 50% of the UMs seeking asylum were living at a private or unknown address. On the one hand reception with family or relatives is often considered as being in the best interest of the child because of the informal and the familiar character of it. On the other hand one has to bear in mind that there is little (quality)control by the authorities on these private addresses to check on the welfare of the child. In addition, the families do not always have the same means as provided by the centres to assist the UMs.

#### 4.1.5 *Financial costs reception*<sup>78</sup>

In Belgium, the means given to Fedasil are covered by the budget of the Programmatic Public Service (PPS) for Social Integration. Fedasil receives a subsidy corresponding to one of PPS Social Integration Budget lines. Fedasil has several sources of financing: Europe is one of the main sources, the rest are structural subsidies from the Federal State. Concerning the allocation of their means, the expenses are classified as follows: Human resources, Functioning, Investment, Subsidies to partners (Red Cross, specific conventions, Local Reception Initiatives and municipalities).

Reception of UMs by Fedasil's partners is based on a basic allowance cost of € 39.44/day/place for the Red Cross; and € 39.10/day in Local Reception Initiatives. The difference comes from the amount of pocket money granted to beneficiaries. In addition, two specific conventions exist: one with the non-profit association Synergie 14 and another with Mentor Escale. For the former, Fedasil provides funds aiming at supporting the functioning of this alternative reception structure; for the latter, Fedasil pays 4 social workers.

For Fedasil's partners, the budget amounts to ca. € 2 million in 2008 for Local Reception Initiatives and to ca. € 1 million for the Red Cross Centres. For the UMs hosted in federal reception centres, the expenses are global. One has to analyse the expenses made for minors exclusively in proportion to the number of places occupied by UMs. Governmental budget is allocated to the FPS Justice, which serves to pay the guardians who receive basic allowances. There are agreements between the FPS Justice and the non-profit organisations active in the reception of UMs aiming at allowing their staff members to be recognised as guardians.

In addition to the conventions established in Belgium between Fedasil, the Social Public Welfare Services and the Red Cross in terms of 'general' reception of UMs, Fedasil has established conventions with organisations delivering a specialised follow-up for UMs. The aim is to allow for the follow up of the UMs once they have left the regular reception structure as well as to assist some UMs who might have difficulties in adapting to the general reception structure. There is a convention with the non-profit association Mentor-Escale, fully involved in providing assistance with the process of encouraging the UMs autonomy. Their activities are in line with the model of follow up that the UM has experienced in Fedasil. Mentor Escale receives subsidies allowing them to assist 80 UMs. There is also another convention signed with the non-profit organisation Synergie 14. The specific objective is to organise a different reception framework, in smaller and more convivial context, mainly meant for those who did not adapt to the traditional reception system. Synergie 14 daily collaborates with the collective reception structures of the

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<sup>77</sup> Child Focus & Fedasil. Het profiel en de traject-monitoring van de niet-begeleide minderjarige asielzoeker in België. Juli 2005, pp.40-42.

<sup>78</sup> This part integrally comes from: International Organization for Migration. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of best practices and recommendations. September 2008, pp. 216-217.

network. They can host 11 UMs, out of which 4 places are reserved for emergencies. As a general rule when it comes to federal public expenses, the Federal Administration, more specifically the Finances Inspection Service, ensures proper use and impose standards for the management of the funds.

## 4.2 Residence possibilities of the UM

Unaccompanied minors have several residence possibilities. As already mentioned, if they fulfill the entry conditions (e.g. they have valid travel documents), they will be allowed to stay up to three months. These UMs do not fall under the definition of UM as mentioned in the Guardianship Act, and they will not be taken care of by a guardian. However, it can happen that a guardian is already appointed as a sort of precaution, in case the regular stay comes to an end and the UM overstays his visa. UMs sometimes remain illegally on the territory and if they are not detected or if they disappear from the reception centres, they will remain 'invisible' for the Belgian authorities.

Once UMs have been registered by the Guardianship Service, they will have access to several legal residence possibilities in Belgium. The guardian, in consultation with the UM, will decide which procedure is in the best interests of the child:

- 1) The UM should apply for asylum;
- 2) The UM should be considered as a victim of human trafficking;
- 3) The guardian should apply for a residence permit on the basis of specific procedure for unaccompanied minors described in the Circular Letter of 15 September 2005;
- 4) The UM finds himself in an illegal residence situation;
- 5) The UM should apply for a regularisation according to art 9bis or 9ter of the Aliens Act (humanitarian or medical circumstances)

Some procedures can be started up simultaneously, e.g. asylum and victim of human trafficking; asylum and regularisation. However, the procedure according to the Circular Letter of 15 September 2005 can only be started when the UM has no other procedure in progress.

### 4.2.1 If the UM is an asylum seeker

When UMs apply for asylum they have the right to remain in Belgium as long as the asylum procedure is not finished. If asylum seekers receive a positive decision, they will be recognised as a refugee and will thus receive a residence permit. They will then be considered as other (Belgian) minors in a problematic upbringing situation and could receive assistance by the Youth Welfare Services of the respective Communities. If the asylum procedure has resulted in a negative decision the guardian will have to look for another durable solution for the UMs. So, the UMs still have the possibility to apply for a specific protection status according to Circular Letter of 15 September 2005 with the Bureau MINTEH of the Immigration Department. The details on how UMs can make an asylum application will be further explained in "4.8 Conditions and Provisions of making an asylum application by UM".

### 4.2.2 If a UM is victim of trafficking<sup>79</sup>

When an UM is a victim of human trafficking, the Belgian law<sup>80</sup> of 15 September 2006 that amends the Aliens Act (art 61/2 to 61/5) and articles 110bis en 110ter of the Royal Decree of 8 October 1981, are of relevance. The Law specifically mentions the status of unaccompanied minors and stresses the importance of the best interests of the child during the whole procedure. Belgium has decided to apply the procedure for human trafficking also on minor victims.

The definition of UMs victim of human trafficking is larger than the definition of UMs mentioned in the Guardianship Act, and includes also European unaccompanied minors.

In order to benefit from the status of victim of trafficking, the minor must fulfill the following three conditions:

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<sup>79</sup> Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique. Mars 2008 p. 403; AND

International Organization for Migration. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of best practices and recommendations. September 2008, pp. 81-82; AND Dienst Vreemdelingenzaken, activiteitenrapport 2008.

<sup>80</sup> Belgian Official Gazette 6 October 2006, applicable since 1 June 2007

- breaking off contact with the suspected offenders;
- obligatory guidance by specialised and approved reception centres<sup>81</sup> for victims of trafficking in human beings;
- cooperation with the judicial authorities by making a statement or by instituting legal proceedings against the offenders.

The detection and identification of the victims is usually performed by first line services in the field (police, hospitals, etc). It can also be indicated that the UM is a possible victim of human trafficking on the specific UM identification form for the Guardianship Service. It will be the Public Prosecutor's Office that will proceed with the legal proceedings against the offenders. On basis of the status of the procedure the Immigration Department, Bureau MINTEH, will do the follow up of the administrative procedure and will issue residence documents, as relevant.<sup>82</sup>

The type of residence permit obtained by the victim depends on stage of progress of the legal proceedings:

- 1) The victim receives a certificate of immatriculation type A valid for 3 months if the following conditions are met: a complaint has been filed, the person is willing to cooperate with the authorities, the person can still be considered as a victim of trafficking in human beings, the person concerned has broken off all contacts with the suspected offenders. A prolongation of three months is possible.
- 2) The victim can receive a foreigner card type A valid for 6 months on the conditions that: the legal procedure is still pending; the person is cooperating to the legal procedure; the person has broken off all contacts with the suspected offenders; and the person cannot be considered as a potential threat to public order or to national security.
- 3) The competent minister can grant the victim an foreigner card type B for an unlimited duration on the following conditions: the complaints or the statements have led to a conviction; the Public Prosecutor or the Labour Auditor's charges include elements linked to the traffic of human beings or a serious form of smuggling in human beings; and the victim either has submitted an identity document or has legitimately proved the impossibility to obtain this document in Belgium.

In case the procedure results in a negative decision, the UM can still make an application according to the procedure described in the Circular Letter of 15 September 2005.

The reception of UMs who are (potential) victims of human trafficking differs in some cases from the normal reception process in three phases. In cases of urgency, UMs can directly be transferred to a specialised reception facility that is better adjusted to its specific needs. The first and second reception phase are thus skipped. Three reception centres are specialised in the reception of UMs victims of human trafficking: Minor Ndako and Juna (of the Flemish Community) and Esperanto (of the French Community).

#### 4.2.3 Circular Letter of 15 September 2005

This Circular Letter foresees a specific procedure for UMs to apply for an authorisation to reside on the Belgian territory until they reach the age of 18. The Ministerial Circular Letter was published in the Belgian Official Journal and thus has a more or less legally binding character. This Circular Letter is only applicable for those minors who do not claim asylum (or whose asylum procedure has ended with a negative decision by the asylum authorities), and who have not claimed a residence status under another procedure (victims of trafficking, regularisation according to article 9bis and 9ter). Thus, it applies to those UMs who reside illegally on the territory and who are not involved in another procedure. This specific procedure can only be initiated by the guardian. This Circular also describes the specific duties of the Bureau Minors of the Direction Entry and Stay (also known as Bureau Minor, or Bureau MINTEH) of the Immigration Department. So, it is stated that the Bureau is not competent for UMs from the European Economic Area and UMs who have claimed asylum.

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<sup>81</sup> Payoke (Antwerp), Pag-asa (Brussels), Sürya (Liège), Esperanto (hidden centre, related to Sürya)

<sup>82</sup> This procedure differs from those for adults, in the way that there is no reflection period of 45 days and the UM receives immediately a residence permit valid for three months.

This procedure aims at finding a “durable solution” for all UMs who initiate this procedure. The Bureau MINTEH is competent to decide on what is the durable solution for each UM on the territory and should see to it that this solution is in the best interests of the child and that the fundamental rights are respected. Guardians play an important role in this phase as according to the Guardianship Act (art3§2 alinea 4) they have to see to it that the competent authorities seek a durable solution for the UMs as soon as possible. In practice they have to make a proposition of what is the durable solution for the UM to the Bureau. To this end, from June 2009 onwards, the UM and his/her guardian will be invited and during one or several interviews the situation of the UM in Belgium and in the country of origin will be looked at. The different possibilities of the durable solution will be investigated by the Bureau and the guardian on a regular basis. The Bureau will also be responsible for the issuance of temporary or definitive residence documents.

This durable solution can be found in Belgium, in the country of origin or in any other country where the UM has a right of residence. The Circular Letter describes three options that qualify as ‘a durable solution’.

- 1) family reunification in Belgium or abroad;
- 2) return of the UM to the country of origin or any other country where he/she has a right of residence with certain guarantees on its reception conditions;
- 3) unlimited stay or settlement in Belgium.

These three options should be considered on an equal basis, without a preference for any of these options. It should be decided on a case by case basis, after a thorough analysis of the situation and after a balance between the advantages and disadvantages of the different possible solutions.<sup>83</sup>

As a decision on what is the durable solution in the best interests of the child will be taken on basis of a maximum of objective information regarding the UM, the guardian has an important duty. He has to undertake all the necessary measures to track down the family of the UM, in Belgium or abroad. He can e.g. contact the Tracing Service of the Belgian Red Cross;<sup>84</sup> the Bureau MINTEH can also ask for some support from the FPS Foreign Affairs to contact the family in the country of origin. The guardian should also collect all kinds of documents and provide these to the Bureau (travel documents, identity documents, legal documents, school attestation, etc.), or communicate all the steps he/she has undertaken to try to obtain identification documents. He/she should also communicate to the Bureau any changes in the situation of the UM that could have an effect on the ‘durable solution’. This communication should happen in a written way. Based on some case law by the ALC, the Bureau MINTEH also has responsibilities: it should investigate and verify the reception possibilities and guarantees for the UM in the country of origin.

The Bureau will finally take a decision on what is the durable solution for the UM. Doing so might take a long time and the options can change over time. E.g. if the tracking of the family was unsuccessful, the option of return seems less likely. If the final decision of the Bureau differs from the one proposed by the guardian, the reasons for this should be duly motivated. The decision of the Bureau can be appealed with the Aliens Litigation Council.

Meanwhile, the Bureau can issue residence documents, depending on the state of the procedure. Several options exist:

- 1) If the Bureau decides that the ‘durable solution’ for the UM is a return to his/her country of origin, a removal order (a.k.a. annex 38) will be delivered to the guardian;<sup>85</sup>
- 2) If the Bureau decides that the ‘durable solution’ for the UM has not been found yet:
  - it can prolong the validity of the removal order (annex 38, which was delivered according to another procedure) on a monthly basis;
  - it can deliver a ‘declaration of arrival’ valid for three months, if the UM never started another procedure, that can be prolonged once;
  - If the Bureau decides that the ‘durable solution’ has not been found yet after six months and on presentation of identity documents,<sup>86</sup> a certificate of registration as foreigner (a.k.a. BIVR/CIRE)

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<sup>83</sup> Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non accompagnés en Belgique. Mars 2008, p.355.

<sup>84</sup> <http://tracing.rodekruis.be/>

<sup>85</sup> this will be further explained in: “5. Return practices including reintegration”

<sup>86</sup> In case identity documents cannot be presented, an exceptional procedure can apply, in which the guardian will have to prove all the possible steps he has taken to try to obtain the necessary documents. See: <http://www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=148>

under the form of an electronic identity card A, which is valid for six months to one year, can be issued. This temporary residence permit can be prolonged if certain criteria are met:

- Sufficient knowledge of one the three national languages,
  - Regular school attendance,
  - Family situation of the UM,
  - Any specific element related to the situation of the UM;
- 3) If after a period of three years with an electronic identity card A, no durable solution has been found yet, a residence permit for unlimited duration in the form of an electronic identity card B can be issued.

The issuance and prolongation of these residence documents will not happen automatically, but will depend on the appreciation of the Bureau on a case by case basis and after analysis of all elements present in the file of the UM. There will be an appointment with the guardian and the minor and with each upcoming prolongation of the residence documents, the durable solution will be evaluated. Sometimes the Bureau can impose certain conditions: it can for example decide to prolong the residence documents only for 6 months in stead of 1 year when e.g. the UM skips classes on a regular basis. In case the durable solution consist of a return and the UMs do not meet the conditions, no residence document will be issued, and they will find themselves in an irregular residence situation. However, they will be able to stay in the reception facility and will have the benefits foreseen in the Guardianship Law (e.g. guardian) until the age of 18 is reached.<sup>87</sup>

As mentioned, if no durable solution has been found after three years UMs can receive a residence permit for an unlimited duration. In practice this means that this will only be the case if the UM was 15 years or younger at the time of arrival. So, in most cases the UM will only receive a temporary residence status. This procedure will end once the UM reaches the age of 18: he will no longer have the assistance of a guardian and it will be another Bureau in the Immigration Department that will take over the file.

When a durable solution has been found, the Bureau will, from June 2009 onwards, systematically invite the UM to explain which decision that has been taken regarding his/her residence status. In case the guardian does not agree with the 'durable solution' proposed by the Immigration Department, because e.g. return is envisaged but no measures of reception or escort are taken; the guardian can file an appeal with the Aliens Litigation Council.

Amendments<sup>88</sup> to the Circular Letter are currently being discussed (2009) and a decision has to be taken as whether it should be adopted as a law. Some changes can already be mentioned: (as from 1 June 2009 on) all UMs and their guardians have to be heard systematically by the Bureau on issues that directly concern them (family situation, residence status in Belgium or abroad, ...). Until now this only happened on an ad hoc basis. The Bureau will also do the follow up of the UM until he/she reaches the age of 18.

#### 4.2.4 *Illegal stay*

Many unaccompanied minors however do not receive any legal status despite the existence of a guardian. If the different procedures e.g. asylum, victim of human trafficking have ended up in a negative decision, there is still the possibility to apply for the procedure under the Circular Letter of 15 September 2005. However, as mentioned it is the Bureau MINTEH that is responsible for the issuing of residence documents. Certain conditions can be imposed and if these are not met, no residence document will be issued and the UM will find him/herself in an irregular residence situation. However, as long as the UM has not reached the age of 18, he/she can in principal not be removed (see part return), in practice this situation will create additional uncertainty for the UM.

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<sup>87</sup> see: "4.3 Turning 18"

<sup>88</sup> Platform "Kinderen op de vlucht", Nieuwbrief 24, November-december 2008.

#### 4.2.5 *Regularisation*<sup>89</sup>

If UMs do not satisfy the conditions for residence described in the Circular Letter of 15 September 2005, they can make an application based on article 9bis or 9ter of the Aliens Act. The guardian should make the application and state the exceptional reasons why the UM wishes to be authorised to stay in Belgium: humanitarian reasons, good school results, good knowledge of the language, successful integration, the fact that he has no family or relatives in the country of origin, serious medical problems, etc.). All kinds of documents to support this should be joined with the application. The application should be made to the mayor of the place of residence of the UM and afterwards it will be transferred to the Immigration Department, Bureau Humanitarian Regularisations.

For UMs the decision will be taken in consultation with the Bureau MINTEH. In case of a positive decision the UMs will receive a residence permit of limited duration in the form of a foreigner card type A. It can be prolonged under certain conditions: e.g. finding employment, continuation of studies, the willingness to work. In certain cases the ID can directly issue a residence permit of unlimited duration in the form of a foreigner card type B. A proof of identity will also have to be shown. When the Immigration Department evaluates the application, the UM will not receive a residence permit. If the application is finally accepted, the UM will receive a residence permit. If it is refused, the decision can be appealed with the Aliens Litigation Council. It should always be taken into account that this regularisation is by no way a right, but merely a favour.

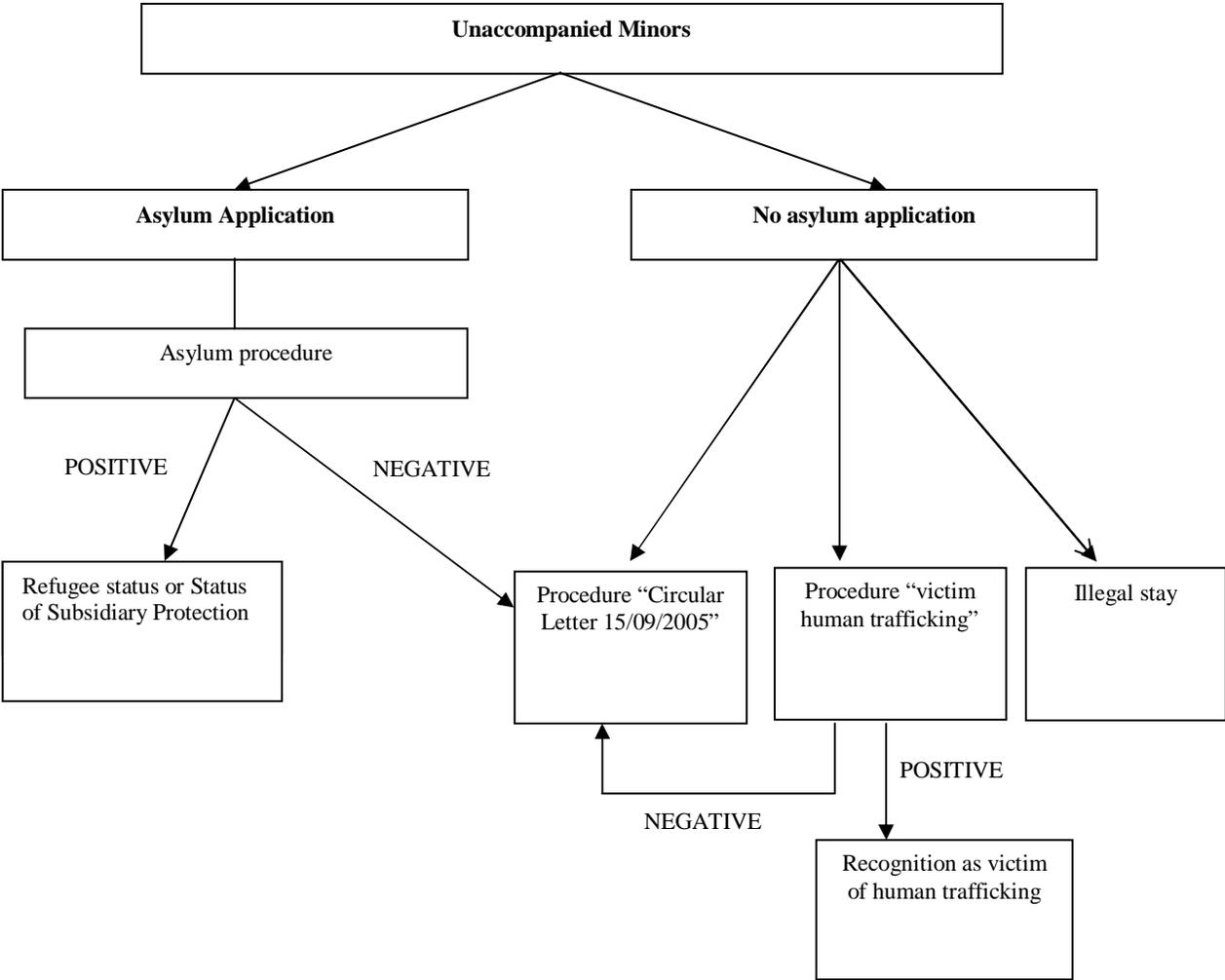
Art 9ter of the Aliens Act is foreseen for those third country nationals who are seriously ill and can demonstrate that they could not receive adequate care in the country of origin. UMs who fulfill these conditions will receive a temporary and conditional leave to remain for 1 year (conditional because the leave to remain may be withdrawn if the concerned UM is no longer seriously ill or if treatment has become possible in the country of origin in the meantime). However, UMs who would still fulfill the conditions after 5 years, would be granted a permanent residence permit.

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<sup>89</sup> Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique. Mars 2008, p.368.

4.2.6 *Overview*

Possible residence situations of UMs <sup>90</sup>



<sup>90</sup>Derluyn, I & Broekaert E. (2005); Niet-begleide buitenlandse minderjarigen. Tijdschrift voor Jeugdrecht en Kinderrechten, 6, 1, 12-21.

### 4.3 Turning 18

The future for UMs will vary, depending on whether they have a residence permit or not. In case they have acquired a residence permit/leave to remain before turning 18 (e.g. recognised as refugee), the guardianship will officially end and it will be the ‘justice of the peace’ who will appoint a civil guardian to watch over the UMs until they are 18.

UMs who turn 18 without being in the possession of a valid residence document could be subject to removal from the territory, as they will become illegal residents. As adults they will lose the support of the guardian and other protective measures. Nevertheless, most refugees do not want or are not able to return to their home country, thus forcibly decide to stay in Belgium – without papers, thus without rights and protection. For most of these adolescents, attaining the age of majority is therefore very frightening since their future –without legal documents and protection- is very unsure. Social workers also feel powerless, having to work with this continuous uncertainty.<sup>91</sup>

In practice, the transition between the status of unaccompanied minor and adulthood, does often not become effective immediately at the 18<sup>th</sup> birthday. The Bureau MINTEH will inform UMs in a written way of the different procedures that can be started when they turn 18 and will usually extend the validity of residence permits: prolonged for 6 to 12 months, making it conditional to e.g. job search, provision of identification documents, etc (see Procedure according to Circular Letter of 15 September 2005). Be the residence permits prolonged for three times, the person would be entitled to a residence permit of an unlimited duration.

Once UMs turn 18, their files come under the responsibility Bureau ‘long term residence’ of the Immigration Department, which will then decide on the regularisation of the UMs and which will do the follow-up of the conditions set by the Bureau MINTEH. Its decision will be discretionary depending on the same criteria used when the person was still under age (educational or professional achievements, integration and the situation in the country of origin).<sup>92</sup>

Turning 18 without being in possession of definitive residence documents can have certain consequences:

1. When it comes to accommodation the UM theoretically has to abandon the accommodation facility where he/she has been staying up till then. Sometimes it is extended until the end of the school year.
2. The legal representation of the UM, by means of a lawyer, will not change after turning 18.
3. The support from community services for the assistance of minors (Youth Welfare Services or the social service of the juvenile court) will end. If the UM is still vulnerable, the assistance can be extended until the age of 20 in the French Community or 21 in the Flemish Community, but an official request has to be made before turning 18.
4. Financial support by the Public Social Welfare Centre (OCMW/CPAS) will usually continue as before (financial support, aid in kind, assistance in a centre). However, all financial support will cease for UMs who do not have a residence permit before turning 18, the UMs only being entitled to urgent medical assistance.<sup>93</sup>
5. Other difficulties will arise regarding the enrollment in school, university or higher education; the access to work or internship; and the affiliation to a health insurance provider.

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<sup>91</sup> Derluyn I, Broekaert E. Unaccompanied refugee children and adolescents : the glaring contrast between a legal and psychological perspective. IN : International Journal on Law and Psychiatry 31 (2008) 319-330

<sup>92</sup> International Juvenile Justice Observatory (IJJO), Daniel Senovilla Hernandez, Situation and treatment of unaccompanied children in Europe. September 2007, p. 45.

<sup>93</sup> Service Droits des Jeunes. What part does your guardian play: <http://www.sdj.be/admin/docmena/A5ANGL40pages.pdf>

## 4.4 Detention

If a third country national arrives at the border without fulfilling all the entry conditions, he/she can be detained in a closed centre at the border until the Immigration Department takes a decision to either grant the permission to enter or remove him/her from the territory. In the past this was also the case for unaccompanied minors. This has led to provisions (art 41) in the new law on “Asylum Seekers and Certain Other Categories of Aliens” of 12 January 2007 which stipulates that UMs can no longer be held in a closed centre at the border, but should be held in the so-called Observation and Orientation Centres (OOCs). UMs arriving at the border without valid entry documents will have an *extraterritorial status in these centres*. If there is no doubt on the age of the UM, he/she will be transferred to the OOC within 24 hours.<sup>94</sup>

It has to be underlined that there is still one possibility where an UM can be held in a detention centre: in case an UM arrives at the border, and there is a doubt on the age. He can be held during three working days (can be exceptionally extended with another three working days) in a detention centre and will be subject to a test aiming at age determination. In practice, taking into account weekends and holidays this can result in a detention up to 11 calendar days.<sup>95</sup> So, in theory this person in detention has not been considered yet as an unaccompanied minor. Once the minority has been established, the UM will be transferred to an OOC within the 24 hours of the notification of the age determination. In case the UM is considered as an adult, the Immigration Department will decide whether to grant the access to the territory or not.

A provisional guardian may be appointed by the Guardianship Service to represent a foreign minor in detention who seems to correspond to the definition of UMs but who is still in the process of being identified. If it appears the minor is indeed an UM then the provisional guardianship becomes definitive.

## 4.5 Provisions for access to legal representation

According to the Guardianship Act, all UMs will be accorded a guardian. It is one of the first duties of the guardian to ensure that the child has suitable legal representation to deal with his immigration status or asylum claim, or any other jurisdictional or administrative procedure. The Guardianship Act stipulates that the guardian should immediately appoint a lawyer.<sup>96</sup> The guardian has to ask for a lawyer to be appointed, if necessary via the office of legal aid in the district where the minor is residing. The UM is entitled to free legal aid.<sup>97</sup> Many bar associations (Brussels, Charleroi, Antwerp) have set up a specific group of lawyers who have voluntarily accepted to deal with the files of UMs, either seeking asylum or not.<sup>98</sup>

Generally, and independently from the asylum procedure, the Juvenile Court can be seized by the Crown Prosecutor on the basis art 36/2 of the law of 8 April 1965 relating to the youth’s protection in order to take provisional measures towards the minors in danger. It is up to the judge to decide whether temporary measures should be taken and whether legal conditions foreseen under art 3/2 are met.<sup>99</sup>

It is also the duty of the guardian to advocate on the child’s behalf where necessary.

Concerning early childhood, the National Office for childhood in the French Community (ONE) and in Dutch Community (Kind en Gezin) have a mandate to accompany and follow up the young child and his/her family by means of free services (consultations, access to kindergarten, etc).

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<sup>94</sup> see also: “4.3.1 Observation and Orientation phase”

<sup>95</sup> Nationale Commissie voor de Rechten van het Kind. Derde periodieke rapport van België betreffende het Internationaal Verdrag inzake Rechten van het Kind. Juli 2008.

<sup>96</sup> Article 9§3 of the Guardianship Act and article 12 of the Royal Decree on Guardianship.

<sup>97</sup> Federale Overheidsdienst Justitie, Dienst Voogdij. Vademecum voor voogden van niet-begeleide minderjarige vreemdelingen. Eerste uitgave – bijgewerkt op 31 augustus 2007, p.36.

<sup>98</sup> [www.mena.be](http://www.mena.be)

<sup>99</sup> **International Organization for Migration. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of best practices and recommendations. September 2008, pp.173-174.**

## 4.6 Psychological care

### 4.6.1 General

The reception system of unaccompanied minors in Belgium has three stages. Upon arrival in one of the two Observation and Orientation Centres (OOCs), the UM has a first discussion with a social worker who becomes the referral person for the UM and who ensures social and administrative follow up. The social worker also plays a role of observer in order to identify the most appropriate orientation to give to the minor, respectful of the child's best interests. The OOC establishes a medical, social and psychological report on the UM with the aim to orient him towards an appropriate second reception phase. During the entire reception process, a referral social worker is designated each time the UM arrives in a new structure. This social worker is in charge of evaluating the individual needs of the UM in view of detecting specific needs and determining whether the follow up he/she receives meets his/her needs. In each reception phase, collaboration with the guardian is necessary. The first evaluation of the individual situation of the UM must be done within 30 days. This evaluation relates to the particular vulnerable character of the UM. The evaluation is continued during the entire stay of the UM in the reception structure.<sup>100</sup>

During these three phases the UM is assisted by his/her guardian, as well as by the personnel (i.a. doctor and social worker) in the reception centres. These persons who work with the UM on a daily basis are the first to observe different or problematic behaviour (depression, auto-mutilation, aggression, nightmares, etc.), but sometimes it is the UM who indicates it him/herself. It is up to these persons to find the best possible help for the UM. Sometimes, this help will be available in the reception centre itself (the doctor or psychologist of the centre) or externally in a specialised organisations.<sup>101</sup> Depending on the specific situation of the UM the most appropriate help will be looked for. There is a range of possibilities: therapy by means of discussion, medication, consultation with a psychiatrist/psychologist, foster family, psychiatric treatment.<sup>102</sup>

However, there are also some critical voices on the psychological care refugees receive. Refugees requiring mental health services are confronted with numerous challenges, including frequent misdiagnosis, language barriers and inappropriate use of interpreters, poor services access, lack of resources to pay the services, lack of familiarity with mental health systems, inappropriate treatment methods, and difficulties of providing culturally sensitive interventions. In Belgium unaccompanied minors, mostly await their asylum claim in refugee centres. Nevertheless mental care is often limited in these centres, and in the mainstream health care, only a few services are specialised in or open to refugees and migrants<sup>103</sup>, with the result that only a limited number of refugees – both adults and children – receive appropriate mental health care. Emotional support and/or adequate treatment for psychological and/or psychiatric problems remain thus very scarce, also for UMs. Therefore it is not surprising that in the centres where UMs stay, high levels of emotional and behavioral problems are reported. And at present, some UMs are continuously transferred from refugee centre to refugee centre, because of severe behavioral or psychiatric problems, without receiving appropriate care or treatment.<sup>104</sup>

It can be mentioned that the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) also has one expert-psychologist who provides psychological support. The psychologist advises the caseworkers of the CGRS<sup>105</sup> on the psychological and mental situation of the asylum seeker, when this can have an influence on the asylum decision. The psychologist organizes an individual psychological interview with the UM and makes a thorough psychological report thereof. The CGRS will take into account this evaluation (PTSD, memory problems, psychological complaints, etc.) when making a decision on the asylum request.

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<sup>100</sup> International Organization for Migration. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of best practices and recommendations. September 2008, pp 122-123.

<sup>101</sup> for a listing of these centres we refer to: Federale Overheidsdienst Justitie, Dienst Voogdij. Vademecum voor voogden van niet-begeleide minderjarige vreemdelingen. Eerste uitgave – bijgewerkt op 31 augustus 2007, pp. 215-223.

<sup>102</sup> Rode Kruis Vlaanderen, onderzoek naar psychosociale en therapeutische hulpverlening aan asielzoekers, maart 2004.

<sup>103</sup> [www.solentra.be](http://www.solentra.be)

<sup>104</sup> Derluyn I, Broekaert E. Unaccompanied refugee children and adolescents : the glaring contrast between a legal and psychological perspective. IN : International Journal on Law and Psychiatry 31 (2008) 319-330.

<sup>105</sup> Commissariaat-generaal voor vluchtelingen en staatlozen. Jaarverslag 2007 pp.32-33. [www.cgvs.be](http://www.cgvs.be)

#### 4.6.2 *Victims of human trafficking*

As already mentioned, there is a specific procedure to assist victims of human trafficking. There are three specialised centres where these possible victims can be accommodated.

- Payoke (Antwerp)<sup>106</sup>
- Pag-asa (Brussels)<sup>107</sup>
- Sürya (Liège), Esperanto (hidden location, depending on Sürya)

These centres provide also psycho-social assistance to the victims. This assistance can be aimed at different areas: practical, psychological, physical problems. There is also collaboration with more specialised services. A lot of attention goes to the acceptance of dealing with the consequences of traumas. But also to work towards a realistic vision on the future.

Each person will receive an individual counselor who will organize, through individual talks, the psychological assistance. During these talks attention is paid to the ability to cope with traumas and to give a meaning to one's life. The ultimate aim is to work towards the ability to manage for oneself.

#### 4.6.3 *Child soldiers*

Specific measures are taken for this category of UMs. There is a programme for social reintegration. In the light of their asylum application psychological, medical and social support is assured. This will happen in first instance by the guardian, often together with the team of social assistants in the reception centre, who has to see to it that the UM receive the appropriate psychological and medical attention: referral to an adapted reception centre, hospital or a centre of psycho-medical care.<sup>108</sup>

Involvement in conflicts as a child soldier is mostly detected during the asylum procedure. The case workers of the Office of the Commissioner General for Refugees and Stateless Persons pay special attention to detect these issues. This should also be done in the light of possible exclusion clauses (art. 1F of the Geneva Convention). The UM can also be heard by the psychologist of the CGRS in order to make an elaborate assessment of his/her asylum case. In case the UM is not deemed capable enough of continuing telling his/her asylum story, the CGRS can base its decisions on all elements present in the asylum file. Although the asylum instances have no specific statistics on this, the CGRS could confirm on basis of their experience, that in the period 2006-2007 there were less than 10 cases of former child soldiers.

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<sup>106</sup> [www.payoke.be](http://www.payoke.be)

<sup>107</sup> [www.pagasa.be](http://www.pagasa.be)

<sup>108</sup> Nationale Commissie voor de Rechten van het Kind. Derde periodieke rapport van België betreffende het Internationaal Verdrag inzake Rechten van het Kind. Juli 2008, p.180.

## 4.7 Integration measures for UM

Between the arrival of the UM on the territory and the end of the different procedures (e.g. asylum, procedure Circular Letter 15 September 2005), a lot of time can elapse (a few months to even two or three years). The guardian will assist the UM during this whole period, will work with the UM towards a durable solution and will thus have an important role to play in the integration of the UM. To begin, the guardian will have to build a relationship of trust with the UM. This first step towards the integration of the UM is to make him/her understand that he/she can have a place in Belgium and will have, as any other citizen, certain rights and obligations.<sup>109</sup>

School will be an important factor in the integration process. The UM will have to develop his/her own network of people. This will include people dealing with the administrative procedure (guardian, lawyer, social assistant) but also people in the reception centre, people in the education area (teacher, director), people in the sports and cultural associations, religious associations, friends at school etc.

A great deal of work on the integration of the UM is done in the different reception centres. Next to providing accommodation these reception centres also provide other kinds of assistance to the UM in the light of his/her 'life project'. This will often require an individualized approach for each UM, depending on its capabilities. It requires from the UM to be a member of different social networks and to adapt himself/herself to his/her current environment. Specific projects can be developed to prepare the UM to being an adult: possibility to prepare his own meals, learn how to deal with an own budget.<sup>110</sup>

By way of example we can refer to the intervention of the social workers in the reception facility of Mentor Escale.<sup>111</sup>

*It is the aim to create and expand the social network around the UM. This will not only be friends, but also people at different levels who can help him along the way. He should be able to use this network, know the possibilities and limits of it. In the end this should evolve in a situation where the UM can take control again of his life, live independently and is sufficiently integrated to proceed his path in the Belgian society. The activities to achieve this are multiple: the social workers will help with the residence procedure, assisting in finding accommodation, assisting in finding the suitable education, school; they will listen to the UM and assist him in finding a future life project. He will also receive help with health issues, etc.*

In Belgium, integration measures are mainly the competence of the Regions and Communities. The Flemish Community has developed the so-called 'inburgeringsbeleid' (civic integration policy). The newly arrived minors of foreign nationality are also one of the target groups. The first step is an interview of the minor at the reception office (*onthaalbureau*), which determines eligibility to participate in the integration programme. The law presents two successive routes for the integration of newcomers: the first one is a training/educational programme composed of Dutch language course, social orientation, and career guidance which should facilitate the way towards the educational system and employment. The second route consists of linking the immigrant with the country's regular institutions, assistance providers or training organisations. One of the first things UMs under 18 have to do is to register for education. In case it is necessary the UM will also be guided towards welfare systems. However, the reception office is no longer responsible for the organisation of socio-cultural activities. In the French speaking Community, migrants (mainly adults) participate in integration programmes on a voluntary basis. Public services and non-profit organisations receive subsidies from the competent authorities (French Community and Walloon Region) to organise courses and/or activities promoting the integration of newly arrived migrants into the Belgian society. Activities can range from literacy and French language courses to information on cultural, social and political life in Belgium).<sup>112</sup>

As mentioned, education is one of the main steps towards integration. Besides education, UMs benefit from other social and economic rights: the right to social aid and benefits, access to health care and the right to work.

<sup>109</sup> L'Observatoire. Revue d'action sociale et medico-sociale. Nr57/2008. Juillet 2008.pp.50, 56-57.

<sup>110</sup> Platform Kinderen op de vlucht, nieuwsbrief 7, oktober 2006. Het El Paso centrum in de schijnwerper.

<sup>111</sup> Mentor Escale, Begeleiding van jongeren op de vlucht. Jaarverslag 2007, pp.20-21.

<sup>112</sup> CESifo-group: national integration programmes for migrants in AT, BE, DK, FR, DE and NL. [http://www.cesifo-group.de/portal/page/portal/DICE\\_Content/LABOUR\\_MARKET\\_AND\\_MIGRATION/MIGRATION/Integration%20of%20Immigrants](http://www.cesifo-group.de/portal/page/portal/DICE_Content/LABOUR_MARKET_AND_MIGRATION/MIGRATION/Integration%20of%20Immigrants)

#### 4.7.1 Education

Each child in Belgium, including unaccompanied minors, is entitled to receive education and to go to school. This right has been specifically mentioned in the law.<sup>113</sup> There is compulsory education from 6 to 18 years of age. For UMs, compulsory education starts from the 60<sup>th</sup> day on after the registration in the “Foreigners’ Register”. There is no compulsory school attendance, which means that one can receive home education. In practice this does not happen so much and the majority of UMs attend school. If the child is an illegal resident in Belgium, the child has also a right to education, and once it’s registered in a school, attendance is compulsory. Primary and secondary school enrolment is free of charge, but attending school does involve expenses (e.g. sports and cultural activities). Minor foreign nationals (incl. UMs) who arrive in Belgium can make use of specially adapted educative programmes that allow them to attend the normal education on a regular and successful basis. This kind of education is for minors who already had some level of education in the past as well as for those who are illiterate. As education is a competence of the Communities (Flemish, French and German), some differences can be discerned.

##### Flemish Community<sup>114</sup>

Reception classes for non-Dutch speaking newcomers (OKAN)<sup>115</sup> in mainstream elementary and secondary education want to teach newcomers Dutch as quickly as possible in order to familiarise them with the school curriculum and school teaching methods suited to their individual capacities. The teaching will be done partly in the separate reception classes and partly in the ‘regular’ classes. The school must draw up an individual work plan for each non-Dutch speaking newcomer. Also teachers receive special training.

After an initial reception year the newcomer to elementary education can progress to a second follow-up year. The UM can be registered in a primary education institution if he/she is five years old or older. A school can organize a reception class from the moment on there are four non-Dutch speaking newcomers registered. A newcomer can follow secondary education if he/she is at least 12 years old; this will at first be in a reception class. In secondary education newcomers can progress to mainstream education with extra support from the reception class after one year. This transfer to mainstream education can also take place during the school year. The reception package is mainly aimed at learning Dutch, for at least 22 hours a week. At the end of the school year each foreign minor who attended classes on a regular basis, receives a certification thereof.

##### French Community<sup>116</sup>

A decree adopted on June 14, 2001 provides the possibility of creating ‘*bridging classes*’ (classes passerelles) for newcomers, i.e. pupils aged from two and a half up to eighteen years old that have been in the country for less than a year and have requested or obtained refugee status (or minors accompanying a person that is in one of these situations), or have a stateless status, or come from certain developing countries.

The stay in a bridging class lasts from one week to six months with a maximum of one year. During this period, the pupils benefit from specific support allowing them to adapt to the country’s socio-cultural and educational system and to be guided towards the level and stream of education that suits them best. Bridging classes can be provided in the primary or secondary schools that made a request for the creation of this type of structure and that have received authorisation. When an institution is authorised to provide bridging classes it receives a complement of teaching time and is required to create an integration committee responsible for guiding newly arrived pupils towards an optimal integration within the school system. This integration committee is authorised to issue, at the end of a pupil’s stay in a bridging class, an orientation certificate towards any level or type of secondary education, except the 6<sup>th</sup> or 7<sup>th</sup> study years. For the newcomers in the ‘refugee’ category who cannot prove attendance or completion of a given school year, the integration committee can grant a certificate of admissibility into any year of secondary education (except the 6<sup>th</sup> and 7<sup>th</sup>), in whichever form and option.

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<sup>113</sup> French Community: article 40 of the decree on positive discrimination.

Flemish Community: circular letter of 24 february 2003 on the right to education for children with an illegal residences status

<sup>114</sup> Vlaamse Gemeenschap. Flemish EURYDICE Report 2008, pp. 408-412, [www.ond.vlaanderen.be/publicaties/?get=INT&nr=347&i=1](http://www.ond.vlaanderen.be/publicaties/?get=INT&nr=347&i=1)

<sup>115</sup> OKAN: onthaalklassen voor anderstalige nieuwkomers

<sup>116</sup> Communauté française de la Belgique, The education system in the French Community of Belgium (2007/08): [www.eurydice.org](http://www.eurydice.org)

As is described, after the reception classes and bridging classes the UM should attend regular education. However for a lot of UMs this is proven to be a big step mostly due to the fact that they are lagging behind in language knowledge. This implies that the UMs often start mainstream education in a lower grade and at a lower level than they would normally be able to if they were taught in their mother tongue.<sup>117</sup>

#### 4.7.2 *Access to social welfare*<sup>118</sup>

The Belgian law provides that all persons, including UMs, who find themselves in a situation of need which does not allow him/her to live in dignity, can receive state benefits and/or social aid. This aid is in most cases provided by the Public Social Welfare Centres.<sup>119</sup> However, the system of reception in three phases provides that the UM who stays in one of the different reception facilities will not receive financial assistance, but social aid is provided in kind (accommodation, food, clothing, psycho-medical-social assistance and a small daily subsistence allowance). In practice, it will only be in exceptional cases that an UM will be entitled to receive state benefits (e.g. when recognised as a refugee, or has the subsidiary protection status, victim of human trafficking). In case an UM finds himself in an illegal situation, he/she is entitled to social assistance. These are rights derived from the Convention of the Right of the Child.

#### 4.7.3 *Access to medical care*<sup>120</sup>

As for the social welfare, the UM who stays in the reception centres of one of the three phases, will have access to medical care and it will be the reception centre that will cover the costs. Under certain conditions the UM has the right to a medical insurance and can register with a health insurance provider. All UMs, including those in an illegal residence situation, will have this right. This right will end once they lose the status of UM.<sup>121</sup>

#### 4.7.4 *The right to work*<sup>122</sup>

An UM can have a student job if specific conditions have been met. He/she has to be in possession of a residence document (inscription in the foreigner's register). The UM can only work under a student work contract. In case of student labour outside the official school holiday periods, he/she will have to apply for a work permit type C, he/she cannot exceed 20 hours work week and the job has to be compatible with his/her studies. The minor has to be 15 and be in full-time education or have finished the curriculum.

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<sup>117</sup> Derluyn, I & Broekaert E. (2005); Niet-begleide buitenlandse minderjarigen. Tijdschrift voor Jeugdrecht en Kinderrechten, 6, 1, 12-21

<sup>118</sup> Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique. Mars 2008, p.521.

<sup>119</sup> OCMW/CPAS

<sup>120</sup> Federale Overheidsdienst Justitie, Dienst Voogdij. Vademecum voor voogden van niet-begeleide minderjarige vreemdelingen. Eerste uitgave – bijgewerkt op 31 augustus 2007, p.224.

<sup>121</sup> Medimmigrant. [www.medimmigrant.be/index.asp?idbericht=37&idmenu=2](http://www.medimmigrant.be/index.asp?idbericht=37&idmenu=2)

<sup>122</sup> Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique. Mars 2008, p. 678.

## 4.8 Conditions and Provisions of making an asylum application by UM

The Geneva Convention of 1951 has no specific stipulation regarding asylum status for unaccompanied minors. The definition of refugees is the same for all persons, regardless of their age. The criteria of recognition do not differ from those for adults. Hence, the UM will have to proceed the same steps in the asylum procedure as the adults. However, the fact that a person is an UM will be taken into account throughout the procedure.

For an overview of the asylum procedure we refer to the EMN Study 2008 “The organisation of asylum and migration policies in Belgium”<sup>123</sup>. The institutions involved in the asylum procedure are the following:

- Immigration Department (ID; a.k.a. Aliens Office) registers the asylum application
- Office of the Commissioner General for Refugees and Stateless Persons (CGRS) is the independent administrative body with the competence to grant or refuse claims for refugee status or subsidiary protection
- Aliens Litigation Council (ALC) hears appeals of decisions taken by the ID or CGRS
- Council of State hears appeals in cassation of decisions of the ALC

### Immigration Department (ID)<sup>124</sup>

The UM presents himself/herself at the offices of the ID, asylum direction in order to apply for asylum. The UM is separated from the other ‘adult’ asylum seekers, and placed in a specific waiting room, and will be assisted by personnel from the ID specifically trained to deal with UMs. As the ID is often the first instance that has contact with the UM, it will have to inform the Guardianship Service of the presence of the UM. The ID, Bureau MINTEH will therefore be responsible for filling out the identification form for UMs. This form will be used to collect the first basic information on the identity of the UM, and his reasons to come to Belgium. Also the fingerprints and a photograph (for minors of at least 14 years<sup>125</sup> of age) will be taken. The purpose of this identification form is to collect in a speedy and reliable way information on the UM, so it can also be used in case the UM disappears. The ID can express a doubt on the age of the UM and indicate if it is necessary to provide shelter or not.

As soon as the identification form is filled out, it will be transferred to the Guardianship Office, who will take charge of the UM and transfer him/her to one of the two OOC. In case there is doubt on the age, the Guardianship Office will proceed with a medical examination. Once the minority is confirmed a guardian will officially be appointed. This guardian will decide in consultation with the UM if the asylum application is the most appropriate procedure to follow for the UM.<sup>126</sup> The Belgian law<sup>127</sup> prescribes that UM has the legal capacity to apply for asylum himself, or that a guardian can make this application in the name of the UM. There is no minimum age to apply for asylum. However, if the UM is in the incapability to be heard, i.e. is too young or has e.g. a mental disability, it is up to the guardian to provide all the information regarding the situation of his/her ward.

If it has been decided that an asylum application is the best option, the UM and his/her guardian will be invited again to the ID to be heard by a caseworker. These caseworkers have in principle received a training i.a. on interviewing vulnerable groups and on intercultural communication. If the UM does not speak Dutch or French he/she can choose to have the assistance of an interpreter. The ID will register the application and question the UM mainly about the trajectory he/she followed to get to Belgium. The presence of a lawyer in this stage of the procedure is not allowed. The ID will also ask the UM to fill out a questionnaire, with the help of his/her guardian, the staff and interpreter present, regarding his/her background and the main reasons of anxiety. This questionnaire may also be filled out at

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<sup>123</sup> website European Migration network

<http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=6D6F7027D4D5688C7C85CEE19519E6B8?directoryID=114>

<sup>124</sup> Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique. Mars 2008, p.253; AND

Jollet Christophe, La procédure des MENA. Comparaison avec les demandeurs d’asile adultes. Mémoire de stage. SPF P&O- IFA. Août 2008, p.17.

<sup>125</sup> The Immigration Department sometimes proceeds with fingerprinting UMs of less than 14 years old, in this case the consent of the UM is required.

<sup>126</sup> The UM can also chose to apply for the procedure under the Circular Letter of 15 September 2005; or the procedure for victims of human trafficking; or the regularisation procedure mentioned in art.9bis and 9ter of the Aliens Act. However the UM can only apply for one procedure at the time.

<sup>127</sup> Guardianship Act art.9

home and sent within 5 days to the CGRS. The UM will be given a document (annex 26) as proof of their asylum application. With this document he/she can present himself at the municipality that will deliver a residence document (attestation of immatriculation) to UMs of at least 12. UMs younger than 12 will receive an ‘identity certificate’.

If the Immigration Department finds that, under the Dublin II Regulation,<sup>128</sup> Belgium is responsible for processing the asylum claim, the asylum seekers’ complete file is forwarded to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) who will decide on their asylum claim.

An UM can also make an asylum application at the border (e.g. airport), in that case he/she will be heard by caseworkers of the Cell Zaventem of the Immigration Department who will do the same tasks as if an UM applied for asylum on the territory.

#### Asylum procedure CGRS<sup>129</sup>

The UM is invited to have an interview at the offices of the CGRS<sup>130</sup> to explain his/her motives to apply for asylum. His/her guardian has to be present, otherwise the interview cannot proceed. A lawyer or any other “trusted representative” can be present at the interview. For European UMs no guardian will be appointed.

The CGRS pays special attention to the UMs and gives a priority treatment to these asylum files. The interview will be adapted to his/her degree of mental development and maturity: the caseworker will adapt the formulation of the questions and methods (e.g. drawing). Personal, cultural and family factors will also be taken into account. Around 35 caseworkers of the CGRS are specialists in the area of asylum and have received special training<sup>131</sup> to deal with UMs. Standardised interview forms and guidelines specifically developed for interviews of UMs are used and he/she will be heard in a room specially adapted to interview UMs. The CGRS also has assigned a coordinator on UMs. Each UM will receive a comic book called Kitzito in which information on the different steps in the asylum procedure is provided.<sup>132</sup> The CGRS is also involved in EU sponsored practical cooperation initiatives, such as the European Asylum Curriculum (EAC)<sup>133</sup> where it is the aim to create a teaching module on interviewing UMs that will be made available to other European asylum instances.

After the interview the asylum request will be examined on basis of two criteria: are the declarations genuine and do they qualify to grant the status of refugee or subsidiary protection. When examining the asylum application both asylum status and subsidiary protection status will be investigated at the same time. The CGRS will hereby take into account the fact that the applicant is a minor, so that principle of “the benefit of the doubt” will have a larger field of application.

If the decision is positive, the UM will be recognised as a refugee or will receive the status of subsidiary protection,<sup>134</sup> respectively they will receive a residence permit for unlimited and limited duration. The recognition as a refugee also has the consequence that they do no longer qualify as an UM under the definition of the Guardianship Act. However the role of guardian can be taken over by a civil guardian. In case of a negative decision the CGRS will always mention that the person is an UM and by consequence the Convention of the Rights of the Child is applicable. The UM will not receive an ‘order to leave the territory’<sup>135</sup> (as adults do), but a ‘removal order’ (annex 38).<sup>136</sup>

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<sup>128</sup> for more details on the Dublin procedure, see: “5.3.1 UMs within Dublin II”

<sup>129</sup> L’Observatoire. Revue d’action sociale et medico-sociale. Nr57/2008. Juillet 2008, pp.41-44.

<sup>130</sup> [www.cgvs.be/nl/publicaties/brochures/](http://www.cgvs.be/nl/publicaties/brochures/)

<sup>131</sup> I.a. Intercultural communication, on specific needs of vulnerable groups, interview techniques. In 2006 a project on the training of case workers dealing with UM was supported by the European Refugee Fund.

<sup>132</sup> EAC and Kitzito are sponsored by the European Refugee Fund

<sup>133</sup> [www.gdisc.org/uploads/tx\\_gdiscdb/final\\_curriculum\\_EAC.pdf](http://www.gdisc.org/uploads/tx_gdiscdb/final_curriculum_EAC.pdf) p.21

<sup>134</sup> In Belgium the single procedure is applied: asylum claims are automatically examined under the Geneva Convention and under the Qualification Directive if the Geneva Convention is not applicable.

<sup>135</sup> bevel om het grondgebied te verlaten (BGV)/ordre de quitter le territoire (OQT)

<sup>136</sup> bevel tot terugbrenging/ordre de reconduite

An appeal against the decisions of the CGRS is possible with the Aliens Litigation Council.<sup>137</sup> The fact that the CGRS has to take into account the degree of development of the UM, and the principle of the benefit of the doubt, has been confirmed in some case law by the ALC.<sup>138</sup>

#### UNHCR Guidelines

The UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997)<sup>139</sup> and the Resolution of the Council of the European Union (1997)<sup>140</sup> are taken into account each time the asylum legislation is adapted. A document on the specific analysis of the Belgian situation in the light of these guidelines is not available.

## **4.9 Family Reunification**

There are different possibilities when it comes to describe the fact that a UM reunites with his/her family. It can happen (1) that the UM is abroad and comes to join his family members already legally residing in Belgium; (2) family members abroad come to join the UM who is legally living in Belgium. In both cases it has to be mentioned that people make use of the official procedure on family reunification as is foreseen in the Aliens Act, but others travel to Belgium to reunite with their family member without making use of this procedure. Another aspect that can be mentioned is the return and family tracing/family reunification of the UM and their family in the country of origin.<sup>141</sup>

### 4.9.1 UM wants family reunification with his parents already in Belgium<sup>142</sup>

UMs who want family reunification with their parents already in Belgium, will not be considered as ‘unaccompanied minors’ as mentioned in the definition of the Guardianship Act, as upon arrival in Belgium they will be taken care of by their family and they will thus not be unaccompanied. They are considered as ‘minors’. There are no detailed statistics available on this issue.

#### Procedure from abroad

Family members of third-country nationals legally residing in Belgium entitled to benefit from family reunification are the spouse or registered partner, provided both spouses or partners are over 21 years of age (this is reduced to 18 year if the partnership already existed before arrival in Belgium) and their children upon the condition that they are less than 18 years old and single. Two conditions have to be fulfilled when submitting a visa application: the sponsor must have a medical insurance that covers himself/herself and his/her family in Belgium and he must have sufficient accommodation for the entire family. With respect to the latter, accommodation is regarded as sufficient if it complies with the requirement concerning security and health applied in the concerning Region. The right of family reunification is not limited to third-country nationals having an unlimited right to stay in Belgium, but also benefits those admitted for a limited period. However, if the sponsor has a right to stay for a limited time span (e.g. students), he/she must have stable, regular and sufficient financial resources. Except in the special case of a disabled child, financial resources are not required for family reunification with a foreign national with unlimited right to stay.

For recognised refugees, conditions of accommodation and medical insurance do not apply if on the one hand, the family ties already existed before entry into Belgium, and, on the other hand the demand for family reunification was made within the year after the granting of the refugee status (the latter condition does not apply to non-accompanied minors as a consequence of a judgment of the Constitutional Court).

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<sup>137</sup> Raad voor Vreemdelingenbetwisting/Conseil du contentieux des étrangers [www.rvv-ccc.be](http://www.rvv-ccc.be)

<sup>138</sup> see Juridische Nieuwsbrief Foyer nr 166 : [www.foyer.be](http://www.foyer.be) februari 2008

<sup>139</sup> Available from <http://www.unhcr.org/refworld/docid/3ae6b3360.html>

<sup>140</sup> Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, available from [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997Y0719\(02\)&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997Y0719(02)&model=guichett)

<sup>141</sup> see: “5. Return practices including reintegration”

<sup>142</sup> EMN BE NCP, the organisation of asylum and migration policies in Belgium, April 2009, p.32. AND

Jollet Christophe. La procédure des MENA. Comparaison avec les demandeurs d’asile adultes. Mémoire de stage. SPF P&O- IFA. Août 2008 p.61

More favourable conditions can apply for third-country workers, whose country of origin has a bilateral agreement with Belgium. E.g. workers of Turkish nationality can have a family reunification with ascending family members; or with a spouse younger than 18.

For family reunification of third-country nationals with EU-citizens (art. 40bis of the Aliens Act) and with Belgians (art. 40ter) more favourable conditions apply based on Directive 2004/38 (no minimum age for partners or spouses, no accommodation condition, possibility of family reunification for ascendants and children older than 21).

Since September 2003 a secured procedure has been put in place that allows establishing the parental link by means of DNA-testing. This can be done when an application for a visa on family reunification is made at a Belgian consulate or embassy.<sup>143</sup> This can be used when there is a doubt on the presented documents or no documents could be presented e.g. due to the destruction of the national register. This procedure is not obligatory. It can be proposed by the applicant as well as by the Immigration Department. E.g. when the ID, in the light of the presented documents and the elements in the file, would be obliged to take a negative decision on family reunification, the DNA testing could shed another light on the situation. However, this procedure will not systematically be used and only as a last resort.

#### Procedure on the territory

It can happen that an UM comes to join his/her parents who have already filed an asylum procedure in Belgium. It can also happen that parents stayed (illegally) in Belgium and had their child presents itself as unaccompanied minor in order for him/her to benefit from this more favourable status. Also in this case the parents might suddenly appear. In order to reunite the UM with his family, the parental link will have to be established by the Guardianship Service.

In case the parents had filed an asylum procedure, the Immigration Department will check the identity documents and whether the parents previously declared having the child, and therefore it can also interview the UM and the parents. If there is still a doubt about the family link, the child will for the time being be considered as an UM. The family link can be verified by presenting documents as well as through DNA-testing at the expense of the parents. In absence of official documents this can be a lengthy procedure (e.g. biological parent vs legal parent).

The Guardianship Service will take charge of the UM and will proceed with the identification. When the Guardianship Service confirms the family link and the family member is capable of taking care of the UM,<sup>144</sup> he/she will be able to join his/her parents/family and will receive the same residence status as his/her parents/family. So in case the parents have applied for asylum, the child will in principle also be registered in the file of its parents.<sup>145</sup> If the family link was finally not proven, the minor will be considered as an UM and a guardian will be appointed.

#### 4.9.2 Family member wants family reunification with the UM already in Belgium

##### Procedure from abroad

Family reunification with an UM already in Belgium is in principle not possible. However, the family members can at the Belgian diplomatic or consular post make a special request to the Minister for Asylum and Migration Policy to grant the authorisation to join the UM. This will always be at the discretionary power of the Minister.

One exception applies, namely in case the UM has been recognised as a refugee. Only the parents of the UM can make use of this procedure, not other family members (brother, sister or legal guardian). UMs who benefit from the subsidiary protection status, nor UMs who have a residence permit according to the procedure under the Circular Letter of 15 September 2005 can benefit from this type of family reunification.<sup>146</sup> As this legal provision has only been established in 2007, the number of cases is rare (around 7 cases in total). The problem is sometimes that the

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<sup>143</sup> This DNA testing is not yet possible in all embassies or consulates (21, but being extended), mostly concentrated on countries with problems of delivering reliable documents on the civil status. See: Colette Van Luil, contribution du SPF Intérieur concernant le rapport fédéral annuel sur l'application de la Convention relative aux droits de l'enfant, 15/10/2008, p.7.

<sup>144</sup> The fact that the parent is present in Belgium, will not necessarily mean that the UM could join his parent, as it has to be in the best interests of the child. E.g. in case the UM's mother is involved in prostitution or has an illegal residence status, it could be considered not in the best interest of the child to reunite with his mother.

<sup>145</sup> If the UM has own motives to apply for asylum, which are different than those of the parents, the child can possibly receive another status than the parents.

<sup>146</sup> L'Observatoire. Revue d'action sociale et medico-sociale. Nr57/2008. Juillet 2008, p.37.

parents of the recognised refugee bring along their other children (thus brothers and sisters of the UM), which was not the intention of the procedure.

*Procedure on the territory*

It is less frequent that the parents come to join their children in Belgium. If the child arrived in Belgium before the parents it will in principle be in charge of the GS and have a guardian. In case the parents join the child, it is up to the GS to verify the family link. In case the parents arrive at the border, the parents will be detained until this verification has been done. Once the family link has been established the guardianship will in principle end. In case the parents were already legally residing on the Belgian territory, they can make an application according to the so-called regularisation procedure mentioned in art.9bis of the Aliens Act.<sup>147</sup>

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<sup>147</sup> Van Zeebroeck Charlotte- Plate-forme Mineurs en exil. Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique. Mars 2008, pp.419-444.

## 4.10 European Unaccompanied Minors

Although not completely within the scope of this study, the situation of the Unaccompanied Minors belonging to one of the Member States of the European Economic Area (so-called European UMs) should also be looked at. UMs from Bulgaria and Romania (mostly belonging to the Roma community) were always well represented in the statistics of UMs in Belgium: e.g. 200 UMs per year (10% of the total number of UMs). However, with the accession of these two states to the European Union in 2007, they do no longer qualify as an unaccompanied minor according to the definition of the Guardianship Act and are thus not entitled to the protective regime thereof. In practice, these UMs are still present on the Belgian territory and they have the same needs and are considered as vulnerable. It can also be mentioned that 17% of the applications within the procedure for victims of human trafficking (adults and minors) is originating from one of these two countries.<sup>148</sup> They also have the possibility to apply for asylum (although according to a specific procedure for EU-citizens).

In order to find a solution for this group of minors, the Circular Letter<sup>149</sup> of 2 August 2007 created a new service within the Guardianship Service for European UM in a vulnerable situation, namely SEMK/SMEV.<sup>150</sup> Not all European UMs are considered, just those in a 'vulnerable situation'. This means those in an irregular administrative or unstable social situation; in case of pregnancy, mental or physical handicap; victims of human smuggling or trafficking, and those in beggary.<sup>151</sup>

In case e.g. the police encounter such a European UM, they will inform the SEMK/SMEV within the Guardianship Service. They will take a temporary charge of the EU UM, but this is not a guardianship. The UM will be placed in one of the Observation and Orientation Centres (OOC) and sometimes referred to the Youth Welfare Services of the Communities; or to the non-profit organisation Foyer<sup>152</sup> in Brussels that has a specific service for young Roma; or to the specialised centres for victims of human trafficking.<sup>153</sup> For some European UMs there is however no specific reception and they are left on their own again. They will not have access to a guardian. The SEMK/SMEV tries to find a solution for these UMs. Temporarily taking charge of European UMs aims at protecting them against vulnerable situations, such as crimes and human trafficking.

Currently, there is a debate in Belgium on whether to include the European UMs in the definition of the Guardianship Act, so they would have the same treatment as the other UMs. Recommendations of NGOs and a proposition of law have been formulated in that sense. It is suggested to include these European UMs, at least as a provisional measure, in the definition. Additionally, Belgium wants to avoid that this becomes a pull-factor by wrongly suggesting that the appointment of a guardian implies a right of residence. In the interest of the European UM the return to his country of origin should be encouraged, in so far as this would not be manifestly against the best interests of the UM, and therefore bilateral readmission agreements could be negotiated. It is mentioned that Belgium and other countries have the duty to point out to the concerned Member States that they have the responsibility to provide sufficient reception of these UMs.<sup>154</sup>

Meanwhile the Immigration Department counts more on cooperation between the EU Member States and the development of a network of contacts via the embassies. As it concerns Member States of the European Union, it should be easier to locate the family members in the country of origin. It is also mentioned that European UMs often come to Belgium to get education; therefore specific programs of the EU in those Member States could help tackle this problem. Meanwhile there is the awareness that specific initiatives should be developed in Belgium, as these UMs often disappear from the OOCs, and refuse the help offered to them.

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<sup>148</sup> Dienst Vreemdelingenzaken, Activiteitenverslag 2007.

<sup>149</sup> Circular Letter of 2 August 2007 regarding unaccompanied European minors in a vulnerable situation, Belgian Official Gazette 17 September 2007.

<sup>150</sup> Dienst Signalement van niet-begeleide Europese minderjarigen in kwetsbare toestand/ Service Signalement des Mineurs européens non accompagnés en situation de vulnérabilité

<sup>151</sup> Vlaams Minderheden Centrum. Verblijf in België van niet begeleide minderjarige vreemdelingen.

[www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=148](http://www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=148)

<sup>152</sup> Foyer: [www.foyer.be/?lang=en&pageb=article&id\\_article=1353](http://www.foyer.be/?lang=en&pageb=article&id_article=1353)

<sup>153</sup> UNICEF : de bescherming van niet-begeleide minderjarige vreemdelingen slachtoffer van kinderhandel en –smokkel. Verkennend onderzoek – samenvatting. November 2008.

<sup>154</sup> Lanjri Nahima: wetsvoorstel tot wijziging van artikel 479 van de Programmawet (I) van 24 december 2004 met betrekking tot de voogdij over niet-begeleide minderjarige vreemdelingen. Belgische Senaat 4-578/1; 22/02/2008.

## 4.11 Disappearances

Although not a specific requirement of this study, it is worth mentioning the disappearances of UMs, which is a main concern for Belgium. Accordingly, a collaboration protocol has been signed to manage disappearances from the two Observation and Orientation Centres,<sup>155</sup> Steenokkerzeel and Neder-Over-Heembeek, since most of the disappearances occur from these centres. The aim of this Protocol is to align the activities of the various stakeholders in the matter in order to prevent as much as possible the disappearance of UMs and to ensure the speedy return of UMs who nevertheless disappear. In particular, this should notably help protect them from the risks of sexual abuse or other forms of exploitation; although in practice the difference between real disappearances and “voluntary departure” is not always clear.

To give an idea of the importance of the situation: in 2006 there were 951 disappearances out of one of the Observation and Orientation Centres (first reception phase); which is more than 50% of the total of UMs that were registered with the Guardianship Service. In 2007 there were 902 disappearances (about 45% of the total).<sup>156</sup> In 2008 this number was 562 disappearances.<sup>157</sup> Most disappearances occur within the first days of arrival at the OOC, and even before a guardian has been appointed. One has to bear in mind that these OOCs are open centres and the UMs are free to leave if they so desire.

These numbers are enormous, but however these should be put into perspective as it mostly concerns minors who are not demanding to be taken care of, and are considered by the OOCs as ‘voluntary leavers’. However, this does not mean that they are not a reason for concern to the government. Some examples: they are on their way to join their family or the group they belong to in Belgium or abroad; they use the reception in the OOC as a temporary shelter when they have problems within their community; they have another final destination, e.g. UK or Scandinavia; and some disappearances might be double counted as UMs sometimes use different identities or have been referred to the OOC multiple times. However, there are also disappearances further on (2<sup>nd</sup> and 3<sup>rd</sup> phase): UMs who find it difficult to adapt to the life in a reception centre; UMs under a removal order disappearing just before they turn 18;<sup>158</sup> or they have received negative decisions in one of the procedure that could have provided them with a residence permit (see above); or they just decide to find their future elsewhere. The disappearances often concern minors originating from Maghreb countries or from the Roma community in Eastern and Southern Europe. The situation of the UMs of Roma origin is more specific as these minors are usually accompanied by a member of their family, sometimes even by their own parents but the latter are also residing irregularly in Belgium.

However there are also the so-called “worrying disappearances”, referring obviously to the victims of human trafficking and smuggling. The 2007 study “The airport, a safe return for minors traveling alone” has formulated some recommendations for better protection of these minors. A task force is currently organised to put these recommendations into practice.<sup>159</sup> Other coordination initiatives are being developed by different stakeholders<sup>160</sup> to deal with UMs that use Belgium as a transit country and/or who refuse the offered reception. To that respect, the areas in and around the port of Zeebrugge (gateway to UK) are specifically confronted with transit migrants.

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<sup>155</sup> Most of disappearances occur from 2 Observation and Orientation Centres: Steenokkerzeel (French speaking centre) and Neder-Over-Heembeek (Flemish speaking center). The Protocol has been signed by the following instances: Parquet general pres de la Cour d’Appel de Bruxelles; le parquet pres du tribunal de 1ere instance de Bruxelles; the Immigration Department; CGRS; Fedasil; Police from Brussels and Kampenhout, Steenokkerzeel and Zemst; the Guardian Service; and Child Focus. More information about this protocol are available on the Child Focus website [www.childfocus.be/fr/](http://www.childfocus.be/fr/)

<sup>156</sup> Child Focus, Annual Reports 2006 and 2007.

<sup>157</sup> Kamer van Volksvertegenwoordigers. Vraag nr.87 van de heer Pierre-Yves Jeholet van 19/01/2009 aan de Minister van Maatschappelijke Integratie, Pensioenen en Grote Steden,, 3de Zitting van de 52ste zittingsperiode, DO 2008200906745

<sup>158</sup> as UMs have to give their consent, for a voluntary return to be organized but some of them might still be under a removal order renewed until they are 18, and thus become illegal major who could be returned

<sup>159</sup> International Children’s Rights Day, Child Focus, the King Boudewijn Foundation, and the Federal Police jointly collaborated to the drafting of this study; more information on the study including the recommendations made in this framework is available on [www.childfocus.be](http://www.childfocus.be).

<sup>160</sup> Guardianship Service, Immigration Department, Public Prosecutor, Maritime Police and Fedasil have organised coordination meetings to better deal with the situation of UMs on their way to the UK.

There are legal provisions detailing which measures should be taken in case of disappearances<sup>161</sup>: the police should be informed and should in turn inform other competent authorities such as Child Focus in case of a worrying disappearance.

In Belgium, an UM is considered as having left the reception structure 24 hours after his absence has been noticed. Upon these 24 hours, the police are informed about the absence of the UM as well as the guardian or the Guardianship Service.

If the UM is in a particular vulnerable situation, the reception centre informs the police immediately after one has established the disappearance. The guardian and the Guardianship Service are equally informed at the same time. Particularly vulnerable are UMs younger than 13 years old; minors suffering from psychological disorders or mental health problems and victims of trafficking.<sup>162</sup> The abovementioned collaboration protocol formalizes certain practices in cases of disappearances of UMs.

Child Focus has the objective to implement every possible action in order to find missing children and fight against their sexual exploitation. However, not for all disappearances a file is opened with Child Focus (in the past this used to be the case). Since 2006 Child Focus has a new modus operandi and will only open a file in case there is a minimum of information available on the UM and the circumstances of his disappearance; and whereby the help of Child Focus can offer an added value. This will in most cases be for worrying disappearances. E.g. in 2008 about 14 cases in the OOCs qualified as a 'worrying disappearance'.<sup>163</sup> However, a lot of cases probably still remain undetected. For policy makers it remains difficult to find an equilibrium between on the one hand some sort of detention of the UM to protect him/her against himself/herself or third parties, and on the other hand the rights of freedom of the UM. Reception centres like Minor Ndako, Juna, Esperanto are good examples of 'secured' centres which find this equilibrium. However, the places available in these centres are limited.

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<sup>161</sup> Circular of Public Prosecutors of 11 October 2004; Ministerial Directive on the search for missing persons of 20 February 2002, adapted on 20 April 2003

<sup>162</sup> International Organization for Migration. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of best practices and recommendations. September 2008, pp. 178-179.

<sup>163</sup> Kamer van Volksvertegenwoordigers. Vraag nr.87 van de heer Pierre-Yves Jeholet van 19/01/2009 aan de Minister van Maatschappelijke Integratie, Pensioenen en Grote Steden., 3de Zitting van de 52ste zittingsperiode, DO 2008200906745

## 5. Return practices including reintegration

Belgium has signed the Convention on the Rights of the Child<sup>164</sup> and a number of Human Rights international instruments including the European Convention on Human Rights<sup>165</sup> (ECHR), the Charter of Fundamental Rights of the European Union.<sup>166</sup> Belgium thus ensured that UMs' fundamental rights are safeguarded. As will be further explained in this Section, substantial funding is also allocated to support a sustainable return. Eventually, safeguards are also taken through monitoring activities organised directly by the Immigration Department or via Belgian embassies in the country of origin, on a case-by-case basis, especially when there is a risk of infringement within Art 3 ECHR.

It should be borne in mind that the Minister of Migration and Asylum Policy is responsible for the removal of illegal third country nationals from the Belgian territory. Forced return comes within the specific responsibility of the Immigration Department, while the Federal Agency for the Reception of Asylum Seekers (FEDASIL) in collaboration with the International Organization for Migration (IOM) is in charge of organising voluntary return, in the framework of the REAB Programme (Return and Emigration of Asylum seekers Ex Belgium).

As far as unaccompanied minors (UMs) are concerned, Belgium has decided not to enforce forced return against this vulnerable population, even when a removal order has been issued. Indeed decisions with regard to return are taken in two steps: the delivery of the removal order followed by its implementation (which in principle never occurs for UMs, voluntary return being the only solution in the framework of the IOM REAB programme).

### 5.1 National (suspensive) measures to organise the return of unaccompanied minors

Unaccompanied minors benefit from special protection in Belgium and are thus not submitted to the Belgian removal regulation which is in principle applicable to illegally staying adults. In accordance with the Circular Letter of 15 September 2005, UMs are subject to two specific measures:

- Removal at the border. Minors who would not comply with the conditions of access to the territory would be submitted to a measure of removal at the border. This measure is decided by the Immigration Department and notified by the Border Police.
- Removal order (known as Annex 38)<sup>167</sup> delivered to the UM's guardian, requiring that the guardian escort the minor back to his/her country of origin.

#### 5.1.1 Removal at the border

As already mentioned the Immigration Department is entitled to take a measure for the UM to be removed and denied access to the Schengen territory. Special attention<sup>168</sup> is given to minimising the potential stress and psychological trauma caused to UMs in such a situation. The Guardianship Service is thus directly informed of the presence of UMs and immediately appoints a permanent or provisional guardian.

The first responsibility is to determine whether the UM is indeed unaccompanied, and the second, whether or not he/she is a minor. When there is doubt about the age, the UM is then placed in a closed centre near the airport when the minor has claimed asylum, and at INAD<sup>169</sup> if no asylum claim has been filled, during three days, renewable for another three days. The age determination process is then initiated by GS, a positive outcome leading to the placement of the minor in an Observation and Orientation Centre (OOC). Similarly, when it is obvious that the minor is not yet 18, he/she is placed in an OOC but with an extraterritorial status within fifteen days, renewable once for

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<sup>164</sup> UN GA Resolution 44/25 of 20 November 1989

<sup>165</sup> Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No 11, Rome 4.XI.1950

<sup>166</sup> OJ C 364, 18.12.2000, p.1

<sup>167</sup> Annex 38 is addressed within Circular 2005.

<sup>168</sup> In accordance with Art 6 paragraph 4 of the Guardianship Act and Art 37 of the Convention on the Rights of the Child (ref)

<sup>169</sup> INAD stands for Inadmissible Passengers

five days. Should the expulsion not occur within these twenty days, the UM would then be allowed to “access to the territory” but would nevertheless remain in the same center for another 10 days, since in principle, OOC host UMs for 15 days renewable once.<sup>170</sup> A person detained in another centre who declares him/herself to be a minor afterwards also benefit from the same procedure.

Removals of unaccompanied minors at the border (the airport) barely occur in Belgium. It would only happen when, following a thorough assessment of the situation, and assuming that the guardian proposes return to his/her country or to a third country as a durable solution. This would be the case if safe reception conditions are guaranteed, if the family is willing to take back the minor and if the concerned minor agrees to return.

The role of the guardian in this framework is again very important since it is one of his/her duties to come up with a proposal for a durable solution, together with the minor. The guardian should be informed of the order for removal at the border within 24 hours if the minor is undocumented and 12 hours if the minor is documented.

Of the 35 UMs that were intercepted at Brussels airport in 2008, 2 were returned.

- One of the cases involved a 17-year-old UM who was returned within 15 days to her country of origin. There was no doubt about her identity since she held a passport. Contacts with the father were easily established and both the UM and the father agreed for the return to occur; all these factors led to the conclusion that the durable solution was for the minor to be returned, a solution endorsed by the guardian. The UM was not accompanied since it was assumed that he/she was mature enough to travel alone back home.
- The other case involved a 7-year-old minor, coming from a third country where she already held refugee status. The decision was taken to send her back to this third country, where the reception was handled by a child foster organisation.

While there is no obligation to follow up the UMs once they are returned, this can be organised on a case-by-case basis either through Belgian embassies<sup>171</sup> in the country of origin or directly between the guardian who had been assigned to the minor in Belgium and NGOs or actors in civil society involved in each specific case.

### 5.1.2 *Removal orders*

A suspensive removal order<sup>172</sup> (a.k.a. order to take back, commonly known as Annex 38) is notified to the UM’s guardian when a decision to remove the minor has been taken by the Immigration Department. In principle the guardian has no legal obligation to accompany the UM to his/her country of origin, as this is the competence of the Immigration Department. However, he/she can always do this on a voluntary basis. According to the Guardianship Act (art.24§1 al4) the guardianship’s mission ends at the moment the UM is removed from the Belgian territory. The procedure detailed in ‘Section 5.1.1’ is applied: once informed of the decision to escort the minor, the guardian should search for a durable solution, addressing the possible family reunification in the country of origin or in a third country where the minor would be allowed to reside.

Criteria to determine if UMs should be returned are addressed in the Circular 2005.<sup>173</sup> It should be noted that from June 2009 on, the hearing of the UMs and their guardian by the Immigration Department in the framework of Circular Letter 2005 will become mandatory. This new measure is the positive outcome of children’s rights organisations’ advocacy for the promotion and strengthening of children’s participation when adults make decisions which affect them, in accordance with the Convention on the Rights of the Child.

If according to this assessment the durable solution is to send the UM back home, the guardian will then:

- contact IOM for the organisation of the voluntary return<sup>174</sup>; or
- hand over the UM to the family, if relatives have come to pick him/her up.

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<sup>170</sup> In reality, UMs stay longer in the COO since there is a lack of space in other centres, which could take over.

<sup>171</sup> A protocol has been signed between the Belgian Ministry of Foreign Affairs and the Immigration Department according to which the embassies could take care of the monitoring.

<sup>172</sup> Bevel tot terugbrenging/ordre de reconduite

<sup>173</sup> Family tracing is organised directly by the Immigration Department, on the basis of the information provided by the UMs or available in their files. This is different from the Red Cross tracing programme, which may be implemented voluntarily by the guardian.

<sup>174</sup> In the past, the Immigration Department organised some voluntary return procedures, for instance when a civil servant had already planned to travel to the country to which the minor was returning. Nowadays, voluntary return is mainly organised via the IOM.

As for adults, the costs associated with return are covered as follows:

- The carrier will support the costs when there is a removal at the border, in accordance with the Chicago Convention;<sup>175</sup>
- If the guardian decides on the voluntary return of the minor, this process will be organised within the IOM REAB programme, which will be further addressed below.

#### **5.1.2.1 Appeal against a removal order**

An unaccompanied minor's lawyer may appeal against the decision of the Immigration Department to issue a removal order before the Aliens Litigation Council and then before the Council of State. The Immigration Department's decision to issue a removal order would then either be confirmed or cancelled; if so, UMs have the opportunity to bring new information to the Immigration Department for the case to be reconsidered.

#### **5.1.2.2 What happens if the UM does not return?**

When, following a thorough assessment of the situation, it becomes clear that return is not possible, the Immigration Department then issues a document, the so-called 'declaration of arrival' and later ensures that the UM is properly integrated in Belgium (see also procedure under Circular Letter 2005).

Situations are more critical when removal orders have been issued, but the UMs decide not to proceed with voluntary return;

- In principle, the removal order should then be renewed on a monthly basis within 6 months; UMs' lawyers could still bring new information for the Immigration Department to reconsider its initial decision, and possibly cancel the removal order.
- But there are also cases in which the removal order is not renewed; the minor thus remaining without any status. UMs in this situation would still be granted the rights they are entitled to according to the Guardianship Act (e.g. access to health care, housing, education, etc), but without any residence status.

Belgian authorities are aware of this sensitive issue, which leave UMs in a very uncomfortable situation, especially since they have no view on their future. Combined with the fact that the minors concerned might soon turn 18, this raises the additional issue of the disappearance of minors.

## **5.2 The voluntary return of Unaccompanied Minors**

As previously mentioned, forced return is not implemented against minors. Voluntary return organised via the IOM is thus the only option for returning an UM to his/her country of origin. Several initiatives from the Immigration Department to organise a sustainable return are also worth mentioning (section 5.2.2).

### **5.2.1 Voluntary return of Unaccompanied Minors: the IOM REAB programme**

Voluntary return is organised in the framework of the IOM Assisted Voluntary Return and Reintegration (AVRR) programmes, more specifically the REAB programme.<sup>176</sup> Created in 1984, REAB is funded by FEDASIL and is implemented by the IOM Brussels Regional Office in cooperation with FEDASIL and other partners.<sup>177</sup> As far as UMs are concerned, the voluntary return assistance is being provided in line with the principle of best interests of the child, the UNHCR Guidelines for the Repatriation of Minors<sup>178</sup> and the Council resolution on Unaccompanied Minors who are Nationals of Third Countries<sup>179</sup>.

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<sup>175</sup> Convention on International Civil Aviation, Chicago, 7 December 1944

<sup>176</sup> More information about the IOM REAB programme in Belgium are available on [www.belgium.iom.int/REAB/](http://www.belgium.iom.int/REAB/)

<sup>177</sup> The implementation of the REAB programme benefits from the support of a large network of partners such as CIRE, Vluchtelingwerk Vlaanderen, Caritas and the Red Cross.

<sup>178</sup> Council of Europe, *European Convention on the Repatriation of Minors*, 28 May 1970, ETS 071, available at: <http://www.unhcr.org/refworld/docid/3ae6b37714.html>

<sup>179</sup> COUNCIL RESOLUTION of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03)

In accordance with UNHCR guidelines for repatriation of minors, assistance with respect to the return of UMs is limited to candidates who meet the following requirements:

- UMs who have formally expressed the wish to return home and for whom it has been decided that return is in the best interests of the child;
- UMs for whom parents / family members in countries of origin have formally indicated their agreement to welcome the child back and assist him/her in his/her reintegration process;
- UMs for whom IOM can provide/link to appropriate reintegration and follow-up assistance in their countries or origin.

Besides general information on the programme itself, services provided through REAB once the migrant has decided to voluntarily return generally include: counsel to the migrant and social worker prior to the departure; pre-departure assistance, such as obtaining relevant travel documents; deciding on the size of grants for the UM's projects; organisation of particular assistance if needed; organisation of the return journey itself; and reception and reintegration measures in the country of origin. The IOM works in close cooperation with NGOs and governmental structures both in Belgium and in the country of origin.

#### **5.2.1.1 REAB: steps towards a safe return**

While REAB is set up for any migrant expressing the wish to return voluntarily, and keeping in mind that the IOM implements a case-by-case evaluation of each situation, especially when vulnerable categories are concerned, the process of organising UMs' return usually includes the following steps:

- The guardians are the main interlocutors when proceeding with a UM's request to return to his/her country of origin. They contact IOM Brussels to launch the voluntary return procedure; when IOM is contacted directly via another mean and/or by another organisation, contacts are immediately established with the guardian who is the only person legally allowed to initiate the voluntary return; IOM usually does not meet the unaccompanied minor, unless there is a specific request from the minor (via the guardian) to do so;
- A social report is filled, for IOM to process the AVR R request; information provided in this report includes information related to the UM's country of destination and citizenship; contact details in the country of return; contacts details of the UM in Belgium, his/her guardian, and the centre hosting the minor; circumstances of arrival in Belgium and legal status of the UM; assessment of specific needs in terms of reintegration; and contacts with the parents/family of origin; etc. The information so gathered is essential, primarily in determining critical aspects to be addressed in the country of origin;
- Together with the Guardian, IOM makes an assessment of the situation, to determine the best interests of the child, with support from the UNHCR Guidelines on Determining the Best interests of the Child, and in accordance with Belgian legislation and the corresponding legislation from the country of origin.
- Collaboration with IOM Regional Offices located in the countries of origin as well as with other relevant organisations and NGOs is essential to take the most appropriate decision. These local channels are key to gathering information on issues such as the socio-economic situation in the country of origin, legal matters and specific reintegration schemes for assistance, specialised centres for victims of trafficking, medical welfare, family tracing and assessment of the situation of the family;
- Travel documents and any other relevant departure authorisations are then established; specific requirements are then assessed, such as for medical assistance during transport, assistance for specific transportation within Belgium or an escort during the flight; minors under 15 years old will systematically be escorted, the escort being requested to submit a Mission Report, guaranteeing that the minor has returned safely;
- Willingness to leave the host country is then confirmed; the guardian can then ask for the "reintegration" procedure to be initiated.
- UMs can then benefit from support available via two financial tools of €700 each, created in 2006 and aiming at providing additional reintegration support to returnees, including vulnerable persons: the "reintegration fund" and the "vulnerable cases fund". While the specific terms of these funds have been set up by both IOM and FEDASIL, IOM is responsible for the assessment of each individual reintegration project, which will then be validated in collaboration with FEDASIL;
- A maximum of €1400 can therefore be allocated for reintegration of UMs, the decision being taken on a case-by-case basis. In principle, this amount should be spent within six months following the return to the homeland, but exceptions (e.g. funding spent within one year instead of six months) are possible to allow

for the optimal use of the funding. Cash grants are not provided since they do not promote sustainability and the effectiveness of their use cannot be monitored;

- The reintegration fund is meant to facilitate sustainable return and reintegration to the country of origin; returnees choose the type of activities they would like to pursue, which they would consider profitable and in line with their skills e.g. vocational training courses, setting up small businesses, access public education, training, etc.
- UMs can also benefit from the vulnerable cases fund to search for their families (family tracing); to pay for temporary housing and care in case family reunification is not immediately possible; for referral to health care and psychological counseling and/or medical assistance; etc. Family tracing is initiated mainly via the Red Cross<sup>180</sup>;
- It should be mentioned that special attention is given to support the continued education of the child; or provide specialist advice to orientate them on the labour market (e.g. assistance to find a job; vocational training) if they are no longer attending school;
- A reintegration agreement is signed between the IOM, the guardian and the UM, affirming that the “applicant has freely expressed the desire to return” and addressing points such as the provision of an airline ticket and the specific amount and purpose of the reintegration assistance which is allocated to the UM. The agreement also reaffirms that no cash shall be granted, and that the applicant should return financial support granted by IOM if he/she returns to Belgium within five years;
- The return travel is organised, UMs usually being escorted by their guardians up to final destination;
- Either IOM regional offices in the Countries of Origin or identified NGOs will welcome UMs; support is then provided until the final destination or further, depending on whether the minor benefits from the “reintegration procedure” or not;
- IOM will ensure that reintegration activities are adapted to the specific needs of the child and monitor and evaluate the return process over a period of one year via its field office, through reports within one, three and twelve months of the return. The follow-up could nevertheless be extended, should the case requires so, with the support of other financial national structures;

For the return of UMs who have been victims of human trafficking, IOM gets support from its partners specialised in Trafficking in Human Beings (THB) mainly Payoke (Antwerp) and Surya (Liege), but also Pag-Asa (Brussels). A thorough assessment of the situation prior to return is organised to ensure that the UMs concerned will not be trafficked again (e.g. in case parents have been consciously or unconsciously involved in the trafficking of their children; when girls have been fooled by their boyfriends). This specific procedure is initiated by IOM even when THB is only suspected, and that the UM did not get the “victim of human trafficking” status.<sup>181</sup>

#### **5.2.1.2 Other important issues**

IOM would generally be aware of family disputes (if any), prior to the departure of the UMs, since this should come out during the reintegration process. When return is confirmed, it is therefore assumed that the UM is reintegrating into a safe family environment. Indeed, when family reunification is not possible and when it has not been possible to identify alternative reliable organisations or adults caretakers in the country of origin able to take responsibility of the child, IOM and the guardian will decide not to proceed with the voluntary return procedure.

Since mandatory monitoring activities last for one year, IOM is not informed of potential family disputes which might occur following that year. The unique case that could be mentioned here is of a 12-year-old girl who had arrived in Belgium when she was 6 and had some difficulties reintegrating in her home town. She escaped, but the issue was rapidly solved with the help of her guardian and her godmother.

**IRRICO** - (Information on Return and Reintegration in Countries of Origin) – another IOM AVRR programme should also be mentioned. It is a safe channel to get reliable and up-to-date information on the countries of origin on return and reintegration measures and socio-economic conditions, which will help all the partners involved in organising the best possible return ensuring that the best solution is taken, in due consideration of the best interests of the child. In principle, IRRICO can be used as a means to get information from twelve countries of origin, but other

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<sup>180</sup> [www.rodekruis.be/NL/Over/Links/Tracing/](http://www.rodekruis.be/NL/Over/Links/Tracing/)

<sup>181</sup> International Organization for Migration. Exchange of information and best practices on first reception, protection and treatment of unaccompanied minors. Manual of best practices and recommendations. September 2008, pp.184-186.

countries of return might be considered on a case-by-case basis. Information consolidated in the framework of “Country Fact Sheets” for the former and “Frequently Asked Questions” for the latter are made available via a database on the Internet.

### 5.2.1.3 *Statistics*

- In 2008 5 direct counseling sessions were organised by the IOM at the request of REAB partners and/or guardians wishing to provide additional information to the UMs or to discuss some specific cases. These counseling sessions allowed for the effective return and reintegration of minors to Rwanda, Romania, Bulgaria, the DRC and Syria;
- In 2008 a number of information requests targeting countries such as Afghanistan, the DRC, Ghana and Guinea-Conakry were also dealt with, to support the guardians, REAB Partners and UMs to take an informed decision about the sustainability of a possible return which would benefit the child, in terms of security, family reinsertion and social and economic viability;
- By way of example. (For more detailed statistics we refer to the annexes). In 2008, 30 applications coming from unaccompanied minors were received, out of which 22 requests were processed.
  - 11 of them requested reintegration assistance.
  - 2 escorts were needed for assistance during transport.
  - In parallel, 7 requests submitted to the IOM and treated accordingly were eventually cancelled for the following reasons: no more willingness to return, returned by other means or continued the asylum procedure.

	Number of returns UMs
2003	8
2004	22
2005	16
2006	21
2007	16
2008	22

Source: IOM Brussels Office

## 5.2.2 *The Immigration Department initiatives towards a sustainable return*

### 5.2.2.1 *General concerns*

As already mentioned, the Immigration Department is in charge of organising forced return. Some of its other responsibilities include the management of projects supported in the framework of the European Return Fund (ERF); and establishing relationships with the official representatives of countries of origin located in Belgium to discuss preventive measures to illegal immigration and means to establish a safe, efficient and sustainable return.

This last point – safe, sufficient and sustainable return – is a major concern for the Immigration Department, and it has been brought to the attention of the Ministry of Justice that the current non implementation of removal orders creates a “pull-factor” which leads to the misuse of UM status in Belgium. It seems that most UMs who have been identified come either for family reunification, to study or to benefit from the health system.<sup>182</sup> Besides, the number of UMs intercepted has grown, most of them being illegal UMs who had already been arrested for a criminal offence. Out of the around 30.000 interceptions in Belgium in a period of 12 months in 2007- 2008, 8,5% were UMs. Often they were intercepted multiple times (e.g. sometimes 8 times or more) and often criminal offences had been committed. This problem of multiple interceptions can be specifically noticed with UMs from Romania and Serbia.<sup>183</sup> In that respect, the Immigration Department also raises its concern on the criteria used for determining the

<sup>182</sup> This is the outcome of an internal study done by the Immigration Department. Cel Immigratieambtenaren. Terugkeer van niet-begeleide vreemdelingen. 13/06/2008.

<sup>183</sup> This is the outcome of an internal study done by the Immigration Department: Bart Verstraete, onderzoek naar dubbele intercepties 2007-2008.

best interests of the child which often leads to the UM not being sent back to his/her country of origin even when the family has been found and a thorough assessment in the country of origin has established that the return would be safe. It is suggested to clarify the role of the Guardianship Service in that framework, as well as the relationship between this body and the guardians.

#### ***5.2.2.2 Some initiatives to support a sustainable return***

Belgium benefits from €3m within the European Return Fund, with 25% co-financed by the Immigration Department. Half of this fund will be allocated to voluntary return, the other half to forced return. This initiative, initiated at the beginning of 2008 will among others support the reintegration of criminal offenders, vulnerable persons including people suffering from physical or mental illness, “aged-out minors” (those just turned 18 years old) and people aged 60 after forced return.

The Belgian Immigration Department has also organised ad hoc initiatives for the voluntary return of UMs. For instance, a project was jointly established with Congo in 2006 to organise the return of Congolese street children. Although both countries had jointly agreed to organise the safe return of ten children in this framework, it was decided not to proceed since the decision to return was eventually not supported by the guardian; this decision was taken because the parents did not want their children to be sent back home although the ten children would have been welcomed by the Don Bosco NGO. Another example which is worth mentioning is that of a family-tracing activity for 23 UMs initiated by the Belgian Immigration Department in Albania in 2001 (thus before the Guardianship Act came into force). Although 22 families had been found, the UMs were eventually not sent back since the juvenile courts were not in favour of forced return.

With regards to relations with countries of origin’s official channels in Belgium, contacts are mainly established with embassies, notably to facilitate the signature of a Memorandum of Understanding (MoU). In that respect; it should be mentioned that in 2008 prevention and information actions were set up in collaboration with the IOM, with Senegal, Cameroon and India and should start in the near future with Brazil, Congo, Kosovo, Guinea and Morocco. Similar actions had been established with the Balkan countries, Turkey and Romania. Support from the Ministry of Foreign Affairs is sometimes requested.

## **5.3 The European Community framework: specific activities within Dublin II, the Readmission Agreements and the Return Directive**

### **5.3.1 Unaccompanied Minors within DUBLIN II**

The main purpose of Dublin II Regulation<sup>184</sup> is to establish which country should be responsible for examining an asylum claim. As far as unaccompanied minors are concerned, and according to Article 6:

*“Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interests of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum”.*<sup>185</sup>

Other relevant articles are:

- Article 3 paragraph 2;<sup>186</sup> and
- The humanitarian clause, Article 15.<sup>187</sup>

Although no specific figures can be given, it appears that there are “many” UM cases within the DUBLIN II procedure, most of them coming from Greece. It is believed that the DUBLIN II mechanism is being used to organise family reunification, since requirements to benefit from the formal and legal family reunification scheme seem too complex.

Application of the Dublin II regulation is done on a case-by-case basis, the best interests of the child should be carefully assessed in cooperation with the guardian. Requests to take charge are made within the DubliNet,<sup>188</sup> using a dedicated form. Both the request and the answer have to be made within two weeks if there is a “hit” within EURODAC<sup>189</sup> i.e. if it is established that an asylum claim has already been filled in another Member State, within one month if there is no EURODAC “hit”. When a visa has been delivered by another Member State; this delay is expanded to two months. Past these deadlines, the concerned Member State automatically becomes responsible for examining the asylum request. The transfer should in principle be organised within six months following the explicit or implicit acceptance of the request, failure to do so also leads to Belgium assuming responsibility.

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<sup>184</sup> Council Regulation (EC) No 343/2003 of 18 February 2008 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national. DUBLIN II applies to EU26, Norway, and Iceland. An agreement signed between the European Community and Iceland extends the application of DUBLIN II to Denmark. More information about this regulation are available at <http://europa.eu/scadplus/leg/fr/lvb/l33153.htm>

<sup>185</sup> This implies that he can file an asylum application in country B and it will be country B that will be the responsible state, even it can be proven that it was country A that delivered a visa to the UM, or that the UM passed through country A to enter the Schengen territory. By consequence, the fact that the UM is known in another Member States does not necessarily trigger the utility to demand for a transfer.

<sup>186</sup> Each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation. In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility.

<sup>187</sup> **.1 Any member, even where it is not responsible under the criteria set out in this Regulation, may bring family members, as well as other dependent relatives, on humanitarian grounds as in particular on family or cultural considerations.** In this case that Member State shall, at the request of another Member State examine the application for asylum of the person concerned. The persons concerned must consent. **.2 In cases in which the person concerned is dependent on the assistance of the other on the account of pregnancy or a new-born child, serious illness, severe handicap or old age, Member States shall normally keep or bring together the asylum seeker with another relative present in the territory of one of the Member States provided that family ties existed in the country.** **.3 If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the best interests of the child.** **.4 Where the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it. [...].**

<sup>188</sup> DubliNet is a secure electronic network of transmission channels between the national authorities dealing with asylum applications. It was launched 6 months after the DUBLIN II regulation was adopted by the EU Council of Ministers of 18 February 2003.

<sup>189</sup> Council Regulation (EC) No 2725/2000 concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of the DUBLIN Convention. The purpose of EURODAC is to “assist in determining which Member States is to be responsible pursuant to the Dublin Convention for examining an application for asylum lodged in a Member State, and otherwise to facilitate the application of Dublin under the conditions set out in the Regulation.”

**It should be noted that:**

- Where Belgium is the first place where the asylum claim is being filled by the UM, the Immigration Department will examine the request and issue a document entitled “Annex 26” (or “Annex 25” when the application is made at the border)
- A minor is never interviewed in the framework of the DUBLIN II process prior to the nomination of the guardian;
- The role of the guardian in this framework is once again crucial since no UM will be sent back in the framework of DUBLIN if the guardian does not agree so;
- Some countries have decided not to answer the request to take back. In such a case, Belgium would then order the transfer and wait for information on the date and place at which the UM should appear; a request to take back – although not implemented - would nevertheless be important to get potential information about the UMs’ potential family, his/her age, establish if he/she was unaccompanied, etc.

As for UMs who have already filed an asylum claim in Belgium, the practice is to accept the request from another Member State to take them back. A decision on a minor who is accompanied would be taken on a case-by-case basis, especially within the limits set by the humanitarian clause. For instance, Belgium has already accepted to take back a minor accompanied by his sick grand-mother, following a request from France, because the minor’s uncle was already on the Belgian territory.<sup>190</sup> Had the grandmother been healthy, Belgium would have not accepted to take them both.

Although there are “many cases” of UMs within the DUBLIN procedure, no statistics are available and there are also no specific requirements from Eurostat in that respect. Consequently, it has not been possible to get precise numbers of DUBLIN cases at the border or in the territory.

UMs sent back within DUBLIN can be accompanied by their guardians, although this is no legal obligation. Once UMs have been taken back, there is no obligation for the Belgium to follow up the cases.

*5.3.2 Existence of re-admission agreements and safeguards contained therein*

Sixteen so called “BENELUX Agreements”<sup>191</sup> have been signed by Belgium, together with The Netherlands and Luxembourg; starting with France in 1964, the last one signed with Bosnia and Herzegovina in July 2006. As an EU Member State, Belgium is also part of the eleven readmission agreements which have been signed by the European Community respectively with Hong-Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, Moldova, Bosnia and Herzegovina, Serbia, Montenegro and Macedonia<sup>192</sup>. When relevant, European readmission agreements supersede BENELUX agreements. Implementing protocols are then negotiated bilaterally or multilaterally by BENELUX.

In addition to these readmission agreements, MoUs or administrative agreements<sup>193</sup> can also be signed at executive level, e.g. with the immigration department of a third country. Their negotiation, signature and implementation<sup>194</sup> are easier since these agreements do not call for a ratification procedure. While each of these memoranda includes specific provisions to guarantee a safe return in dignity to the country of origin, the main purpose is to implement forced return. Specific safeguards for unaccompanied minors are therefore included on a case-by-case basis (e.g. in the MoU signed with Afghanistan and in the MoU currently being negotiated with Kosovo), bearing in mind that should the return be implemented it must only be voluntary, and that the family should be willing to welcome the minor; an official body should also welcome the UM at the airport and take responsibility for the minor’s safe return

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<sup>190</sup> Ref Art 15 paragraph 2

<sup>191</sup> BENELUX Agreements have been signed with the following countries: France (1964), Austria (1965), Germany (1966), Bulgaria (1998; entry into force in 2005); Croatia (1999; entry into force in 2005), Estonia (1999; entry into force in 2005), Hungary (2002; entry into force in 2005), Lithuania (1999; entry into force in 2005), Romania (1995; entry into force in 2006), Slovenia (1992; not entered into force yet), Slovakia (2002; entry into force in 2004), ex-Yugoslavia (with Serbia and Montenegro, 2002; entry into force in 2007), Latvia (1999; not entered into force); Switzerland (2003, entry into force in 2007); FYROM (2006; not ratified yet by Belgium), 2006; Bosnia and Herzegovina (2006; not ratified yet by Belgium).

<sup>192</sup> When an EU readmission agreement is signed with a country which has already signed a BENELUX agreement, the former takes precedence over the latter.

<sup>193</sup> MoUs have been signed with the following countries: Congo; Vietnam; Nepal; Niger; Ecuador; Burundi. Negotiation is currently running with Brazil, Kosovo, Afghanistan, Iraq, and Mongolia.

<sup>194</sup> For example, the readmission agreement signed with Ecuador was negotiated in 6 months, between July 2008 and January 2009.

to the family. Usually however, no differentiation is made between third country “nationals” and UMs and other vulnerable population.

### 5.3.3 *The Return Directive: current practices in the remits of Articles 10, 14, 17*

In 2008, the EU adopted the “return directive”<sup>195</sup> which defines procedures for the return of illegally resident third-country nationals. This directive should be brought into force by the EU Member States by December 2010. Provisions related to minors can be found in Article 5 (Non-refoulement, best interests of the child, family life and state of health); Article 7.2 (extension of the period for voluntary departure by an appropriate period taking into account the existence of children attending school and the existence of other family and social links); Article 10 (return and removal of unaccompanied minors); Article 14 (safeguards pending return); and article 17 (detention of minors and families).

As detailed above, removal orders are not enforced for UMs: the only option in Belgium is the voluntary return jointly decided with the guardian and in the framework of the IOM process. Nevertheless, with regard to practices within Articles 10 and 14, the following should be noted:

- **Article 10 “return and removal of unaccompanied minors”:**

Prior to the issuance of a return decision, the Immigration Department (the authority enforcing return in Belgium) takes due consideration of the proposal for a durable solution proposed by the guardian. Other appropriate bodies involved in this phase would include lawyers and NGOs such as the Red-Cross, would the family tracking process be initiated by the guardian. Should a guardian not be satisfied with the issuance of a removal order, (s)he could bring the case to the Aliens Litigation Council and further to the Council of State.

- **Article 14 “safeguards pending return”**

Should the minor and his/her guardian decide not to initiate the voluntary return process within IOM, and when a removal order has been issued against him, the UM would still benefit from the rights he/she is entitled to under the Guardianship Act until he is 18. These safeguards would nevertheless stop when UMs turn 18; the role of the guardian in this is very important, to prepare the minor to the fact that family reunification in his/her home country would be a better option than becoming an illegal in Belgium.

A major concern is when the UMs are suddenly deprived of all assistance and support upon reaching the age of 18 because they have not obtained the legal status required to reside in Belgium; and thus take the risk of being forcibly removed. The fear is that these minors could be sent back into human trafficking network.<sup>196</sup>

- **Article 17 “detention of minors and their families”<sup>197</sup>**

In that framework, and as far as Belgium is concerned, it should be mentioned that:

- In 2008, the Minister of Migration and Asylum declared that undocumented families with children would not be sent to administrative detention centres (the so-called “closed centres”) from October 2008 onwards. Developing alternatives to detaining children in those facilities had become a priority of the federal government.

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<sup>195</sup> Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, Brussels 13 October 2008, PE/CONS 3653/08.

<sup>196</sup> The conditions in centres for third-country national (detention camp, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU Member States”. Directorate-General Internal Policies, Policy Department C, Citizens Rights and Constitutional Affairs – Contract REF/ IP/C/LIBE/IC/2006-181

<sup>197</sup> Article 17 - §1. Unaccompanied minors and their families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time; §2. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy; §3. Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education. §4. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. §5. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.

- Inspired by coaching projects from Sweden and Australia, in October 2008, a pilot project started, involving the coaching of undocumented families with children. Families staying illegally in Belgium, who had been arrested by the police and were awaiting their removal, have been accommodated in private single family houses or apartments, without any restriction of their freedom of movement. However, they have been assisted by a “return-coach” whose role it is to help them to understand the nature of their current situation in Belgium, and why they should cooperate to their identification and to their (forced or voluntary) return. The coaches work together with IOM with regard to possible assisted voluntary returns. Legal aid is provided to families without a lawyer.
- The number of families with children who were detained in closed centres each year was estimated at about 120. The single family houses and apartments (7 in total) are managed by the Immigration Department. According to figures from the Immigration Department, 137 families with children were detained in closed centres from January 2008 to December 2008 (which accounts for 270 detained children in 2008). Most of these families with children were from Russia (28,4%), Serbia (13,13%), Macedonia, Brazil (4,38%), Afghanistan and Kosovo (3,6%).<sup>198</sup>

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<sup>198</sup> Centre pour l’Egalité des Chances et la Lutte Contre le Racisme. Rapport Annuel Migration 2008.

## 6. Concluding remarks: best practices and lessons learned

Over the last few years the Belgian government has undertaken a significant number of initiatives to improve the situation of UMs. The introduction of the Guardianship system in 2004, accompanied by a specialised institution and specialised reception facilities can be considered as a major step forward. Nevertheless, the situation of unaccompanied minors in Belgium still remains a hot topic.

Before the entry into force of the Guardianship Act, the issue of unaccompanied minors was not specifically dealt with in the Belgian legislation. There was no national law that protected specifically the UMs. In the 1990s Belgium was confronted with a rising number of UMs arriving on the territory. The policy makers were aware that initiatives had to be taken; and the so-called “Tabitha-case” proved that the Guardianship Act came at right time. Tabitha was a five-year old Congolese girl who wanted to rejoin her mother in Canada. Arriving in Belgium she was held in a detention centre at the border for two months and was finally returned to Congo. Belgium was condemned by the European Court of Human Rights. Also the existence of a network of non-profit organisations and NGOs that defend the interests of the minors helped raise awareness that legislative and political action in this field was needed.

Many recommendations were made in the course of making this report by different stakeholders (NGO’s, government institutions, guardians, etc.) on the different elements touched upon in this study. However, this is not an exhaustive list, but the most recurring (positive and negative) remarks will be developed in this chapter.

### Guardianship

The introduction of a guardianship system for UMs was widely welcomed as an improvement of the situation of UMs in Belgium. It was an ambitious endeavor with many tasks and responsibilities being attributed to the Guardianship Service. Still, it has been 5 years since the Guardianship Act has been adopted, and all parties agreed that time has come to conduct an impact assessment, and it has been decided that it was going to be launched in September 2009, the following issues deserving particular attention:

Towards one uniform status for all guardians? At the present moment the organisation of the guardianship consists of a majority of guardians in the voluntary system and only few in the professional system. It is claimed that the quality of the work of the guardians differs too much, depending on factors such as the competence and the personality of the guardians, but also on the number of cases they take up (some guardians have just two guardianships and others will have 25). In that way, guardians sometimes do not respect the procedural deadlines; or do not provide enough elements to prove the integration of the UM. These acts or lack of them can have a direct consequence on the situation of the UM. The disparities between the guardians (professionals vs. voluntary, but also voluntary vs. voluntary) are numerous and the UMs do currently not benefit from the difference made between guardians in the professional and voluntary system. There is thus a call for one uniform status for all guardians. Some even propose to only have professional guardians. In the meantime a better remuneration of the both type of guardianships could be envisaged as there are very few organisations that are willing to take up professional guardianship due to the limited remuneration. Also a lot of voluntary guardians only take up two guardianships as this is fiscally and administratively more favourable, which is not enough to gain a real experience. The payment of €500 per guardianship is considered to be too little.

The question of more specialisation of the guardians is also mentioned. At the moment most guardians are assigned depending on their geographical proximity. The criteria for the allocation of a UM to a guardian could be clearer, with the guardians past cases, specialisation in certain countries, etc. being taken into consideration. As the situation of every UM is specific (e.g. victim of trafficking; asylum seeker; UM with psychological problems), it requires a specific approach. One could think that a specialised guardian (on certain profiles) could offer the best help. However, one would have to take into account that the profile of the UM can change over time: a negative decision on asylum application; occurring psychological or other problems, etc. A guardian that would be too specialised would thus also not be able to offer the best possible help. A continuous training of the guardians on all different aspects is considered as a good option. In this regard, a lot of expectations are raised towards the Guardianship Service (especially by guardians) to fully take up its assigned duties: more supervision with monitoring of the guardians; more support in the form of organising specific and multidisciplinary training; coordination and uniformisation of practices; exchange of experiences between guardians; provision of more guidelines; improved

counseling and assistance of the guardians; a formal assessment at the end of the guardianship, and a quality control of the guardians, etc. A specialisation of the guardians by geographical region of the UM could also be envisaged in the long term. Some associations of independent guardians already exist, providing a platform for the guardians, to exchange best practices and learn from their experiences. However, professional guardians are not involved in these fora; thus all the guardians cannot really learn from each others. A call for coordination by the Guardianship Service is thus made. However, it is argued that the Guardianship Service lacks the means to fully execute all the legal duties that were placed upon it in the Guardianship Act.

There is an area of tension in the relationship between the Guardianship Service and the Immigration Department as both governmental bodies have different competences in the field. As a consequence this can sometimes lead to a different interpretation on certain issues. However, consultation is taking place between the two services in order to evolve to a more global vision.

Some guardians also think that the UMs would benefit from a code of deontology being created. This should allow solving some uncertain issues such as whether a guardian can communicate information to the Immigration Department which might be of importance in order to consider return as a durable solution; to what extent the guardian is bound to professional secrecy, etc. For the Immigration Department it would be important to know the motive of the UM to come to Belgium. Does the UM has identity documents? What is the family situation of the UM? Does the UM have a family member in Belgium? As the Immigration Department does not have access to the Observation and Orientation Centres this information, the answers to these questions can be valuable in case the durable solution for the UM is return to his/her country of origin. Professional secrecy also hinders the Guardianship Service and other guardians to have a clear view on the way cases are dealt with (best practices). Guardians are considered to be too autonomous sometimes.

Another criticism that is often heard is it that the procedures of the Guardianship Service often take too long, e.g. as far as the assignment of a guardian is concerned; or when it comes to the streamlining of the various procedures. This often has to do with the fact that the identification procedure is longer than initially foreseen. For instance when a doubt is expressed on the age, the GS has to arrange a meeting with the UM, the medical test has to be done, and then the results have to be communicated. So it is not rare that a full identification process can take up to two months. Meanwhile, the situation creates bottlenecks in the reception facilities and a guardian is not always immediately assigned.

### **Age assessment and medical test**

When there is a doubt on the minority of a young person, the Guardianship Service uses the so-called triple test to determine the age. The fact that it is a combination of three tests, and the fact that lowest attested age is taken into consideration, should provide enough guarantees that the minority can be acknowledged.

However, a lot of criticism is still formulated, supported by scientific evidence, that these medical tests are not reliable. The importance of the medical test in the identification and age assessment process is also criticized. Some argue that it should only be used as a last resort and that the declarations and documents of the UM should be investigated first and foremost. In practice, the immigration and asylum instances are confronted with fraudulent declarations and documents, hence their reluctance to base their opinion solely on that. There is also a growing demand towards the Guardianship Service to have more transparency on other criteria used to determine the age (e.g. to what extent can school reports be used).

The case law by the Aliens Litigation Council proves that more and more importance is given to the principle of the benefit of the doubt. In one case of an Afghan arriving in Belgium without documents, there was a doubt on his age and a medical test was undertaken. The results showed another age than the actual age. The identity documents the UM obtained during his stay in Belgium were not taken into consideration due to the fact that fraudulent documents were easy to obtain. However, the court decided that the identity documents had more value than the medical test.<sup>199</sup> In another case however, a boy was considered to be an UM by the Guardianship Service. Later on the Immigration Department discovered an original passport, which contradicted the alleged minority of the person. A medical test was undertaken and indicated that the person was indeed a minor. The court decided that considering the coherent declarations of the minor regarding his age and the passport, and regardless of the fact that the passport was proven

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<sup>199</sup> Platform kinderen op de vlucht. Nieuwsbrief 23, oktober 2008.

authentic by the embassy of his country of origin, a doubt remained on his age and he should be considered as a minor.<sup>200</sup>

### **Asylum procedure**

A lot of efforts have been undertaken to improve the asylum procedure for unaccompanied minors. The CGRS has specialised caseworkers; there is a coordinator for UMs who is in contact with the different stakeholders; the files are handled with priority, etc. The interview is adapted to the degree of mental development and maturity of the child; and when deciding on the asylum application, the minority is taken into account. However these practices are not part of a legal framework, but are handled by way of internal guidelines of CGRS. Little criticism can be heard towards the practices of the CGRS, however this does not mean that there is no room for improvement. The training of caseworkers and interpreters dealing with UMs can still be further elaborated, hence the active participation of the CGRS in the project of the European Asylum Curriculum (EAC). There is also the awareness that it is not easy to deal with/interview traumatized UMs (e.g. child soldiers) and to make an assessment of their problems based on this interview.

### **Procedure Circular Letter September 2005**

This procedure has been specifically created to provide a solution for those UMs who have not applied for asylum or can not/no longer apply for another residence procedure. This means that the Belgian authorities can provide for each UM on the Belgian territory a procedure that can lead to a durable solution in the best interests of the child.

However, there is a concern by some NGOs about the procedure set up in Circular Letter 2005 in general, and more particularly with regard to the determination of the durable solution in the best interests of the child. According to them, one of the competent authority's concerns is related to the management of migration; and by consequence there is sometimes less focus on the interest of the child. Also more transparency on the criteria used for decision making in this regard would also be welcomed by the guardians. However, it has to be mentioned that decisions by the competent authority on the determination of the best interest of the child are always open for appeal at the Aliens Litigation Council.

Some NGOs have formulated the proposition to have an independent body of child experts (e.g. a youth judge) decide on this durable solution. Another proposition is that the opinion of the UM and those who deal with the UM on a daily basis (e.g. social workers) should also be heard. The Immigration Department has already taken certain measures, such as the systematically hearing of UMs from 1 June 2009 on.

Some criticism exists over the notion of 'durable solution'. The ID provides three possibilities (family reunification, return, residence in Belgium). It is felt that decisions would look less arbitrary if the procedure for determining the durable solution would include guidelines on which persons are entitled to make such a decision, the means to take the decision, what means are allocated to the procedure, what rationale which leads to a decision rather than another, etc.

With regard to the residence documents delivered. The procedure under the Circular Letter provides that the Immigration Department can deliver or prolong the 'declaration of arrival' or the 'Annex 38'. Since this is a favour and not a right, the UM has to fulfill certain conditions and can in the worst case end up having no right of residence, in case the durable solution consists of return. According to a lot of NGOs this system is not adequate enough and they propose that all UMs would receive a (temporary) right of residence as long as there has been no decision taken on the durable solution for the UM. The Immigration Department however decides on a case by case basis.

Regarding the conditions of the procedure itself, it should be mentioned that this can only be initiated by the guardian and not by the UM himself. A lot thus depends on the quality of the guardian. Also the need to present a passport as a proof of identity is in principle (however there are exceptions) one of the prerequisites, for a successful procedure. It is often mentioned that it is more difficult for an UM to undertake the necessary steps to obtain the passport/identity documents (contact with authorities, knowledge of the procedure, etc.). This again leads to more fraudulent use of passports/identity documents.

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<sup>200</sup> Platform Kinderen op de vlucht, Nieuwsbrief 20, april 2008.

The fact that this procedure is described in a Circular Letter means that it provides less legal security. Propositions to incorporate the Circular Letter in the Aliens Act or in a new law are under way, but have not yet been decided upon.

### **European UMs**

The Guardianship Act excludes by definition the UMs with a nationality of the European Economic Area. As they constitute a significant number of the UMs located in Belgium, a specialised service SEMK/SMEV for these vulnerable European UMs has been created, which allows them to be placed in a reception facility (OOC) for maximum 1 month, however no guardian will be assigned to them. NGOs ask nonetheless to include also these minors in the Guardianship Act as they are foremost children in need.

From the point of view of the Belgian authorities their situation should be treated differently than that of UMs as the Community law guarantees the fundamental and personal right to reside and circulate freely on the territory of the Member States of the European Union, to all EU citizens, including UMs. The protective measures taken for these European UMs have thus to be comparable to those taken for Belgian UMs. So, it is not possible to simply apply the regime of UMs to that of European UMs; since there is another judicial framework.<sup>201</sup> The Immigration Department examines the individual residence situation of each European UM and searches for an appropriate solution in a European context. A better practical cooperation and bilateral agreements with the other member states; more initiatives at the level of the European Union (e.g. Roma community, network of contacts, improvement of education in country of origin) would make improvement of the protection of these European UMs possible.

### **Reception of UMs**

The introduction of the three phase reception procedure has been considered as an improvement: each UM is entitled to be accommodated. The fact that Belgium is a federal country and that the Communities also have competences in the reception of UMs makes things more complicated. This also means that in theory the reception of the UM depends more on its administrative status and less on its specific needs.

The lack of a sufficient number of places in the reception facilities in the three phases is a constantly recurring problem. For example, the identification process in the first phase should normally happen within 15 days. As this often takes longer, the flow to the second reception phase is hindered and this creates saturation in the Observation and Orientation Centres. On a practical level, informal cooperation ensures that when the Communities are unable to accommodate a (non-asylum seeking) UM, it is the federal entity Fedasil who is responsible to accommodate the UM. This guarantees that UMs are not left on their own due to a lack of place in the reception facilities. An agreement formalizing this type of cooperation should be concluded but has not been signed yet. Official clarification of the role and responsibilities between the federal, regional and communal would certainly help improving the reception conditions. However, the down side is that the Fedasil centres also become saturated; and that not all UMs receive the accommodation that is best suited for their situation. E.g. asylum seekers who need special attention cannot directly be referred to adapted facilities due to lack of places; or non-asylum seekers have to stay in an asylum reception centre while they need more specialised care.

There seems also to be a difference in quality of the reception centres. The centres for the non-asylum seeking UMs are considered relatively good and comparable to the care for Belgian youth in the mainstream Youth Welfare system. But the number of available places in these centres is very limited, so that these centres can only care for a small number out of the entire group. Those who cannot be cared for in these centres stay for long periods in the first assigned reception centres; some of them finally decide to apply for asylum in order to be moved to a reception centre for asylum seeking UM, while others disappear from the crisis reception centres. Another picture is seen in the reception centres for asylum seekers: the capacity of these centres is sufficient for the number of adolescents in the group, but the quality of care provided in these centres is considered less than in the 'non-asylum' reception facilities: small numbers of mostly only semi-skilled staff members, large numbers of children and adolescents, limited infrastructure, less developed psychological care, etc.

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<sup>201</sup> Kamer van Volksvertegenwoordigers. Parlementaire vraag van de heer Marc Elsen aan de minister van Migratie- en Asielbeleid over «het ontbreken van een wettelijk statuut voor niet-begeleide minderjarige vreemdelingen afkomstig uit de landen van de Europese Economische Ruimte» (nr. 4-780), 14/05/2009.

It is believed that UMs are best accommodated in small scale reception centres of maximum 40 persons or in families. For really young children (younger than 12) reception in a foster home is considered as the best option. However, it is also mentioned that UMs placed in families should also be able to benefit from the same support they would get in a centre (e.g. not only from their guardians, but also from psychologists, etc.) and there should also be enough monitoring of their situation.

### **Integration**

On the integration issue a mixed feeling can be discerned. On the one hand the principle of integration is welcomed. On the other hand the uncertain residence status of the UM makes his/her future uncertain, and there is no clear view as to what extent the efforts to integrate will improve his/her chances to a definitive residence status. Hence the effect this has on his/her motivation to integrate.

On the level of education: the reception of newcomers in the so-called ‘onthaalklassen/classes passerelles’ is widely considered as successful as it is a very efficient way to integrate UMs in a school. However, more problems occur when the UM is transferred to a normal class in the general education system, mostly due to language problems, but also due to their education level. In the French Community the ‘classes passerelles’ are not organised on the basis of the number of newcomers from the European Union, but only on the number of newcomers from developing countries.

The access to medical assistance is also considered as well-developed; however people with an uncertain residence status will have more problems. The access to mental health care is sometimes considered as more problematic due to the high threshold (cultural differences, language problems, etc.).

### **Trafficking in human beings**

Belgium has done some pioneering work on European and international level regarding the tackling of human trafficking and the protection of the victims thereof. In spite of this there are still some loopholes.<sup>202</sup>

The detection of UM victims of trafficking is crucial and has several gaps, especially when it comes to economic and interfamily exploitation. Persons within the first line services, but also guardians, are insufficiently aware of the problems of the UM, and often lack training to detect the cases and to deal with them.

European minors, a group with a lot of potential victims, can also benefit from this specific status. However, unlike UMs from third countries, they do not have the disposition of a guardian and thus lack the help in case they do not receive the status of a victim.

The most mentioned concern relates to the heavy conditions of the procedure. The conditions to benefit from the status, are hard to meet and statistics show that very few UMs get to benefit from this status. It is said that the conditions are insufficiently adapted to UMs: e.g. it is practically and psychologically difficult for UMs to collaborate with the authorities and to file a complaint against their offenders. As a consequence a lot of UMs start up another procedure (asylum, Circular Letter 2005), which is however less adapted to their specific needs. This point has been recognised by the Belgian government and in July 2008 it approved an action plan that foresees that after the evaluation of “the Circular Letter of 26 September 2008 on the introduction of a multidisciplinary cooperation in the field of victims of human trafficking and/or certain other aggravated forms of trafficking in human beings” by 30 October 2010, it will be decided whether it is necessary to adapt the Belgian legislation or to take other measures.

Victims are not always directly redirected to the specialised reception centres for victims of human trafficking and therefore do not immediately receive the necessary support. Also shortages of vacant places in the reception facilities occur. Concerning UMs who are not residing in a reception centre but who are living with adults or friends, only

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<sup>202</sup> UNICEF: de bescherming van niet-begeleide minderjarige vreemdelingen slachtoffer van kinderhandel en –smokkel. Verkennend onderzoek – samenvatting. November 2008.

little verification is made about the quality of the reception mechanism or of the link between the child and the person hosting it.

Also here data collection on UM victims of trafficking could be improved as there are data on the number of applications for the procedure, but not enough on the follow-up.

### **Return**

The return option is considered as a durable solution in the best interests of the child. However the numbers of voluntary returns are very low. The reasons for this should be further examined. The Immigration Department is under the impression that the guardian is often reluctant to see this as a durable solution in the best interests of the child. A removal order that is issued for an UM is seldom implemented. It therefore creates a “pull factor” which leads to the misuse of the UM status in Belgium. Also the fact that the Immigration Department does not have access to the first reception phase; and to the facts brought to light thanks to the relation of confidence between the guardian and the UM, hinders sometimes a speedy return of the UM to his/her country of origin. According to the Guardianship Service requests for voluntary return are however introduced with IOM, but due to other reasons, the return does finally not happen. A better collaboration and information exchange between the two services could be envisaged.

One should acknowledge the efficiency of the IOM programme. However the reintegration funding that is proposed is considered as not being sufficient in relation to the amount parents might have invested to send their children to Belgium.

### **Statistics**

One ever recurring problem is that of statistics on the situation of UMs. In Belgium there is no uniform system of statistics on UMs. Each service involved has its own statistics, but no service can indicate exactly how many UMs are residing on the Belgian territory. E.g. statistics from the Guardianship Service differ from the statistics from the Immigration Department. A uniform and centralised registration system would lead to a better matching with the information needed and to better assess the situation of UMs.

At the initiative of the Belgian Commission of the Rights of the Child, efforts are undertaken to map the different statistics and to coordinate with the different data providers on UMs in Belgium. Also within e.g. the Immigration Department plans are put in to practice to improve the quality of the statistics.

### **Disappearances**

A major concern is the disappearance of UMs in Belgium. There is a rising awareness of this problem at the level of the Belgian authorities. A cooperation agreement has been signed between different services responsible for the reception and support of UMs in the observation and orientation centres. It intends to better coordinate the actions of the different actors in case of disappearance. All want to prevent disappearances as much as possible, and in case it does occur, try to locate them rapidly with the purpose of protecting them against possible risks of exploitation or abuse.

Some propositions have been made: there should be more awareness with all people involved in dealing with UMs; the signals that point to a possible disappearance should be taken more seriously; a better pedagogic assistance in the first reception phase; a better registration of the fingerprints and the circumstances at the time of apprehension; a more rapid assignment of a guardian as most UMs disappear within 48 hours and before a guardian has been assigned.

Child Focus only initiates research actions in a limited number of cases, often due to a lack of available information on the UM. This means however that there is no overview on the situation of all UMs.

The reception system for UMs are open facilities that accommodate all UMs who want to be helped. There remains an area of tension between on the one hand protecting the UMs against themselves and human smuggling/trafficking; and on the other hand respecting their right to freedom.

Also suggestions are made to enhanced practical cooperation at European level for tracing of UMs.

### **Opinion of the UM**

In a study of UNICEF “what do you think”, the UMs themselves made some recommendations. This study dates back to 2004, so some of study’s insights have already been put into practice the following years. They would like to see the end of the medical test in the framework of an age assessment, as well to be better informed about the different procedures. In the reception centres they would like more possibilities to develop their skills, respect for their private life, more dialogue in matters that concern them and a policy that is the same for all reception centres. They would like to have more support in school, as well as qualitative health care.

### **Exchange of information**

The exchange of information between the different stakeholders (ID, police services, reception centres, guardians, etc.) seems to be essential to improve the situation of UMs in Belgium. Different initiatives have already been taken or are under way, at different levels (task force, protocol agreements, Guardianship Service, etc.). However, it can be concluded that there is always room for improvement.

# Statistics

## *Annex 1: Number of Unaccompanied minors in Belgium*

The known number of UMs on the Belgian territory can best be found by looking at the identification forms of the Guardianship Service. According to the Guardianship Act, any authority (Police, Immigration Department) that comes to know about the presence of an UM within the Belgian territory or arriving at the border has the obligation to inform the Guardianship Service. So the GS has the most complete listing. It can however happen that an UM has been reported to the GS on two different occasions, but this should be filtered out by the GS. This Service started its activities from 1 May 2004 on, so the statistics are only available from this date on.

### Number of unaccompanied minors in Belgium as registered by the Guardianship Service

May-Dec 2004	
Country of origin	Number of persons
India	136
Romania	122
Congo Brazzaville	113
Congo DR	111
Guinea	105
Yugoslavia	103
Afghanistan	98
Morocco	78
Moldavia	71
Angola	69
<b>All countries</b>	<b>1793</b>

2005	
Country of origin	Number of persons
Romania	202
Yugoslavia	146
Iraq	113
Congo Brazzaville	112
Morocco	109
Congo DR	106
India	106
Guinea	93
Rwanda	92
Algeria	88
<b>All countries</b>	<b>2040</b>

2006	
Country of origin	Number of persons
Romania	152
Yugoslavia	126
Congo DR	123
Morocco	103
Algeria	98
Afghanistan	76
India	71
Iraq	68
Guinea	65
Serbia	49
<b>All countries</b>	<b>1702</b>

2007	
Country of origin	Number of persons
Afghanistan	152
Morocco	126
India	123
Yugoslavia	103
Congo DR	98
Iraq	76
Algeria	71
Guinea	68
Romania	65
Serbia	49
<b>All countries</b>	<b>1558</b>

2008	
Country of origin	Number of persons
Afghanistan	356
India	263
Guinea	135
Morocco	124
Iraq	119
Algeria	111
Congo DR	69
Yugoslavia	51
Serbia	51
Palestine	45
<b>All countries</b>	<b>1878</b>

Source : Guardianship Service

**Annex 2 : Age distribution of UMs in Belgium**

Age on the basis of declarations of the UM at the moment of registration with the Guardianship Service

Age	2004		2005		2006		2007		2008	
		%		%		%		%		%
0	0	0,00%	2	0,10%	5	0,29%	3	0,19%	4	0,21%
1	7	0,35%	3	0,15%	1	0,06%	1	0,06%	3	0,16%
2	9	0,46%	3	0,15%	5	0,29%	5	0,32%	3	0,16%
3	4	0,20%	4	0,19%	2	0,11%	4	0,25%	4	0,21%
4	9	0,46%	6	0,29%	7	0,40%	7	0,44%	1	0,05%
5	11	0,56%	13	0,63%	10	0,57%	6	0,38%	10	0,53%
6	12	0,61%	15	0,73%	11	0,63%	10	0,63%	8	0,42%
7	21	1,06%	12	0,58%	10	0,57%	16	1,01%	14	0,74%
8	16	0,81%	20	0,97%	22	1,26%	12	0,76%	7	0,37%
9	22	1,11%	22	1,07%	31	1,78%	18	1,14%	12	0,64%
10	26	1,32%	29	1,40%	36	2,07%	34	2,16%	27	1,43%
11	41	2,08%	45	2,18%	41	2,35%	45	2,85%	30	1,59%
12	65	3,29%	69	3,34%	76	4,37%	60	3,80%	62	3,29%
13	77	3,90%	107	5,18%	105	6,03%	89	5,64%	106	5,62%
14	126	6,38%	150	7,26%	142	8,16%	122	7,74%	173	9,17%
15	231	11,70%	278	13,46%	266	15,28%	235	14,90%	310	16,44%
16	558	28,27%	607	29,39%	467	26,82%	432	27,39%	592	31,39%
17	652	33,03%	662	32,06%	493	28,32%	465	29,49%	509	26,99%
18	17	0,86%	18	0,87%	11	0,63%	13	0,82%	11	0,58%
<b>Total</b>	<b>1974</b>		<b>2065</b>		<b>1741</b>		<b>1577</b>		<b>1886</b>	

Source: Guardianship Service

**Annex 3: Gender distribution of UMs in Belgium**

Gender distribution of UMs registered by Guardianship Service

Year	Male		Female		Total
		%		%	
2004	1273	65,96%	657	34,04%	1930
2005	1340	64,15%	749	35,85%	2089
2006	1112	63,43%	641	36,57%	1753
2007	1114	70,46%	467	29,54%	1581
2008	1503	79,65%	384	20,35%	1887

Source: Guardianship Service

**Annex 4: Statistics on asylum applications**

It has to be observed that there can be a difference in the numbers of asylum applications between the Immigration Department (responsible for registration of the asylum application) and the Office of the Commissioner General for Refugees and Stateless Persons (CGRS, deciding on the asylum claim). This difference can be explained i.a. by the stricter definition the ID applies for UMs; by multiple asylum applications by the same person; and by asylum applications by European UMs. One also has to bear in mind that an asylum application made in a certain year, is not always treated/decided on in the same year. Ref= Refugee Status; SP= Subsidiary Protection; Neg = Negative Decision

2002	Asylum applications of unaccompanied minors								Decisions CGRS on asylum				
	Total	Age							Gender		Ref	SP	Neg
Country of origin		0-5	6-10	11-15	16	17	18	19 +	M	F			
Congo RD	140	9	19	48	9	38	3	14	60	80	3		7
Angola	73	2	6	19	8	14	1	23	44	29			1
Albania	67	2	1	21	7	21	5	10	62	5			3
Rwanda	57	2	12	23	6	9	1	4	33	24	19		25
Afghanistan	50	0	0	5	5	6	1	33	43	7			3
Guinea	43	0	0	0	2	16	0	25	29	14			107
R.F.Y. Kosovo	41	0	0	10	1	16	3	11	39	2	1		4
India	36	0	0	4	2	4	2	24	36	0			
Sierra Leone	28	0	1	3	2	4	6	12	17	11	2		17
Turkey	27	0	1	9	5	5	2	5	24	3	1		6
<b>All countries</b>	<b>913</b>	<b>21</b>	<b>53</b>	<b>197</b>	<b>93</b>	<b>235</b>	<b>40</b>	<b>274</b>	<b>652</b>	<b>261</b>	<b>39</b>		<b>215</b>

To be considered minor after medical test: 599

2003	Asylum applications of unaccompanied minors								Decisions CGRS on asylum				
	Total	Age							Gender		Ref	SP	Neg
Country of origin		0-5	6-10	11-15	16	17	18	19 +	M	F			
Congo DR	124	1	14	31	17	39	1	21	48	76	4		16
Guinea	68	0	1	5	14	29	1	18	40	28			10
Angola	51	2	5	15	7	13	0	9	23	28			1
Afghanistan	45	0	0	8	10	9	2	16	43	2	5		39
Cameroon	34	0	1	3	7	10	1	12	17	17			1
Albania	33	0	0	7	9	6	4	7	32	1			1
Rwanda	32	1	2	8	9	9	1	2	16	16	25		10
R.F.Y. Kosovo	26	1	1	2	6	12	2	2	15	11	4		1
Burundi	20	1	3	2	5	4	0	5	8	12	1		1
Liberia	20	0	0	2	1	6	0	11	14	6			
Nigeria	20	0	0	2	2	7	0	9	18	2			
<b>All countries</b>	<b>788</b>	<b>8</b>	<b>36</b>	<b>135</b>	<b>147</b>	<b>240</b>	<b>18</b>	<b>204</b>	<b>520</b>	<b>268</b>	<b>48</b>		<b>115</b>

To be considered minor after medical test: 566

2004	Asylum applications of unaccompanied minors								Decisions CGRS on asylum				
	Total	Age							Gender		Ref	SP	Neg
	Country of origin	0-5	6-10	11-15	16	17	18	19 +	M	F			
Congo DR	94	4	9	25	24	22	5	5	40	54	3		20
Guinea	92	0	0	19	15	45	2	11	51	41	1		11
Afghanistan	53	0	0	8	17	14	5	9	52	1	1		1
Rwanda	41	0	6	12	11	12	0	0	22	19	48		29
Russia	27	0	0	7	8	11	1	0	20	7	1		1
Cameroon	25	0	1	4	2	16	2	0	15	10			14
Albania	23	0	1	0	11	9	0	2	23	0	1		
Angola	23	0	0	6	3	8	0	6	15	8			3
Serbia-Montenegro	21	0	0	5	8	8	0	0	8	13	5		
Pakistan	19	0	0	5	3	4	1	6	18	1			2
<b>All countries</b>	<b>675</b>	<b>7</b>	<b>22</b>	<b>128</b>	<b>163</b>	<b>262</b>	<b>19</b>	<b>74</b>	<b>463</b>	<b>212</b>	<b>71</b>		<b>137</b>

To be considered minor after medical test: 582

2005	Asylum applications of unaccompanied minors								Decisions CGRS on asylum				
	Total	Age							Gender		Ref	SP	Neg
	Country of origin	0-5	6-10	11-15	16	17	18	19 +	M	F			
Congo DR	81	1	3	22	13	20	13	9	28	53	7		5
Guinea	73	0	1	6	10	31	12	13	39	34	10		79
Afghanistan	61	0	0	14	11	18	8	10	61	0	1		7
Iraq	44	0	0	3	7	23	6	5	43	1			15
Rwanda	41	0	2	14	5	13	1	6	19	22	32		25
Cameroon	33	0	0	3	8	7	5	10	13	20	3		25
Russia	25	1	0	4	4	15	1	0	19	6	14		7
India	23	0	0	4	6	10	2	1	20	3			
Romania	20	0	0	4	4	12	0	0	8	12			
Somalia	19	0	0	4	4	7	1	3	14	5	1		14
Albania	18	0	0	3	5	5	2	3	18	0			
<b>All countries</b>	<b>654</b>	<b>3</b>	<b>12</b>	<b>117</b>	<b>123</b>	<b>230</b>	<b>82</b>	<b>87</b>	<b>415</b>	<b>239</b>	<b>88</b>		<b>376</b>

To be considered minor after medical test: 485

2006	Asylum applications of unaccompanied minors								Decisions CGRS on asylum				
	Total	Age							Gender		Ref	SP	Neg
	Country of origin	0-5	6-10	11-15	16	17	18	19 +	M	F			
Afghanistan	74	0	0	13	21	23	7	10	73	1			7
Congo DR	44	1	6	8	8	13	6	2	13	31	20		30
Guinea	44	0	1	3	4	18	8	10	22	22	27		73
Russia	34	0	2	10	12	10	0	0	24	10	1		8
Angola	32	0	2	7	8	12	2	1	17	15	1		9
Rwanda	29	0	3	10	2	12	2	0	14	15	25		49
Cameroon	27	0	1	1	4	13	1	7	12	15	3		12
Iraq	23	0	0	5	4	10	2	2	23	0	1	1	6
Ethiopia	12	0	0	4	3	2	0	3	9	3	2		9

China	11	0	0	6	2	2	0	1	10	1			3
Serbia-Montenegro	11	0	0	1	1	7	0	2	4	7			1
<b>All countries</b>	<b>491</b>	<b>3</b>	<b>19</b>	<b>101</b>	<b>93</b>	<b>171</b>	<b>42</b>	<b>62</b>	<b>331</b>	<b>160</b>	<b>96</b>	<b>1</b>	<b>316</b>

To be considered minor after medical test: 387

2007	Asylum applications of unaccompanied minors										Decisions CGRS on asylum			
	Country of origin	Total	Age							Gender		Ref	SP	Neg
			0-5	6-10	11-15	16	17	18	19 +	M	F			
Afghanistan	118	0	0	28	23	28	18	21	116	2	6	4	34	
Guinea	65	1	2	16	5	24	5	12	43	22	11		12	
Congo DR	56	0	3	13	14	13	2	11	22	34	3		19	
Iraq	33	0	0	0	7	20	4	2	33	0	1	7	12	
Russia	32	1	3	8	2	17	0	1	26	6	9		5	
Rwanda	27	1	7	7	4	7	1	0	9	18	6		15	
Serbia-Montenegro	23	1	2	4	5	9	1	1	9	14	1		9	
Angola	20	0	0	9	5	5	1	0	6	14			20	
Cameroon	19	0	0	2	2	8	2	5	12	7	9		8	
Burundi	14	1	1	4	2	5	1	0	3	11	2		5	
Albania	11	0	0	1	4	3	2	1	11	0			4	
<b>All countries</b>	<b>555</b>	<b>5</b>	<b>19</b>	<b>121</b>	<b>108</b>	<b>182</b>	<b>53</b>	<b>67</b>	<b>379</b>	<b>176</b>	<b>61</b>	<b>12</b>	<b>191</b>	

To be considered minor after medical test: 435

2008	Asylum applications of unaccompanied minors										Decisions CGRS on asylum		
	Country of origin	Total	Male				Female				Ref	SP	Neg
			0-13	14-15	16-17	18 or +	0-13	14-15	16-17	18 or +			
Afghanistan	106	3	39	64	88	0	0	0	1	11	16	51	
Guinea	89	5	5	34	27	6	4	35	3	33		28	
Congo DR	36	6	2	6	2	7	3	12	4	10	1	17	
Russian Federation	27	3	2	9	0	4	1	8	0	4		4	
Iraq	25	2	1	21	8	0	0	1	0	4	3	11	
Angola	17	1	4	1	1	6	4	1	3	4		9	
Cameroon	17	1	2	6	8	0	1	7	2	4		7	
Kosovo	13	1	1	4	0	0	2	5	0	2			
Somalia	13	1	3	9	5	0	0	0	3	1	1	1	
India	13	0	5	8	2	0	0	0	0				
Rwanda	12	0	2	2	0	3	1	4	0	7		9	
<b>All countries</b>	<b>470</b>	<b>27</b>	<b>74</b>	<b>219</b>	<b>177</b>	<b>29</b>	<b>20</b>	<b>101</b>	<b>20</b>	<b>114</b>	<b>22</b>	<b>184</b>	

To be considered minor after medical test : 364

Source applications: Immigration Department

Source decisions asylum applications: Office Commissioner General for Refugees and Stateless Persons (CGRS)

Ref= Refugee Status; SP= Subsidiary Protection; Neg = Negative Decision

**Annex 5 : Statistics on Return**

**Assisted Voluntary Return in Belgium: Number of requests processed by IOM**

2003			
Country	Female	Male	Total
Brazil	2		2
Congo DR	1		1
Ecuador	1	1	2
Moldova Republic		1	1
Pakistan		1	1
Poland	1		1
<b>Total</b>	<b>5</b>	<b>3</b>	<b>8</b>

2004			
Country	Female	Male	Total
Bolivia		1	1
Brazil	5	4	9
Colombia	1	1	2
Ecuador	6	2	8
Guinea	2		2
<b>Total</b>	<b>14</b>	<b>8</b>	<b>22</b>

2005			
Country	Female	Male	Total
Brazil	2	4	6
Bulgaria	1		1
Burundi		3	3
Ecuador	4	1	5
Romania	1		1
<b>Total</b>	<b>8</b>	<b>8</b>	<b>16</b>

2006			
Country	Female	Male	Total
Bolivia	1	1	2
Brazil	4	7	11
Bulgaria		1	1
Kazakhstan	1		1
Lithuania	1		1
Romania	2	1	3
Singapore	1		1
Ukraine	1		1
<b>Total</b>	<b>11</b>	<b>10</b>	<b>21</b>

2007			
Country	Female	Male	Total
Angola	1		1
Bolivia	1		1
Brazil	2	1	3
Bulgaria	1		1
Burundi		1	1
Ghana		1	1
Hungary	1	2	3
Romania	1		1
Rwanda	1	2	3
Ukraine		1	1
<b>Total</b>	<b>8</b>	<b>8</b>	<b>16</b>

2008	
Country	Total
Brazil	5
Bulgaria	2
Congo DR	1
Mongolia	1
Poland	1
Romania	3
Russian Federation	1
Rwanda	1
Slovakia	6
Syrian Arab Republic	1
<b>Total</b>	<b>22</b>

2008	
Gender	
Male	11
Female	11
<b>Total</b>	<b>22</b>

2008	
Age groups	
0-11	4
12-17	17
18-25	1
<b>Total</b>	<b>22</b>

Source: IOM Brussels Office

**Annex 6: numbers of UMs that initiated the procedure 'trafficking in human beings'**

The information on victims of trafficking in human beings is available at the Immigration Department, Bureau MINTEH. However, it is only since 2006 that specific data regarding the profile of these UMs is available. In these statistics one can find information on the nationality, the date of birth, the gender and sector of exploitation. To obtain the information before 2006, one should go through the specific files. The number of UMs that initiates the procedure victims of human trafficking is relatively low. As has been mentioned before, the conditions to be recognised as a victim, are considered hard to meet.<sup>203</sup>

**Numbers of UMs that initiated the procedure 'victims of human trafficking'**

2002		2003		2004	
Country of origin	Number of persons	Country of origin	Number of persons	Country of origin	Number of persons
Romania	5	Ecuador	6	?	?
Albania	3	Romania	5		
Nigeria	2	Ghana	5		
Congo DR	1	China	4		
Kazakhstan	1	Croatia	3		
Latvia	1	Russia	3		
Bulgaria	1	Morocco	2		
Morocco	1	Poland	2		
		Afghanistan	1		
<b>Total</b>	<b>15</b>	<b>Total</b>	<b>31</b>	<b>Total</b>	<b>22</b>

2005		2006		2007	
Country of origin	Number of persons	Country of origin	Number of persons	Country of origin	Number of persons
Sudan	1	Morocco	4	Brazil	5
China	1	Iran	3	China	1
Nigeria	1	Burundi	2	Bulgaria	1
Bulgaria	1	Liberia	1	India	1
Morocco	1	Brazil	1	Serbia	1
Ghana	1	Hungary	1		
Ecuador	1	Latvia	1		
		China	1		
		France	1		
		Nigeria	1		
<b>Total</b>	<b>7</b>	<b>Total</b>	<b>16</b>	<b>Total</b>	<b>9</b>

2008	
Country of origin	Number of persons
?	?
<b>Total</b>	<b>6</b>

<sup>203</sup> Timmerman C., Vandenhole W., Vanheule D.(eds.). Kinderen zonder papieren: feiten en rechten. Juli 2009.

***Annex 7 : European Unaccompanied Minors***

The number of European Unaccompanied Minors is difficult to obtain as they do not strictly resort under the definition of the Guardianship Act. The Guardianship Service provides figures of all UMs that have been reported to them by the different authorities. However, the fact that e.g. a Polish UM has been reported to them in 2006 could be considered as a mistake by the reporting authority as Poland is an EU member since 2004. So these figures provide an accurate view for Romania and Bulgaria up till 2006 (EU accession in 2007). The Guardianship Service was not able to provide statistics yet of the SEMK/SMEV for European vulnerable UMs. To have an idea of the number of European UMs in 2008 we can refer to the number of interceptions by police authorities (column 2008\*). Note that the number for intercepted Romanians includes that of multiple interceptions, so the number is lower, but it gives already an indication.

**Number of EU unaccompanied minors as identified by the Guardianship Office**

	<b>From May 2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2008*</b>
<b>Romania</b>	122	202	213	65	33	293
<b>Bulgaria</b>	3	20	14	3	1	13
<b>Poland</b>	3	0	1	0	0	4
<b>Slovakia</b>	3	3	0	1	1	3
<b>Italy</b>	2	1	1	1	6	17
<b>Cyprus</b>	1	0	0	0	0	0
<b>Czech Republic</b>	1	2	0	1	0	0
<b>France</b>	1	0	0	0	1	6
<b>Germany</b>	1	0	1	1	0	5
<b>Belgium</b>	0	1	0	0	1	0
<b>Estonia</b>	0	1	0	0	0	0
<b>Greece</b>	0	1	1	0	0	0
<b>Netherlands</b>	0	1	0	0	0	0
<b>Spain</b>	0	1	0	0	0	1
<b>United Kingdom</b>	0	0	0	0	0	0
<b>Lithuania</b>	1	0	1	0	0	7
<b>Hungary</b>	0	0	1	0	0	6

Source: Guardianship Service

\*Source: Immigration Department

***Annex 8 : Number of interceptions of UMs***

Statistics on the interceptions of UMs are also not always accurate statistics. Police authorities report the UMs that they have intercepted to the Immigration Department Bureau C or Bureau P (permanency during office closing hours). By adding the numbers of these two Bureaus we can have an idea of the number of interceptions; mind that this can include multiple interceptions and does not represent the number of persons. For 2008 on the Bureau C started to collect specific statistics on the interceptions of UMs (see 2008\*).

<b>2006</b>			
<b>Country of origin</b>	<b>Bur C</b>	<b>Bur P</b>	<b>Total</b>
Romania	164	3	<b>167</b>
Yugoslavia (S-M)	54	5	<b>59</b>
Algeria	43	3	<b>46</b>
Iraq	32	1	<b>33</b>
Yugoslavia	27	3	<b>30</b>
Morocco	19	0	<b>19</b>
Moldova	19	1	<b>20</b>
India	16	1	<b>17</b>
Palestine	16	1	<b>17</b>
Bosnia-Herzegovina	14	0	<b>14</b>
Croatia	12	0	<b>12</b>
<b>All countries</b>	<b>499</b>	<b>22</b>	<b>521</b>

<b>2007</b>			
<b>Country of origin</b>	<b>Bur C</b>	<b>Bur P</b>	<b>Total</b>
Yugoslavia (S-M)	123	113	<b>236</b>
India	82	43	<b>125</b>
Bosnia-Herzegovina	49	52	<b>101</b>
Algeria	45	82	<b>127</b>
Croatia	45	50	<b>95</b>
Yugoslavia	36	46	<b>82</b>
Undetermined	35	55	<b>90</b>
Morocco	29	65	<b>94</b>
Serbia	28	48	<b>76</b>
Iraq	21	38	<b>59</b>
Afghanistan	20	25	<b>45</b>
<b>All countries</b>	<b>621</b>	<b>819</b>	<b>1440</b>

*Source: Immigration Department*

<b>2008*</b>	
<b>Country of origin</b>	<b>Number of interceptions</b>
India	398
Romania	293
Serbia	286
Algeria	207
Morocco	165
Afghanistan	157
Iraq	104
Croatia	67
Palestine	67
Bosnia-Herzegovina	57
Undetermined	46
<b>All countries</b>	<b>2122</b>

**Annex 9 : Identification form for unaccompanied minors**

**FORM UNACCOMPANIED MINOR ALIEN<sup>204</sup>**

The form unaccompanied minor alien is send electronically to the Guardianship Service and the Aliens Office, together with a copy of the identity documents or residence documents and a photograph of the alien concerned.

**Guardianship Service** : Waterloolaan 115, 1000 Brussels, ☎ 078 15 43 24, e-mail<sup>205</sup>: [tutelles@just.fgov.be](mailto:tutelles@just.fgov.be)

**Aliens Office** : Antwerpsesteenweg 59 B, 1000 Brussels, e-mail<sup>206</sup> : [minfiche@dofi.fgov.be](mailto:minfiche@dofi.fgov.be)

Report number:.....

File number of the Aliens Office:.....

The individual declares to be an unaccompanied minor alien: YES – NO

Fingerprints have been taken<sup>207</sup> or other biometric features have been collected: YES – NO

**Identity of the service completing the form (stamp)**

.....  
.....  
.....  
.....

**Directions for completing this form.**

All sections have to be completed. However, the “special section for potential clandestine passengers” shall be completed only by the members of the Federal Police services responsible for border control. It is requested to insert the mention “not applicable” if no observations are to be made, in whatever section.

**SPECIAL SECTION FOR (POTENTIAL) CLANDESTINE PASSENGERS**

This regards an individual who declares to be or seems to be an unaccompanied minor, clandestine passenger.

Aboard the (motor ship, indicate the name) : .....

Lying in the port of : .....

Probable duration of the stay of the ship<sup>208</sup> (lay days<sup>209</sup>)       > 24 hours       < 24 hours

**Doubts about the alleged minority:**

- Doubts expressed : YES – NO
- Reason for these doubts (physical appearance, documents, statements,...) : .....

The Aliens Office requests to carry out a medical examination: YES – NO

**Identity**

Name, first name .....

Place and date of birth<sup>210</sup> .....

Nationality .....

Address in Belgium.....

Address in country of origin or other country.....

Other identities used .....

<sup>204</sup> An “unaccompanied minor alien” (hereinafter called “UMA”) is a person who seems to be or declares to be less than 18 years of age, who is not accompanied by a person exercising parental authority or guardianship over him/her by virtue of the law applicable in accordance with Article 35 of the Law of 16 July 2004 laying down the Code of private international law, who is a national of a country that is not a member of the European Economic Space (EES) and who is in one of the following situations :

- having applied for asylum ;  
- not fulfilling the conditions for entry into the territory and residence within the territory, set out in the law on entry into the territory, residence, settlement and removal of aliens.

<sup>205</sup> If there is a technical problem, the form can be faxed to the following number: ☎ 02 542 70 83

<sup>206</sup> If there is a technical problem, the form can be faxed to the following number: ☎ 02 274 66 3702-274.66.37 or 02-793.96.50 (after 17.00 hours, during the weekend and on official holidays).

<sup>207</sup> Article 30 b, (3) and (4) of the Law of 15 December 1980 on entry into the territory, residence, settlement and removal of aliens.

<sup>208</sup> Please tick where appropriate.

<sup>209</sup> Period of time for loading and unloading a ship.

<sup>210</sup> If the person only knows his year of birth, 99/99/ followed by the year should be mentioned.

**Identity established on the basis of :**

- Statement : YES – NO
- Documents : YES – NO
- <sup>211</sup>Passport – false or falsified passport – authentic passport fraudulently obtained– identity card – other<sup>212</sup>: .....

**Features**

- Length : ..... cm
- Hair colour : .....
- Eyes colour : .....
- Mother tongue.....
- Spoken language : .....
- Personal objects :  
Luggage – clothes – money – mobile phone – jewellery – other<sup>9</sup> : .....

**Family members and acquaintances of the minor**

● Parents

◇ FATHER

Name, first name.....  
Place and date of birth.....  
Nationality.....  
Address (domicile).....  
.....  
Phone/ mobile phone .....

◇ MOTHER

Name, first name.....  
Place and date of birth.....  
Nationality.....  
Address (domicile).....  
.....  
Phone/ mobile phone .....

● Other family members or acquaintances in Belgium

◇ Person 1

Name, first name.....  
Place and date of birth.....  
Nationality.....  
Family relationship/connection.....  
Address (domicile).....  
.....  
Phone/ mobile phone .....

◇ Person 2

Name, first name.....  
Place and date of birth.....  
Nationality.....  
Family relationship/connection.....  
Address (domicile).....  
.....  
Phone/ mobile phone .....

**Is there any other family member and/or acquaintance in another Member State of the European Union or in a third country? YES – NO**

If so, where ?

◇ Person 1

Name, first name.....  
Place and date of birth.....  
Nationality.....  
Family relationship/connection.....  
Address (domicile).....  
.....  
Phone/ mobile phone .....

◇ Person 2

Name, first name.....  
Place and date of birth.....  
Nationality.....  
Family relationship/connection.....  
Address (domicile).....  
.....  
Phone/ mobile phone .....

<sup>211</sup> Circle the appropriate response.  
<sup>212</sup> To be specified.

**Itinerary, interception and stay**

- Itinerary to Belgium (date and first country of entry, transit through which country, point of entry at the border, date of arrival and which means of transport have been used?)
  
- Reason for immigration into Belgium (who organized the travel, who took care of the minor ?)

- Accompanying person(s) on the trip to Belgium: YES – NO

✧ Person 1

✧ Person 2

Name, first name

Name, first name

Place and date of birth.....

Place and date of birth .....

Nationality .....

Nationality .....

Family relationship/connection.....

Family relationship/connection .....

Address (domicile).....

Address (domicile) .....

.....

.....

Phone/ mobile phone .....

Phone/ mobile phone .....

Identity established on the basis of :

- Statement : YES – NO

- Documents : YES – NO

<sup>213</sup> Passport - false or falsified passport- fraudulently obtained passport on basis of declarations- identity card- other<sup>214</sup>;

Circumstances of the interception of the minor : .....

Is there a link with other facts ?

.....  
.....  
.....

**Could the person concerned, on the basis of indications/facts, be victim of human trafficking or certain more severe forms of human smuggling ?**

YES – NO

Specify :

.....  
.....  
.....

<sup>213</sup> Circle the appropriate response.  
<sup>214</sup> To be specified.

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