



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 Responsibilities of Guardianship Service*
 - 3.3.2 Responsibilities 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 autonomous reception*
 - 4.1.4 Statistical information*
 - 4.1.5 Financial costs of reception*
 - 4.2 Residence possibilities for the UM
 - 4.2.1 If the UM is asylum seeker*
 - 4.2.2 If the UM is a victim of trafficking*
 - 4.2.3 Circular 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 for access to legal representation
 - 4.6 Psychological Care
 - 4.7 Integration measures for UMs
 - 4.8 Conditions and provisions for UMs applying for asylum
 - 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.

The EMN has several activities. Firstly, the EMN responds to information needs through specific Reports, Studies and Ad-Hoc Queries. Secondly, the EMN collects and documents information in a comparative manner. Thirdly, the EMN has the task of establishing a multi-level network to aid its activities. On the European level, EMN NCPs meet regularly, as well as networking and collaborating with other European level institutions and organisations. At national level, each EMN NCP aims to develop a network involving partners within their Member State with expertise in migration and asylum from a wide range of stakeholders in order to have a cross-section of views and information, e.g. from Member State governments, (academic) research community, NGOs.

Further information, including the EMN's various outputs, is available from:

emn.sarenet.es
www.dofi.fgov.be

The Belgian National Contact Point can be contacted by e-mail and phone:

Benedikt Vulsteke:	Benedikt.Vulsteke@dofi.fgov.be ;	phone +32 (0)2/ 793 92 30
Geert Beirnaert:	Geert.Beirnaert@ibz.fgov.be ;	phone +32 (0)2/ 205 50 54
Séverine De Potter:	Severine.DePotter@cntr.be ;	phone +32 (0)2/ 793 92 31
Nicolas Perrin:	Nicolas.Perrin@economie.fgov.be ;	phone +32 (0)2/ 793 92 32

Or by letter at the following address:

EMN Belgian Contact Point
Dienst Vreemdelingenzaken, WTC II 24th floor,
Antwerpsesteenweg 59B,
1000 Brussels
Belgium

Our special thanks goes out to Marie Diop, student at ULB/Odysseus Network, where she took the one year certificate course on European Law on Immigration and/or Asylum. During her internship at the Belgian National Contact Point her valuable contributions in the making of this report were much appreciated.

Executive Summary

The current study was undertaken in the first half of 2009 within 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 on these. 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 of 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 prepared for UMs has been applicable. It provides specific provisions to deal with UMs on Belgian territory or at the border. Any authority that comes to know about the presence of a UM on Belgian territory or arriving at the border is required to inform the Guardianship Service. This should be done by filling out a specific identification form for UMs. Every UM, regardless of his/her administrative status (asylum seekers, undocumented children, European UMs) will at first be placed in what is called an 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. The OOC can also function as an extraterritorial place (for a limited time) for those UMs intercepted at the border. The OOC is a secure, though open, reception facility. Belgium does not detain UMs.

The Guardianship Service and the guardian will be important for a UM residing in Belgium. Once identified, a guardian will be assigned to every UM. The guardian will have to ensure 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. The first phase is 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 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 specialist centres. However, places are hard to find within the Communities. As a practical solution it was arranged that Fedasil will become responsible for the reception of non-asylum-seeking UMs only when the Communities lack sufficient reception places. In this way, it is guaranteed that a 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 (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 more stable housing or autonomous reception that is best adapted to their specific profiles.

When it comes to the **residence situation** of UMs in Belgium, several options are open. (1) A UM can apply for **asylum** and will, in the case of a positive decision, be recognised as a refugee or receive the status of subsidiary protection; (2) a UM can be a **victim of human trafficking** and initiate a specific procedure. However, the conditions are hard to meet and few UMs receive residence status as victims of human trafficking; (3) the **Circular of 15 September 2005** provides a specific procedure for UMs to apply for authorisation to reside on 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 residence 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 fulfils the conditions set by the Immigration Department (e.g. attends classes, provides identity documents, etc.) a residence permit of unlimited duration can be issued. (4) If 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 can also apply for **regularisation** on the basis of Art 9 bis (exceptional reasons) or Art 9 ter (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 individualised approach for each UM, depending on his/her 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 mainstream education.

In the **asylum procedure** for UMs, the criteria for recognition as a refugee do not differ from those for 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 will be adapted to the degree of mental development and maturity of the UM. There are caseworkers who have 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 there is the fact that 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 from 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 more as ‘voluntary leavers’ (e.g. they have another final destination). However, there are also ‘worrying disappearances’ (e.g. victims of human trafficking) and in those cases the help of Child Focus can be provided.

Another focal point is the **return practices** for 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 the voluntary return of UMs (e.g. Congo) with little success, however. They have also 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 this study, and the most frequently 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. However, it is mentioned that the Guardianship Service has an important role, but lacks the means to fully execute its legal duties. The procedure according to the Circular of 15 September 2005 can provide a solution for a lot of UMs; however, some NGOs consider that the Immigration Department's role in deciding on the durable solution in the best interests of the child is 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 for their situation. The quality of the reception centres also seems to vary. 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 being undertaken. In general, there is still 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. Like all migrants, UMs all have their personal reasons for leaving 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 within 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 describe the situation, procedures and practices in Belgium.

The results of this study, together with the studies carried out by the other participating Member States, will 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 a lot of 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 of the challenges and problems Belgium is facing in dealing with unaccompanied minors. This study will thus also elaborate some more on the situation of 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 fulfil the conditions to enter or reside in 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 relatively large number of UMs (before their accession in 2007). As a consequence the SMEV Service was created.¹
- UMs who enter Belgian territory with valid travel documents (e.g. with student visa, for family reunification, tourism, etc.). However, once the validity of the visa expires for instance, these persons can be considered as UMs.

¹ See: 4.10 European Unaccompanied Minors

1.3 **Legislative framework**

1.3.1 **Belgian legislation**

In the area of the 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 May 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 of operation of the Observation and Orientation Centres for UMs.
- 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

- Circular² of 19 April 2004 on the taking charge of and identification of unaccompanied minor aliens by the Guardianship Service.
- Circular of 23 April 2004 on the “unaccompanied minor alien” identification form.
- Circular of 30 April 2004 on cooperation between the Immigration Department and local government departments on the residence of UMs.
- Circular of 15 September 2005 on the residence of unaccompanied minors. Steps are currently being undertaken to modify this Circular.
- Circular of 2 August 2007 on European unaccompanied minors in a vulnerable situation.
- Circular of 25 July 2008 modifying the Circular of 23 April 2004 on the “unaccompanied minor alien” identification form.
- Circular of 26 September 2008 on the introduction of multidisciplinary cooperation in the field of victims of human trafficking and/or certain other aggravated forms of trafficking in human beings.³

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.⁴

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)
- European Council Resolution of 26 June 1997 on unaccompanied minors from third countries

² A Circular includes all the rules that a public administration imposes on its civil servants and that have to be respected in individual cases. Some Circulars 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.

³ This Circular tries to raise awareness amongst front-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 was published in the Belgian Official Gazette of 31 October 2008.

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

- Dublin II Regulation (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 human trafficking 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 no. 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 Service⁵ and the practical guide⁶ by Charlotte van Zeebroeck on the administrative, judicial and social situation of unaccompanied minors, and the recent IOM report on the exchange of information and best practices on first reception, protection and treatment of unaccompanied minors⁷ 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 MINTEH Bureau was of prime importance, as were other departments like the Asylum Bureau, Border Inspectorate, Immigration Liaison Officers, and the Legal Department. Other essential sources of information were the *Guardianship Service* within the Federal Public Service (a.k.a. Ministry) of Justice for more details on the guardianship system; *Fedasil* for more information on the reception of unaccompanied minors; and 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 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 UMs, the different services are trying to adapt their systems and starting to collaborate more closely at the level of statistics.⁸

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

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

⁷ International Organisation 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.

⁸ e.g. internal meetings within the Immigration Department; meetings at the level of the National Commission for the Convention of the Rights of the Child; minors task force (The Office of the Minister of Migration and Asylum Policy).

- The **Guardianship Service** (GS) was able to provide statistics on the number of unaccompanied minors that was reported to them on the basis of UM identification forms. 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 back only to this date.
- The **Office of the Commissioner General for Refugees and Stateless Persons** (CGRS) was able to provide statistics on the number of positive and negative decisions in asylum cases. We were able to compare these figures with the numbers of asylum applications (provided by the Immigration Department). We have to bear in mind that an asylum application made in a certain year, is not always treated in the same year.
- The **Immigration Department, MINTEH Bureau** also has a wide range of statistics:
 - Statistics from the specific department within the Immigration Department that reports the presence of an unaccompanied minor in the territory. This provides some basic insight into the number of UMs intercepted by the police authorities as they report to Bureau C and the Out-of-Hours Bureau.
 - The MINTEH Bureau is also responsible for the specific procedure according to the Circular 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 extended according to this procedure are registered. We thus have to take into account that a UM can have several residence documents issued or extended in one and the same year. Also, the procedure is applicable to UMs who are new arrivals, as well as to those who have already passed another procedure(s), e.g. asylum.⁹
 - The Immigration Department also keeps records of persons (including minors) who have requested the application of art 9bis and 9ter of the Aliens Act, the so-called regularisation procedure. However, no distinction is made between accompanied and unaccompanied minors in these statistics.
 - The Asylum Bureau has statistics on UMs who apply for asylum at the border as well as within the territory.

⁹ Timmerman C., Vandenhole 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 reported to it. However, as the figures show, a lot of UMs are intercepted in the territory and thus never had the intention to report themselves to the authorities. This shows that probably a substantial number of UMs remain undetected and thus unprotected.¹⁰ The group of UMs is quite heterogeneous, so it is therefore difficult to have an exact image of “the UM”. There is great diversity when it comes to countries of origin, and this picture can change as 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 old or over (more than 60%).

The majority (60 to 70%) of UMs arriving in Belgium do not apply for asylum. In most cases they are intercepted by the Police as they are in an irregular residence situation. 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).

Between 30 and 40% of UMs apply 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, or nationality or because they belong to a specific social group (criteria of the Geneva Convention). Additionally it can be for reasons of national or international conflict and their fear of becoming a victim of random violence. In the Belgian statistics of the last few years we see that 5 countries make up around 50% of all asylum applications from UMs: Afghanistan, Guinea, DR Congo, Russia and Iraq. In 2007 almost 20% of UM asylum applications came from Afghanistan.

The rationale for seeking entry into Belgium will require further research. Therefore, we would like to highlight the overall profile of UMs in Belgium. Among the few relevant studies, we can refer to a Fedasil and Child Focus study of 2004 where the trajectory in Belgium of 683 asylum seekers was followed.¹¹ It showed that 85% arrived in Belgium with the help of traffickers and 25% of them used an alias.¹² Only 10% of the asylum seekers made their applications at the border. The majority were 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, Moldova, Russia, Albania, Serbia, Kosovo, etc.). The disappearances happened quite rapidly after their detection: 13% within 24 hours, and up to 75% within three months.

In another publication Margot Cloet¹³ divides the UMs present in Belgium into eight subgroups.

- (1) Unaccompanied minors that 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, for instance, 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, illegal labour, 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;

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

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

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

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

- (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 families;
- (6) A sixth group consists of minors in transit. They do not intend to stay in Belgium, but are on their way to another country, e.g. the United Kingdom, Scandinavia, and are intercepted along the way;
- (7) Some UMs are on their way to join their parents or 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 groups of people from the same community. Most of these youngsters belong to the Roma community 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 might 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 countries such as DR Congo, Guinea or Angola often already have a good education as they might have wealthy families and have 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 few or no expectations in their country of origin and have come to Europe to find a better future. They sometimes wander around 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 that 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 commit certain offences (begging, petty crime, etc.). This group also tends to disappear from the reception structures.
- As is reflected in the statistics, European minors, especially 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 the accession of Romania to the European Union in 2007, these UMs no longer fall under the definition of Unaccompanied Minor as given in the Guardianship Act.¹⁴
- Other UMs from countries where the overall security situation is bad. They come to Belgium to seek international protection (refugee or subsidiary protection). Afghanistan is at the top of the list of UM asylum applications. These are mainly young boys older than 16, who had been living in Afghanistan or the neighbouring countries and do not consider it safe to return to Afghanistan due to conflicts over property, political opposition, blood feuds, honour killings or because of involvement as a child soldier.¹⁵ Moreover, asylum seekers from DR Congo most often mention political reasons and war in the Eastern Congo as reasons for fleeing. In Guinea the group consists mostly of girls fleeing because of fear of forced marriages and genital mutilation.
- The majority of UMs arriving in Belgium are between 15 and 18 years old. In the case of really young children we can, for 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 in 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

¹⁴ See: 4.10 European UMs

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

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.¹⁶ The standard profile of these intercepted UM is that they are mainly males 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 the specific protection procedure for UMs is also prone to abuse. An internal study by the Immigration Department reveals that the rising influx of UMs in Belgium (mainly UMs who gain irregular access to the territory and then apply for the specific procedure for UMs) is in contrast to the decreasing influx of irregular entries (asylum seekers and intercepted illegally resident immigrants). We might have expected this number to decrease with the accession of the new member states to the European Union since a great number of UMs from these countries disappeared from the statistics. It has been suggested that the motivation for UMs to use this procedure is to bypass the other legal entry procedures and thus come to Belgium for studies, family reunification, adoption, guardianship or medical treatment.¹⁷ Another indication of improper use of the procedure is the fact that 17 year olds are over-represented 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.

¹⁶ 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.

¹⁷ 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 unaccompanied minors in Belgium involves several actors. The collaboration between these services is extremely important in order to find a durable solution in the best interests of the child. The guardian, as the UM's direct contact point, plays a pivotal role in this.

3.1.1 Immigration Department

The Immigration Department (a.k.a. Aliens Office) comes under the Home Affairs Federal Public Service and is responsible for managing the entry of foreign nationals into Belgian territory, their residence, settlement and (potential) removal from Belgian territory.

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

A) Interviews and Decisions Bureau of the Asylum Directorate

The Immigration Department is responsible for registering asylum applications and checking them according to the Dublin Convention. If a 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 a UM in the territory. If there is doubt about the person's 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 him/herself. 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) Minors Bureau of the Entry and Residence Directorate (MINTEH)¹⁸

The Minors Bureau has the task of finding a 'durable solution' in the best interests of the child and in due consideration of his/her fundamental rights, for all UMs on 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 of 15 September 2005.¹⁹ 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 residence 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 searching for the family in cooperation with the Ministry of Foreign Affairs, with IOM for the voluntary return, and with the police services and Child Focus in the fight against economic and sexual exploitation of UMs; 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 reception conditions.

Within this Bureau there is also the Victims of Trafficking in Human Beings (THB) Unit, which is 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 is sufficient evidence to deliver the status of victim of THB.²⁰ The MINTEH Bureau monitors the residence situation while the procedure is ongoing and the judicial file is followed up by the Public Prosecutor. The MINTEH Bureau 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 of 15 September 2005 at the explicit and written request of the guardian.

¹⁸ See also 4.2.3 Circular of 15 September 2005.

¹⁹ Circular of 15 September 2005 on the residence of unaccompanied minors. Belgian Official Gazette 07/10/2005.

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

C) Border Inspectorate²¹

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

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

If the UM has valid entry documents, access to the territory will be granted if it is certain that the person will be met: the UM will not be handed over to this person until documents are provided to prove the family link. In practice, it is not always verified thoroughly.²² The objective of these measures is to avoid traffic in human beings and to have the necessary guarantees that the UM can legally enter the territory, or transit it.

D) Bureau C

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

E) Out-of-hours Bureau (Bureau P)

This Bureau P fulfils the tasks of the Immigration Department when the offices are closed. It will often be the first to fill out the identification form for UMs.

3.1.2 Guardianship Service

The Guardianship Service (GS) comes under the Justice Federal Public Service (FPS a.k.a. Ministry) and has the mission to ensure judicial protection of all UMs - asylum seekers 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 2004.²³ The policy-makers deliberately chose to create this service within the Justice FPS so that it can have a more independent position vis-à-vis the authorities with jurisdiction on migration and asylum affairs. More information on this service can be found in: “3.3 Guardianship.”

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

The CGRS²⁴ is the independent administrative body with the competence to examine all asylum cases, be they for UMs or adults. However, special attention will be given to UMs during the procedure at the CGRS (specialist case workers, assistance of a guardian and lawyer; profile, age and maturity 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 Directive²⁵ and can accordingly grant or refuse the status. An appeal against the CGRS’s decisions can be lodged with the Aliens Litigation Council; and eventually with the Council of State. More information on the asylum procedure can be found in: “4.8 Conditions and provisions for UMs applying for asylum.”

²¹ 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.

²² 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.

²³ 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.

²⁴ www.cgvs.be

²⁵ Directive 2004/83/EC

3.1.4 Fedasil

Fedasil²⁶ is the Federal Agency for the Reception of Asylum-seekers. This Agency, which comes under the Social Integration Programmatic Public Service (PPS), manages and coordinates a network of asylum reception centres, including the Observation and Orientation Centres.²⁷ Fedasil is also the coordinator of the Assisted Voluntary Return programme, in cooperation with IOM.

3.1.5 Federal Police

The Federal Judicial Police²⁸ focuses on supra-local and organised crime which has a destabilising 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 reducing the growth of the likelihood of criminal offences being committed; to conduct (proactive and reactive) investigations or preliminary investigations and to fight against criminal organisations. At the airport, amongst other things, the Federal Judicial Police carries out active controls in the terminals. This service has quite broad expertise in the area of unaccompanied minors, given the (detected) scope of the problem at Brussels Airport.

Within this framework, the main mission of the Air Police border controls division²⁹ 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 searches for false and falsified travel documents.

It is split into 4 sections:

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

3.1.6 Youth Welfare Services

These centres come under the regional authorities (Communities), as they are responsible for the reception of non-asylum-seeking UMs from the second phase³⁰ 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 cooperate to find the UMs’ families (family tracing). They verify if the information provided by MINTEH is correct; contact the members of the family once they have been found; and ensure safe reception conditions if the UMs return voluntarily, e.g. the UM will be met by a family member and a member of the embassy.

3.1.8 Juvenile court

Two institutions are responsible for youth care. On the one hand, the Comité Bijzondere Jeugdzorg (CBJ) (NL) or Service d’Assistance des Jeunes (SAJ) (FR) is responsible for minors in ‘problematic educational situations’; it can only intervene when all the parties involved agree with the intervention. On the other hand, the juvenile court is responsible for minors who commit a crime, and for those minors in a ‘problematic educational situation’ for whom the parties involved do not 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 a youth care institution (foster care, residential institution, etc.). The juvenile court is only involved for those unaccompanied minors who commit a crime, and sometimes for victims of trafficking.

²⁶ www.Fedasil.be

²⁷ see 4.1.1 observation and orientation phase

²⁸ www.polfed-fedpol.be/org/org_dgj_en.php

²⁹ www.polfed-fedpol.be/org/org_dga_lpa_en.php

³⁰ 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,³¹ 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 the 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, provides follow-up of the cases that are entrusted to the foundation, and participates in the counselling of victims.

It is important to mention that in most cases of so-called ‘worrying’ disappearance, this is reported immediately to Child Focus and a maximum of information is provided. In this respect, it should be mentioned that the MINTEH Bureau 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 Organisation for Migration³² 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 return 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 for minors in exile’ (kinderen op de dool/mineurs en exil)³³ with the aim of exchanging information on the intervention of each of the non-profit organisations, improving the treatment of UMs and proposing 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 holds regular meetings, issues a monthly newsletter, organises conferences and seminars and training sessions, does lobbying, has a pool of specialised lawyers, publishes on the subject, 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 line with the recommendations of the Committee of the Rights of the Child, a body set up by the United Nations in the context of the Convention on the Rights of the Child. The Commission started its activities in 2007. Several working groups have been set up, all involved with the rights of the child. Recently they started coordination meetings to map and improve the available statistics on UMs in Belgium.

³¹ www.childfocus.be/en/about_1.php

³² www.belgium.iom.int/Index.asp?Static_ID=1

³³ For an overview of these organisations we refer to the platform’s website: www.mena.be/mineurs_en_exil_03.php (in French) or www.nbm.be/kinderen_op_de_dool_03.php (in Dutch)

3.2 Entry procedures³⁴

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 Affairs³⁵ 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 the 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 fulfil 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 take place only at the external borders of the Schengen area. For Belgium, this means that six seaports and airports as well as the Eurostar station in Brussels qualify as external borders. The Border Inspectorate of the Immigration Department, in close cooperation with the Federal Police, organises and sets up the border controls.

A distinction is made between extra-Schengen and intra-Schengen travel. In case of an intra-Schengen journey there is no real border control. The only control travellers have to pass is customs control where luggage can be checked for the possible undeclared or illegal import of goods. Staff from the Phenomena section of the Federal Police circulate 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 random checks. For extra-Schengen flights, identity documents will be checked at the border control post. Additional controls can be done at the gate.

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

UMs who fulfil the entry conditions will be allowed access to the territory on condition that the person waiting to meet them can prove, by means of documents, the family ties with the UM. No immediate access can be granted to UMs who are not being met. A more thorough investigation will then be organised regarding the origin (airport of departure) and the purpose of the UM's journey. As already mentioned, in practice this situation is not always thoroughly investigated.

If the UM does not fulfil the entry conditions (e.g. does not have valid travel documents), additional questions on the UM's journey can be asked. In principle, a person who does not fulfil the entry conditions can be returned. However, UMs benefit from specific protection because of their vulnerable situation, within the framework of the

³⁴Child 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.

³⁵Minister van Binnenlandse Zaken/ Ministre de l'Intérieur

Guardianship Act. These UMs will have extraterritorial status and will be placed in an Observation and Orientation Centre³⁶ for 15 days (extended for 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 Convention³⁷ 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 above). 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 for carrying out 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,³⁸ 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 an Observation and Orientation Centre (OOC) within 24 hours. If 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 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 apply for asylum at the border. More information on the asylum procedure will be given in: "4.8 Conditions and provisions for UMs applying for asylum."

Interception within the territory

If UMs are intercepted within the territory, they are handed over to a local police unit, which must handle all the administrative and legal procedures due when a person without legal documents to stay in Belgian territory and/or to travel to the UK for instance, is intercepted in Belgian territory. This involves identifying the person (name, age, nationality); taking fingerprints and 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 traces of (networks of) human traffickers and smugglers. After the identification process, the Belgian Immigration Department is contacted. The MINTEH Bureau 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 travelling alone

During the last few years the Federal Police at Brussels Airport have noticed a rising number of so-called minors travelling alone. This group can include minors coming back from a holiday or family visit, and travelling alone or accompanied by airport personnel; but it also includes unaccompanied migrants as mentioned in the definition of the Guardianship Act. Against this background, a study coordinated by Child Focus³⁹ 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 a UM has parental authority or not, which makes it very difficult to examine the relationship between the minor and the adult. Another conclusion was that there was insufficient awareness amongst airport personnel. In January 2009 the Minister of Asylum and Migration Policies decided 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 UMs in general.⁴⁰

³⁶ see 4.3.1 Observation and Orientation phase

³⁷ Convention on International Civil Aviation, Chicago, 7 December 1944. This Convention states that the costs of removing a person who has not entered the national territory can be charged to the airline company.

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

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

⁴⁰ 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 a UM in Belgian territory or arriving at the border is required to inform the Guardianship Service (GS). This should be done by filling out a specific identification form for the UM. From that moment onwards the Guardianship Service, together with the guardian it has appointed, will play an important role in assisting the UM.

Before the Guardianship Law came into force, the issue of unaccompanied minors was not addressed within Belgian legislation. Thus, no specific law protected UMs. Like other European countries, Belgium was faced with a rising number of UMs arriving in 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 the right time. The case related to a five-year-old Congolese girl who wanted to rejoin her mother in Canada. When she arrived 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 convicted of a breach of Arts 3, 5 and 8 of the European Convention on Human Rights.⁴¹

3.3.1 Responsibilities of the Guardianship Service⁴²

The Guardianship Service comes under the FPS Justice and not under the FPS Home Affairs in order to guarantee a certain independence regarding questions of residence in 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 responsibilities include:

- taking charge of the UMs: the Guardianship Service will take charge of UMs 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 authorities dealing with asylum, migration, reception and housing, as well as with authorities in the UM’s country of origin;
- supervision of the search for a ‘durable solution’ for the UM;
- coordination of the actual activities of the guardians, their supervision and training, etc.
- consultation of other stakeholders in the field.

3.3.2 Responsibilities of the guardian

As mentioned, the Guardianship Service plays an important role in the protection of the UM in Belgian territory. The most frequent duties of the guardian include:⁴³

- ensuring that all decisions taken are in the best interests of the child
- ensuring that a separated child is offered suitable care, accommodation, education and health care provisions;
- ensuring that the child has suitable legal representation to deal with his/her immigration status or asylum claim, or any other jurisdictional or administrative procedure;
- consulting and advising the child;
- appointing a lawyer for the child;
- contributing to and making proposals for a durable solution in the child’s best interests (voluntary return/local integration/resettlement);
- assisting the minor to integrate into the new country and environment;

⁴¹ 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).

⁴² www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/The+European+Convention+on+Human+Rights+and+its+Protocols/

⁴³ Federale Overheidsdienst Justitie, Dienst Voogdij. Vademecum voor voogden van niet-begeleide minderjarige vreemdelingen. Eerste uitgave – bijgewerkt op 31 augustus 2007.

⁴⁴ International Organisation 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.

- lobbying on the child's behalf where necessary;
- exploring the possibility of family tracing and reunification with the child;
- administering 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 procedures. 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 towards the minor, terminate the guardianship or withdraw approval. The guardian must develop a relationship of trust with the UM, which implies some kind of professional secrecy.⁴⁴ He cannot repeat anything without the prior consent of the UM.

Two types of guardianship exist in parallel in Belgium: the "professionalised system" and the "benevolent or voluntary system".⁴⁵ In the professionalised system there is the so-called 'employee-guardian' who is an employee of an NGO in the social and legal sector. In the voluntary system there are 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 volunteers. In 2008 there were 416 registered guardians of which 233 were on active duty.⁴⁶ The majority of guardians are found in the voluntary system.

Each guardian receives a yearly lump sum payment of 500 euros for one guardianship, as well as a lump sum expenses payment of 85 euro and reimbursement of travel expenses. The guardian often has the fiscal and social status of self-employed. In the 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 or 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 continuing training course for guardians at least once a year. Each guardian also receives a basic training course before starting his/her first assignment. After that, each year the GS provides more specialised training courses. In order to support guardians in this complex matter, the GS also provides them with a handbook⁴⁷ 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 for instance when the UM reaches the age of 18, or when a durable solution in the best interests of the child has been found.

3.3.3 Taking charge of the UM

The Circular of 25 July 2008 modifying the Circular of 23 April 2004 on the "unaccompanied minor aliens" identification form obliges the police forces and Immigration Department to complete an *identification form*⁴⁸ 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 (MINTEH Bureau) 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)
- surname and first name

⁴⁴ 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.

⁴⁵ Professionalised guardians work for Caritas and the Red Cross for example and are also called employee guardians (werknemersvoogd/ tuteur salarié). The other statuses are Independent guardians (zelfstandigen); and Voluntary guardians (vrijwillige voogden) who will receive a volunteers' fee.

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

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

⁴⁸ An example of the identification form for UMs can be found in the appendices of this study.

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

Any other person or service (e.g. school principal, youth assistance organisation, social welfare centre, social service, etc.) that comes in contact with a UM who is a third country national can (but this is not mandatory) also direct this UM to the Guardianship Service in order to take charge of this person.

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

In the 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 meets the criteria provided by the law to be considered a UM (under 18 years of age; not accompanied by a person with parental guardianship; non-EEA citizen; having applied for asylum or not fulfilling the conditions for residence in the territory).

The UM identification form that was filled out will be used as a starting point for identifying the UM. The GS will try to get confirmation of the name, nationality, family ties, etc. of this person. It will be based on the person's declarations; the identity/travel/other documents in his possession; information obtained via consulates or embassies; or 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 at the request of the Immigration Department, the CGRS or Guardianship Service. The GS has a collaboration agreement with certain hospitals.⁴⁹ The costs are charged to the authority requesting the test⁵⁰. A so-called "triple test" is done where the UM is referred to a forensic odontologist. The age assessment is based on the clinical impression of an experienced dentist, a radiological examination of the dentition, and the hand and 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 set out in the Royal Decree, but is not in place yet, due to problems of reliability. According to the Law on Patient Rights the minor must give his/her consent to the medical examination.⁵¹

Belgium opted for a combination of these three tests, since there is some criticism regarding the validity and reliability of all of them. The average age of the results of these three tests will be approximate and will always indicate a "range" with a margin of error. In case of any doubt the lowest attested age will be taken into consideration, for example if the medical test concludes that the UM is less than 18 years old or is between 17.5 and 18.5 years old he is considered as a minor and will be assigned a guardian. If the medical test concludes that the UM is over 18 years old, he has no legal right to a guardian and he will be considered an adult.

⁴⁹ VUB (Jette), KU (Leuven), UZ (Gent)

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

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

In some cases the GS will also have to establish the authenticity of family ties. For instance, if a minor is accompanied by an uncle, aunt, grandparent, 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 a 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 a UM. This can be done in cases of extreme urgency and the reasons for this must be properly stated.⁵² This will also be done for example if the procedure for 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 a UM or an adult) the immigration and asylum services must respect this. This decision is an administrative decision which can only be appealed against to the Council of State. However, the Guardianship Service can take new evidence into consideration and issue a new decision. This new evidence can be put forward by the UM or his/her guardian, but also by the Immigration Department (information that raises a doubt about the age).

It should also be pointed out that there is also some controversy on the use of the medical test to determine age.⁵³ Some NGOs are opposed to it as there is scientific evidence⁵⁴ 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, ethnic or geographical descent, illnesses, etc. can have an influence on the development of the child. It has been said that the Guardianship Services continues this medical test for lack of an alternative. Additional research is being undertaken by scientists and medical researchers.

Age assessment tests by the Guardianship Service⁵⁵

	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 a guardian*

Once the Guardianship Service has decided that a person can be considered a UM, it will contact one of the guardians on its list, who can accept or refuse 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 any other body that is involved.

The guardian will meet the UM as soon as possible and discuss with him/her his/her 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 trust of the UM, search for the parents or other family members,

⁵² Guardianship Act article 6§3 and article 6§4

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

⁵⁴ See: advice No. 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.ccne-ethique.fr

See also: the report of the Académie Nationale Française de Médecine regarding the reliability of medical investigations for age assessments and the possibility of improving the situation of isolated UMs, 16 January 2007, www.mena.be
See also: J.P.Jacques, “Quand la science se refroidit, le droit éternue!” et O.Diamant-Berger, “Détermination médico-légale de l’âge d’un adolescent”; J.D.J., November 2003, no. 229.

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

analyse the situation in the country of origin and make an assessment of the different possibilities: staying in Belgium or returning 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 the Circular of 15 September 2005; or opt for irregular residence if all other procedures have been exhausted). More information on these options will be given in “4.2 Residence possibilities for 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 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 autonomous reception

4.1.1 Observation and orientation phase⁵⁶

Whenever the Guardianship Service receives notification of the presence of a UM at the border or within the territory, it contacts Fedasil in order to find a place to accommodate the UM concerned. In the first phase the UM will 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)⁵⁷
- Neder-over-Heembeek (commonly known as NOH - French speaking - 50 places)⁵⁸

These centres are open to all UMs regardless of their administrative status (e.g. asylum seekers, undocumented children, European UMs). Priority is given to the best interests⁵⁹ of the UM and not to his/her administrative status. In principle the UM will stay here for 15 days (renewable once), during which period the GS will conduct the registration and identification of the minor and assign a guardian. In the OOC each UM is assigned a personal coach who will monitor the UM during his stay in the centre. Through conversations, activities and his daily functioning the coach can get a view on the UM and his/her 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 and psycho-social evaluation.

The OOCs will not only take in 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 to the territory. In practice they will receive equal treatment in the OOC, but their administrative status can differ. UMs arriving at the border without valid entry documents will have *extraterritorial status*. If there is no doubt about the age of the UM, he/she will be transferred to the OOC within 24 hours. If there is a doubt about the age of the UM the GS must undertake a medical test to determine age within three days. During these three days the person will stay in a detention centre near the airport. Once minority has been established by the GS the UM will be transferred to the OOC within 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 (extended by 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 into 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 made within these 15 days the UM will be allowed into the territory. In that case the OOC will no longer be an extraterritorial place, but a place in the territory. The UM will be able to stay in the OOC for another 15 days.

⁵⁶ 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 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.

⁵⁷ www.Fedasil.be/Steenokkerzeel/home

⁵⁸ www.Fedasil.be/Neder-over-Heembeek/home

⁵⁹ this is to comply with 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 better care of their specific needs⁶⁰ (e.g. pregnant UMs, young children, children with psychological problems, potential victims of human trafficking, etc.).

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

4.1.2 Transitional phase

In this second phase, a distinction is made between UMs who are applying for asylum and those who are not. This fact will have a consequence on the reception facility to which 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 when a 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 a UM who has applied for asylum comes after 15 days. A UM who does not apply for asylum or needs more specific help will be transferred after 1 month maximum as the search for accommodation outside of the Fedasil network or adapted accommodation might take more time.⁶¹

4.1.2.1 When UMs seek asylum

If a UM applies for asylum, the responsibility for 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.⁶² Reception facilities include:

- federal reception centres (8)
- centres organised by the Red Cross (3)
- Local Reception Initiatives which come under the Public Social Welfare Centre (14)
- reception facilities run by an NGO (Vluchtelingenwerk, Ciré)

The Fedasil centres have a special area for 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 a UM can also be transferred to a guest family or to distant relatives in Belgium.

UMs stay about 4 months, up to a maximum of 1 year, in the collective reception centre; however, in practice this maximum period is often not adhered to. They can stay in the reception facility either the time needed to be oriented to a Local Reception Initiative (known as the third phase) or 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.⁶³ During this phase the UM will, in collaboration with his/her guardian, have to take steps regarding his/her 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 autonomous and responsible people (autonomy, responsibility and sense of civic awareness). As in the first reception phase,

⁶⁰ Kinderrechtencommissariaat. Heen en retour. Kinderrechten op de vlucht. September 2007, p.56.

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

⁶² 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.

⁶³ See: 4.2.2 When a UM is a victim of trafficking

material assistance is provided. In addition, minors are registered at school (as there is compulsory school attendance up till the age of 18).⁶⁴ They are prepared to live autonomously under supervision.

Like 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 his/her (extended) family. However, in this case, checks will be carried out 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.⁶⁵

If the UM’s asylum application results in a negative decision, in principle Fedasil will no longer be responsible for providing support to the UM; instead 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 for residence in the territory under the Circular of 15 September 2005 preferably before reaching the age of 18.⁶⁶ If there is a positive decision, the UM will no longer qualify as a 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 desired with the help of the Public Social Welfare Centre. In practice the UM can stay in the reception centre until he/she reaches the age of 18.

4.1.2.2 When UMs do not lodge an asylum application

The reception of UMs who have not lodged an asylum application or whose application has been rejected falls under the authority of the Communities, through their respective Youth Welfare Services (YWS).⁶⁷ 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 the YWS’ responsibility. However, a lot of these YWS facilities were created for ‘minors’ in general and not specifically for UMs. Places are thus often hard to find and the Flemish Community will not automatically consider all UMs 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 need “other assistance”. However, more specialised initiatives for UMs exist: e.g. Minor Ndako, Juna and Esperanto which can take care of victims of human trafficking. UMs might also stay with a foster family; live autonomously under supervision; or with the help of the Public Social Welfare Centre.

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

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 the goodwill of the partners. This framework is currently being discussed between the Federal, Flemish and French Community governments. According to a Royal Decree⁶⁹ passed in 2007 Fedasil was given responsibility for the reception of all UMs, including those who have not applied for asylum - in this latter case only if the Flemish and French Communities lack sufficient reception places. In practice, the Communities receive hardly any UMs entering the second phase. When places are available, the French community receives only the most vulnerable UMs (e.g. the very young, victims of human trafficking) regardless of their status, while the Flemish Community also receives non-asylum seeker minors. Mostly due to a lack of places, UMs have to stay in the first assigned reception centre for

⁶⁴ International Organisation 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.

⁶⁵ 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.

⁶⁶ 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.

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

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

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

asylum seekers for extended periods of time. It also means that some UMs who have specific needs are lodged in 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 have lived on the streets for a long time, drug addicts, those with 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.⁷⁰ 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 emergency relief for instance.

4.1.3 *Stable housing or autonomous reception*⁷¹

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 realise their ‘life project’ and are prepared to live autonomously. UMs will receive more stable housing or autonomous reception that is best adapted to their situation. In the medium or long term, the aim is to set up a system where each UM, regardless of his/her status, will have accommodation provided by the most appropriate body. 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;
- If a UM has applied for asylum and is staying in a collective reception facility, after four months he/she can apply for a more individual reception facility. This will then be in a Local Reception Initiative – a smaller facility with individual housing units - where there is a possibility of living autonomously but with follow-up (organised by Fedasil). In practice, this will often depend on the availability of these places.
- Settle alone and live autonomously. This will be organised with the assistance of the UM’s guardian, the reception centre’s education team, the Social Welfare Services or the Youth Services. The process of living autonomously can be supervised by a service recognised by the Flemish or French Community.

If UMs cannot follow this classic three-phase path, the following forms of reception exist:⁷²

- 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:⁷³ 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 social services. This kind of reception is given as a 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;⁷⁴
- Beneficiary of a state benefit. In certain cases UMs will be able to benefit from the minimum income (equal to the state benefit for people with no income) provided by the Public Social Welfare Centre (OCMW/CPAS);⁷⁵
- Rental of personal housing: some UMs live alone. The rental contract will then be signed by the guardian. UMs can ask for support from several non-profit organisations that can help them to get installed (gifts, interest-free loans, rental guarantee, furniture).⁷⁶

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

⁷¹ International Organisation 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.

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

⁷³ research by Child Focus proved that approximately 35% of UMs stay at a private address

⁷⁴ 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)

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

⁷⁶ 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

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.

4.1.4 Statistical information

A study⁷⁷ published in 2005 illustrates the trajectory of UMs seeking 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) were 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 were still in the reception centre; 35% had moved to a private address; 10% were staying at an unknown address; 10% were living autonomously under supervision; 5% with a foster family; 1 UM was in a specialised reception centre for victims of human trafficking.
- In Group I: 75% were still at a private address; 2 UMs had gone to a reception facility; 3 UMs were at an unknown address and 4 minors were living 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 familiar character of it. On the other hand we have to bear in mind that there is little (quality) control by the authorities of 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 of reception*⁷⁸

In Belgium, the funds 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 the 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 funds, the expenses are classified as follows: Human resources, Operating costs, Investment, Subsidies to partners (Red Cross, specific agreements, 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 agreements exist: one with the non-profit association Synergie 14 and another with Mentor Escale. For the former, Fedasil provides funds aimed 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 approximately € 2 million in 2008 for Local Reception Initiatives and approximately € 1 million for the Red Cross Centres. For UMs hosted in federal reception centres, the expenses are all-inclusive. We have to analyse the expenses for minors exclusively in proportion to the number of places occupied by UMs. The governmental budget is allocated to the Justice FPS and is used to pay the guardians who receive basic allowances. There are agreements between the Justice FPS and the non-profit organisations involved in the reception of UMs aimed at allowing their staff members to be recognised as guardians.

In addition to the agreements established in Belgium between Fedasil, the Social Public Welfare Services and the Red Cross in terms of the 'general' reception of UMs, Fedasil has established agreements with organisations delivering specialised follow-up for UMs. The aim is to make it possible to follow up 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 an agreement with the non-profit association Mentor-Escale, which is fully involved in providing assistance for the process of encouraging the UMs' autonomy. Their activities are in line with the follow-

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

⁷⁸ This part integrally comes from: International Organisation 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.

up model that the UM has experienced with Fedasil. Mental Escalade receives subsidies allowing them to assist 80 UMs. There is also another agreement signed with the non-profit organisation Synergie 14. The specific objective is to organise a different reception framework, in a smaller and more friendly context, mainly meant for those who did not adapt to the traditional reception system. Synergie 14 collaborates on a daily basis with the collective reception structures of the network. They can host 11 UMs, with 4 of their places reserved for emergencies. As a general rule when it comes to federal public expenses, the Federal Administration, more specifically the Finance Inspection Service, ensures proper use and imposes standards for the management of the funds.

4.2 Residence possibilities for the UM

Unaccompanied minors have several residence possibilities. As already mentioned, if they fulfil the entry conditions (e.g. they have valid travel documents), they will be allowed to stay for up to three months. These UMs do not fall under the definition of a 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 has already been 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 in 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 applies for asylum;
- 2) The UM is considered a victim of human trafficking;
- 3) The guardian applies for a residence permit on the basis of the specific procedure for unaccompanied minors described in the Circular of 15 September 2005;
- 4) The UM finds him/herself in an illegal residence situation;
- 5) The UM applies for regularisation according to art 9 bis or 9 ter 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 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 ongoing. If asylum seekers receive a positive decision, they will be recognised as a refugee or receive the status of subsidiary protection 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 from 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 UM. So, the UMs still have the possibility to apply for a specific protection status according to the Circular of 15 September 2005 with the MINTEH Bureau of the Immigration Department. The details on how UMs can make an asylum application will be further explained in “4.8 Conditions and Provisions for UMs applying for asylum”.

4.2.2 If a UM is a victim of trafficking⁷⁹

When a UM is a victim of human trafficking, the Belgian law⁸⁰ of 15 September 2006 that amends the Aliens Act (art 61/2 to 61/5) and articles 110 bis and 110 ter 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 to minors who are victims.

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

⁷⁹ 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 Organisation 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.

⁸⁰ Belgian Official Gazette 6 October 2006, applicable since 1 June 2007

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

- breaking off contact with the suspected offenders;
- obligatory guidance from specialised and approved reception centres⁸¹ 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 front-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 proceeds with the legal proceedings against the offenders. On the basis of the status of the procedure the Immigration Department, MINTEH Bureau, will follow up the administrative procedure and issue residence documents, as relevant.⁸²

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

- 1) The victim receives a type A immatriculation certificate 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. An extension for three months is possible.
- 2) The victim can receive a type A foreigner card valid for 6 months on condition that: the legal procedure is still pending; the person is cooperating with the legal procedure; the person has broken off all contacts with the suspected offenders; and the person cannot be considered a potential threat to public order or to national security.
- 3) The competent minister can grant the victim a type B foreigner card for an unlimited duration under the following conditions: the complaints or 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 has either submitted an identity document or legitimately proved the impossibility of obtaining this document in Belgium.

If the procedure results in a negative decision, the UM can still make an application according to the procedure described in the Circular 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 emergency cases, UMs can be directly transferred to a specialised reception facility that is better suited to their specific needs. The first and second reception phases are thus skipped. Three reception centres are specialised in the reception of UM victims of human trafficking: Minor Ndako and Juna (for the Flemish Community) and Esperanto (for the French Community).

4.2.3 Circular of 15 September 2005

This Circular sets out a specific procedure for UMs to apply for authorisation to reside in Belgian territory until they reach the age of 18. The Ministerial Circular was published in the Official Gazette and thus has a more or less legally binding character. This Circular is only applicable to those minors who do not claim asylum (or whose asylum procedure has ended with a negative decision from the asylum authorities), and who have not claimed residence status under another procedure (victims of trafficking, regularisation according to article 9 bis and 9 ter). Thus, it applies to those UMs who are residing illegally in 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 Minors Bureau of the Entry and Residence Directorate (also known as the Minors Bureau, or MINTEH Bureau) of the Immigration Department. So, it is stated that the Bureau is not responsible for UMs from the European Economic Area and UMs who have claimed asylum.

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

⁸² This procedure differs from those for adults, in that there is no 45-day reflection period and the UM immediately receives a residence permit valid for three months.

This procedure aims to find a “durable solution” for all UMs who initiate it. The MINTEH Bureau is competent to decide on what is the durable solution for each UM in the territory and should ensure 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 (art 3§2 paragraph 4), they have to ensure that the competent authorities seek a durable solution for the UMs as soon as possible. In practice they have to make a proposal about 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 to one or more interviews during which the UM’s situation in Belgium and in the country of origin will be looked at. The different possibilities for the durable solution will be investigated by the Bureau and the guardian on a regular basis. The Bureau will also be responsible for issuing temporary or permanent residence documents.

This durable solution may be in Belgium, in the country of origin or in any other country where the UM has a right of residence. The Circular 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 his/her 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 them. It should be decided on a case by case basis, after a thorough analysis of the situation and after weighing up the advantages and disadvantages of the different possible solutions.⁸³

As a decision on what is the durable solution in the best interests of the child will be taken on the basis of as much objective information regarding the UM as possible, the guardian has an important duty. He has to undertake all the necessary measures to track down the UM’s family in Belgium or abroad. He can, for example, contact the Tracing Service of the Belgian Red Cross;⁸⁴ the MINTEH Bureau can also ask for support from the Foreign Affairs FPS 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 has undertaken to try to obtain identification documents. He should also inform the Bureau of any changes in the UM’s situation that could have an effect on the ‘durable solution’. This should be done in writing. Based on some case law by the ALC, the MINTEH Bureau 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 make 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. For instance, if tracking 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 explained. An appeal can be made against the Bureau’s decision to 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 country of origin, a removal order (a.k.a. annex 38) will be delivered to the guardian;⁸⁵
- 2) If the Bureau decides that the ‘durable solution’ for the UM has not been found yet:
 - it can extend 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 does not start another procedure, it can be extended once;
 - If the Bureau decides that the ‘durable solution’ has not been found after six months and on presentation of identity documents,⁸⁶ a certificate of registration as a foreigner (a.k.a. BIVR/CIRE)

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

⁸⁴ <http://tracing.rodekruis.be/>

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

⁸⁶ If 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>

in 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 extended if certain criteria are met:

- Sufficient knowledge of one of 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, a residence permit for unlimited duration in the form of an electronic identity card B can be issued.

These residence documents will not be issued and extended automatically; that will depend on the Bureau's assessment on a case by case basis and after analysis of all elements present in the UM's file. There will be an appointment with the guardian and the minor and the durable solution will be evaluated each time the residence documents come up for extension. Sometimes the Bureau can impose certain conditions: it can for example decide to extend the residence documents for only 6 months instead of 1 year when, for instance, the UM skips classes on a regular basis. If 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 set out in the Guardianship Law (e.g. a guardian) until the age of 18 is reached.⁸⁷

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 old or younger at the time of arrival. So, in most cases the UM will only receive temporary residence status. This procedure will end once the UM reaches the age of 18: he/she will no longer have the assistance of a guardian and it will be another Bureau in the Immigration Department that takes over the file.

When a durable solution has been found, the Bureau will, from June 2009 onwards, systematically invite the UM to explain to him/her any decision that has been made regarding his/her residence status. If the guardian does not agree with the 'durable solution' proposed by the Immigration Department, because for instance return is envisaged but no measures for reception or escort have been taken, the guardian can lodge an appeal with the Aliens Litigation Council.

Amendments⁸⁸ to the Circular are currently being discussed (2009) and a decision has to be made as to 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, etc.). 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 with a negative decision, there is still the possibility to apply for the procedure under the Circular of 15 September 2005. However, as mentioned, it is the MINTEH Bureau that is responsible for issuing residence documents. Certain conditions can be imposed and, if these are not met, no residence document will be issued and the UM will find himself in an irregular residence situation. However, as long as the UM has not reached the age of 18, in principle, he cannot be removed (see return section) but in practice this situation will create additional uncertainty for the UM.

⁸⁷ see: "4.3 Turning 18"

⁸⁸ Platform "Kinderen op de vlucht", Nieuwbrieff 24, November-December 2008.

4.2.5 Regularisation⁸⁹

If UMs do not satisfy the conditions for residence described in the Circular of 15 September 2005, they can make an application based on article 9 bis or 9 ter 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 enclosed with the application. The application should be made to the mayor of the UM's place of residence and afterwards it will be transferred to the Immigration Department, Humanitarian Regularisations Bureau.

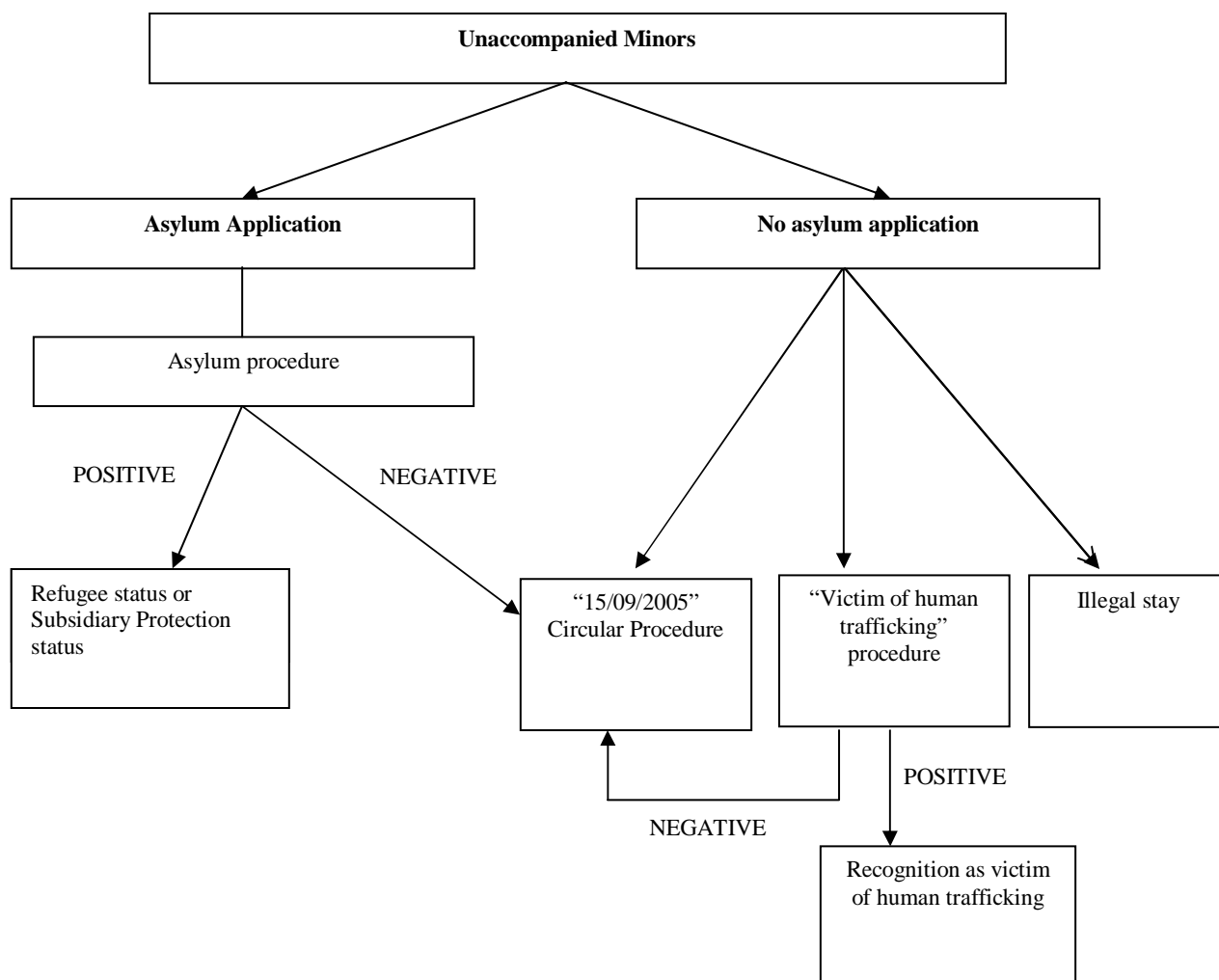
For UMs, the decision will be taken in consultation with the MINTEH Bureau. If there is a positive decision, the UMs will receive a residence permit of limited duration in the form of a type A foreigner card. It can be extended under certain conditions: e.g. finding employment, continuation of studies, willingness to work. In certain cases the Immigration Department can directly issue a residence permit of unlimited duration in the form of a type B foreigner card. Proof of identity will also have to be shown. When the Immigration Department studies 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, an appeal can be made to the Aliens Litigation Council. It should always be taken into account that this is by no way a right, but merely a favour.

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

⁸⁹ 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 ⁹⁰



⁹⁰Derluyn, 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. If 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 they 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.⁹¹

In practice, the transition between the status of unaccompanied minor and adulthood often does not become effective immediately on the 18th birthday. The MINTEH Bureau will inform UMs in writing of the different procedures that can be started when they turn 18 and will usually extend the validity of residence permits: extension for 6 to 12 months, making it conditional on looking for a job, providing identification documents, etc. (see Procedure according to Circular of 15 September 2005). If the residence permit is extended three times, the person will be entitled to a residence permit of an unlimited duration.

Once UMs turn 18, their files come under the responsibility of the ‘long-term residence’ office of the Immigration Department, which will then decide on the regularisation of the UMs and will follow up the conditions set by the MINTEH Bureau. 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).⁹²

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 leave the accommodation facility where he 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, 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 from 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, UMs will only be entitled to urgent medical assistance.⁹³
5. Other difficulties will arise regarding enrolment in school, university or higher education, access to work or internships, and affiliation to a health insurance provider.

⁹¹ 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

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

⁹³ 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 the decision to either grant 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 came into force on 7 May 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 about the age of the UM, he/she will be transferred to the OOC within 24 hours.⁹⁴

It has to be underlined that there is still one possibility where a UM can be held in a detention centre: if a UM arrives at the border, and there is a doubt about his/her age. He/She can be held for three working days (this can exceptionally be extended for another three working days) in a detention centre and will be subject to a test aimed at age determination. In practice, taking into account weekends and holidays, this can result in detention for up to 11 calendar days.⁹⁵ So, in theory, this person in detention has still not been considered as an unaccompanied minor. Once minority has been established, the UM will be transferred to an OOC within 24 hours of the notification of the age determination. If the UM is considered an adult, the Immigration Department will decide whether to grant 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 a 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/her immigration status or asylum claim, or any other jurisdictional or administrative procedure. The Guardianship Act stipulates provisions that the guardian should immediately appoint a lawyer.⁹⁶ The guardian has to ask for a lawyer to be appointed, if necessary via the legal aid office in the district where the minor is residing. The UM is entitled to free legal aid.⁹⁷ Many Bar associations (Brussels, Charleroi, Antwerp) have set up a specific group of lawyers who have voluntarily agreed to deal with the files of UMs, whether seeking asylum or not.⁹⁸

Generally, and independent of the asylum procedure, the Crown Prosecutor can bring a case to the Youth Tribunal 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 for minors in danger. It is up to the judge to decide whether temporary measures should be taken and whether the legal conditions specified under art 36/2 are met.⁹⁹

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 the Dutch Community (Kind en Gezin) have a mandate to support and follow up a young child and his/her family by means of free services (consultations, access to kindergarten, etc).

⁹⁴ see also: “4.3.1 Observation and Orientation phase”

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

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

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

⁹⁸ www.mena.be

⁹⁹ International Organisation 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 for unaccompanied minors in Belgium has three stages. Upon arrival in one of the two Observation and Orientation Centres (OOCs), the UM has an initial discussion with a social worker who becomes the UM's key worker and 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 draws up a medical, social and psychological report on the UM with the aim of orienting him/her towards an appropriate second reception phase. During the entire reception process, a key social worker is designated each time the UM arrives in a new facility. This social worker is in charge of evaluating the individual needs of the UM with a view to 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 a UM must be done within 30 days. This evaluation relates particularly to the vulnerable character of the UM. The evaluation is continued during the entire stay of the UM in the reception structure.¹⁰⁰

During these three phases the UM is assisted by his/her guardian, as well as by the personnel (including doctor and social worker) in the reception centres. These people who work with the UM on a daily basis will be the first to observe different or problematic behaviour (depression, self-harming, aggression, nightmares, etc.), but sometimes it is the UM who indicates it himself. It is up to these people to find the best possible help for the UM. Sometimes, this help will be available in the reception centre itself (from the centre's doctor or psychologist) or externally in a specialised organisation.¹⁰¹ The most appropriate help will be looked for depending on the specific situation of the UM. There is a range of possibilities: therapy by means of discussion, medication, consultation with a psychiatrist/psychologist, foster family, or psychiatric treatment.¹⁰²

However, there has also been some criticism about 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 access to services, lack of resources to pay for the services, lack of familiarity with mental health systems, inappropriate treatment methods, and difficulties in providing culturally sensitive interventions. In Belgium, unaccompanied minors mostly wait for their asylum claim in refugee centres. Nevertheless, mental care is often limited in these centres, and in mainstream health care, only a few services are specialised in, or open to, refugees and migrants¹⁰³, 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, including for UMs. Therefore it is not surprising that high levels of emotional and behavioural problems are reported in the centres where UM stay. And currently, some UMs are continually transferred from refugee centre to refugee centre, because of severe behavioural or psychiatric problems, without receiving appropriate care or treatment.¹⁰⁴

It can be mentioned that the Office of the Commissioner General on Refugees and Stateless Persons (CGRS) also has a consultant psychologist who provides psychological support. The psychologist advises the CGRS¹⁰⁵ caseworkers on the psychological and mental situation of an asylum seeker, when this can have an influence on the asylum decision. The psychologist organises an individual psychological interview and produces 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.

¹⁰⁰ International Organisation 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.

¹⁰¹ for a list 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.

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

¹⁰³ www.solentra.be

¹⁰⁴ 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.

¹⁰⁵ Commissariaat-generaal voor vluchtelingen en staatlozen. Jaarverslag 2007 pp.32-33. 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)¹⁰⁶
- Pag-asa (Brussels)¹⁰⁷
- Sürya (Liège), Esperanto (hidden location, depending on Sürya)

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

Each person will receive an individual counsellor who will organise the psychological assistance through individual talks. During these talks attention is paid to the person's ability to cope with traumas and to give a meaning to his/her life. The ultimate aim is to work towards the person's ability to manage by him/herself.

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 be provided in the first instance by the guardian, often together with the team of social workers in the reception centre, who have to ensure that the UM receives appropriate psychological and medical attention: referral to an adapted reception centre, hospital or centre for psycho-medical care.¹⁰⁸

Involvement in conflicts as a child soldier is mostly detected during the asylum procedure. The case workers of the Office of the Commissioner General on Refugees and Stateless Persons pay special attention to detecting 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 interviewed by the CGRS psychologist in order to make an elaborate assessment of his/her asylum case. If the UM is not deemed capable enough of continuing to tell his/her asylum story, the CGRS can base its decisions on all elements present in the asylum file. Although the asylum authorities have no specific statistics on this, the CGRS could confirm on the basis of their experience that in 2006-2007 there were fewer than 10 cases of former child soldiers.

¹⁰⁶ www.payoke.be

¹⁰⁷ www.pagasa.be

¹⁰⁸ 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 UMs

Between the arrival of a UM in the territory and the end of the different procedures (e.g. asylum, 15 September 2005 Circular procedure), a lot of time can elapse (from 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 UM's integration. To begin with, the guardian will have to build a relationship of trust with the UM. This first step towards the UM's integration is to make him/her understand that he/she can have a place in Belgium and, like any other citizen, will have certain rights and obligations.¹⁰⁹

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 worker) but also people in the reception centre, people in the education area (teacher, director), people in sports and cultural associations, religious associations, friends at school, etc.

A great deal of work on the UM's integration is done in the different reception centres. As well as 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 a personalised approach for each UM, depending on his/her capabilities. It requires the UM to be a member of different social networks and to adapt him/herself to his/her current environment. Specific projects can be developed to prepare the UM for being an adult: possibility to prepare his/her own meals, learn how to deal with a budget.¹¹⁰

By way of example we can refer to the opinion of the social workers in the Mentor Escale reception facility.¹¹¹

The aim is 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 and know its possibilities and limits. In the end this should evolve into a situation where the UM can regain control of his life, live independently and be sufficiently integrated to proceed on his path in Belgian society. There are many activities to achieve this: the social workers will help with the residence procedure, assist in finding accommodation and assist in finding 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 responsibility of the Regions and Communities. The Flemish Community has developed the so-called 'inburgeringsbeleid' (civic integration policy). Newly-arrived minors of foreign nationality are also one of the target groups. The first step is an interview with 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 education 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 register for education. If 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 Belgian society. Activities can range from literacy and French language courses to information on cultural, social and political life in Belgium).¹¹²

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

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

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

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

¹¹² 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

4.7.1 Education

Each child in Belgium, including unaccompanied minors, is entitled to receive an education and go to school. This right is specifically mentioned in the law.¹¹³ There is compulsory education from 6 to 18 years of age. For UMs, compulsory education starts from the 60th day after registration in the “Foreigner’s Register”. Attendance at school is not compulsory, which means that one can receive home education. In practice this does not happen very much and the majority of UMs attend school. If the child is an illegal resident in Belgium, the child still has a right to education and, once he/she has 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). Foreign national minors (including UMs) who arrive in Belgium can make use of specially adapted educational programmes that allow them to attend normal education on a regular and successful basis. This kind of education is for minors who have already had some level of education in the past as well as for those who are illiterate. As education is the responsibility of the Communities (Flemish, French and German), some differences can be discerned.

Flemish Community¹¹⁴

Reception classes for non-Dutch speaking newcomers (OKAN)¹¹⁵ 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 separate reception classes and partly in ‘regular’ classes. The school must draw up an individual work plan for each non-Dutch-speaking newcomer. Teachers also receive special training.

After an initial reception year the newcomer to elementary education can progress to a second follow-up year. A UM can be registered in a primary education institution if he/she is five years old or older. A school can organise a reception class from the moment 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 has attended classes on a regular basis, receives certification thereof.

French Community¹¹⁶

A decree adopted on 14 June 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 who have been in the country for less than a year and have requested or obtained refugee status (or minors accompanying a person who 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 education system and be guided towards the level and stream of education that suits them best. Bridging classes can be provided in primary or secondary schools that have made a request to set up this type of structure and have received authorisation. When an institution is authorised to provide bridging classes it receives additional teaching time and is required to create an integration committee responsible for guiding newly-arrived pupils towards optimal integration into the school system. At the end of a pupil’s stay in a bridging class, this integration committee is authorised to issue an orientation certificate towards any level or type of secondary education, except the 6th or 7th study years. For 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 6th and 7th), in any form and option.

As described, after the reception classes and bridging classes, the UM should attend regular education. However, for a lot of UMs this has proved to be a big step mostly due to the fact that they are lagging behind in language

¹¹³ French Community: article 40 of the decree on positive discrimination.

Flemish Community: Circular of 24 February 2003 on the right to education for children with illegal residence status

¹¹⁴ Vlaamse Gemeenschap. Flemish EURYDICE Report 2008, pp. 408-412, www.ond.vlaanderen.be/publicaties/?get=INT&nr=347&i=1

¹¹⁵ OKAN: onthaalklassen voor anderstalige nieuwkomers

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

knowledge. This implies that 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.¹¹⁷

4.7.2 Access to social welfare¹¹⁸

Belgian law states that all people, including UMs, who find themselves in a situation of need which does not allow them to live in dignity, can benefit from state benefits and/or social aid. In most cases, this aid is provided by the Public Social Welfare Centres.¹¹⁹ However, the three-phase reception system means that UMs who stay 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 a UM will be entitled to receive state benefits (e.g. when recognised as a refugee, or when he/she has subsidiary protection status, or is a victim of human trafficking). If a UM finds him/herself 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 care¹²⁰

In the same way as for social welfare, UMs who stay in the reception centres of one of the three phases will have access to medical care and it will be the reception centre that covers the costs. Under certain conditions UMs have the right to 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.¹²¹

4.7.4 The right to work¹²²

A UM can have a student job if specific conditions have been met. He/she has to be in possession of a residence document (registration in the foreigners' register). The UM can only work under a student work contract. In the case of student labour outside the official school holiday periods, he/she will have to apply for a type C work permit; he/she cannot exceed 20 hours of work a 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.

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

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

¹¹⁹ OCMW/CPAS

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

¹²¹ Medimmigrant. www.medimmigrant.be/index.asp?idbericht=37&idmenu=2

¹²² 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 for UMs applying for asylum

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 recognition criteria do not differ from those for adults. Hence, UMs will have to go through the same steps in the asylum procedure as adults. However, the fact that a person is a UM will be taken into account throughout the procedure.

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

- The Immigration Department (ID; a.k.a. Aliens Office) registers the asylum application
- The 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
- The Aliens Litigation Council (ALC) hears appeals of decisions made by the ID or CGRS
- The Council of State hears appeals and can quash the ALC’s decisions

Immigration Department (ID)¹²⁴

UMs must present themselves at the offices of the ID, asylum directorate, in order to apply for asylum. UMs are separated from 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 authority to have contact with a UM, it will have to inform the Guardianship Service of the presence of a UM. The ID, MINTEH Bureau 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/her reasons for coming to Belgium. Fingerprints and a photograph (for minors of at least 14 years¹²⁵ of age) will also be taken. The purpose of this identification form is to collect information on the UM in a speedy and reliable way, so it can also be used if the UM disappears. The ID can express a doubt about the age of the UM and indicate if it is necessary to provide shelter or not.

As soon as the identification form has been filled out, it will be transferred to the Guardianship Office, which will take charge of the UM and transfer him/her to one of the two OOCs. If there is doubt about the age, the Guardianship Office will proceed with a medical examination. Once minority has been confirmed a guardian will be officially appointed. This guardian will decide in consultation with the UM if the asylum application is the most appropriate procedure to follow for the UM.¹²⁶ Belgian law¹²⁷ states that UMs have the legal capacity to apply for asylum themselves, 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 incapable of being interviewed, i.e. is too young or has a mental disability for instance, 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 interviewed by a caseworker. In principle these caseworkers have received training including 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 route he/she followed to get to Belgium. The presence of a lawyer during 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 home and sent within 5 days to the CGRS. The UM will be given a document (annex 26) as

¹²³ European Migration network website

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

¹²⁴ 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.

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

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

¹²⁷ Guardianship Act art.9

proof of his/her asylum application. With this document he/she can present himself at the municipality, which will deliver a residence document (attestation of registration) 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,¹²⁸ Belgium is responsible for processing the asylum claim, the asylum seeker's complete file is forwarded to the Office of the Commissioner General on Refugees and Stateless Persons (CGRS) which will decide on his/her asylum claim.

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

CGRS asylum procedure¹²⁹

The UM is invited to an interview at the offices of the CGRS¹³⁰ to explain his/her motives for applying 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 UMs and gives 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 CGRS caseworkers are specialists in the area of asylum and have received special training¹³¹ to deal with UMs. Standardised interview forms and guidelines specifically developed for interviewing UMs are used and they will be interviewed in a room specially adapted to interview UMs. The CGRS has also appointed a coordinator for UMs. Each UM will receive a comic book called Kitzito in which information on the different steps in the asylum procedure is provided.¹³² The CGRS is also involved in EU-sponsored practical cooperation initiatives, such as the European Asylum Curriculum (EAC)¹³³ whose aim is to create a teaching module on interviewing UMs that will be made available to other European asylum authorities.

After the interview the asylum request will be examined on the 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 take into account the fact that the applicant is a minor, so the 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;¹³⁴ respectively he/she will receive a residence permit of unlimited or limited duration. Recognition as a refugee also has the consequence that he/she no longer qualifies as a UM under the definition of the Guardianship Act. However, the role of guardian can be taken over by a civil guardian. In the case of a negative decision the CGRS will always mention that the person is a UM and consequently the Convention of the Rights of the Child is applicable. The UM will not receive an 'order to leave the territory'¹³⁵ (as adults do), but a 'removal order' (annex 38).¹³⁶

¹²⁸ for more details on the Dublin procedure, see: "5.3.1 UMs within Dublin II"

¹²⁹ L'Observatoire. Revue d'action sociale et medico-sociale. Nr57/2008. Juillet 2008, pp.41-44.

¹³⁰ www.cgvs.be/nl/publicaties/brochures/

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

¹³² EAC and Kitzito are sponsored by the European Refugee Fund

¹³³ www.gdisc.org/uploads/tx_gdiscdb/final_curriculum_EAC.pdf p.21

¹³⁴ 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.

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

¹³⁶ bevel tot terugbrenging/ordre de reconduite

An appeal against the CGRS's decisions can be made to the Aliens Litigation Council.¹³⁷ The fact that the CGRS has to take into account the UM's degree of development, and that the principle of the benefit of the doubt has to be applied, has been confirmed in some case law by the ALC.¹³⁸

UNHCR Guidelines

The UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997)¹³⁹ and the Resolution of the Council of the European Union (1997)¹⁴⁰ 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 is reunited with his/her family. It can happen (1) that the UM is abroad and comes to join 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 some people make use of the official procedure on family reunification as laid down in the Aliens Act, but others travel to Belgium to be reunited 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 UM and their families in the country of origin.¹⁴¹

4.9.1 UM wants family reunification with parents already in Belgium¹⁴²

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 and 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 on 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 medical insurance that covers him/herself and his/her family in Belgium and he/she must have sufficient accommodation for the entire family. With respect to the latter, accommodation is regarded as sufficient if it complies with the health and safety requirements applied in the Region concerned. 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 the 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, the accommodation and medical insurance conditions do not apply if, on the one hand, the family ties already existed before entry into Belgium and, on the other hand, the request for family reunification is made within a year of refugee status being granted (the latter condition does not apply to unaccompanied minors as a consequence of a judgment of the Constitutional Court).

¹³⁷ Raad voor Vreemdelingenbetwisting/Conseil du contentieux des étrangers www.rvv-cce.be

¹³⁸ see Juridische Nieuwsbrief Foyer nr 166 : www.foyer.be februari 2008

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

¹⁴⁰ 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)

¹⁴¹ see: "5. Return practices including reintegration"

¹⁴² EMN BE NCP, the organisation of asylum and migration policies in Belgium, April 2009, p.32, and Jollet p.61

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

For family reunification of third-country nationals with EU citizens (art. 40 bis of the Aliens Act) and with Belgians (art. 40 ter) 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 secure procedure has been put in place that allows a parental link to be established by means of DNA testing. This can be done when an application for a family reunification visa is made at a Belgian consulate or embassy.¹⁴³ It can be used when there is a doubt about the documents presented or if 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. When the ID, for instance, in the light of the presented documents and the elements in the file, would be obliged to take a negative decision on family reunification, DNA testing could shed a different light on the situation. However, this procedure will not be used systematically but only as a last resort.

Procedure within the territory

It can happen that a UM comes to join his/her parents who have already lodged an asylum procedure in Belgium. It can also happen that parents stayed (illegally) in Belgium and had their child present him/herself as an 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.

If the parents have lodged an asylum procedure, the Immigration Department will check the identity documents and whether the parents have previously declared having the child; it can therefore 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 a UM. The family link can be verified by presenting documents as well as through DNA testing at the parents' expense. In the absence of official documents this can be a lengthy procedure (e.g. biological parent v. 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,¹⁴⁴ he/she will be able to join his/her parents/family and will receive the same residence status as his/her parents/family. So if the parents have applied for asylum, the child will in principle also be registered in the file of its parents.¹⁴⁵ If the family link is finally not proven, the minor will be considered as a UM and a guardian will be appointed.

4.9.2 Family member wants family reunification with a UM already in Belgium

Procedure from abroad

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

One exception applies, namely if the UM has been recognised as a refugee. Only the parents of the UM can make use of this procedure, not other family members (brothers, sisters or legal guardian). Neither UMs who benefit from the subsidiary protection status, nor UMs who have a residence permit according to the procedure under the Circular of 15 September 2005 can benefit from this type of family reunification.¹⁴⁶ As this legal provision was only established

¹⁴³ This DNA testing is not yet possible in all embassies or consulates (21, but being extended), mostly concentrated in countries with problems delivering reliable documents on civil status. See: Colette Van Lul, 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.

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

¹⁴⁵ If the UM has his/her own motives to apply for asylum, which are different from those of the parents, the child might receive a different status from that of the parents.

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

in 2007, the number of cases is rare (around 7 cases in total). The problem is sometimes that the 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 parents come to join their children in Belgium. If a child arrives in Belgium before the parents he/she will in principle be in charge of the GS and have a guardian. If the parents join the child, it is up to the GS to verify the family link. If the parents arrive at the border, they will be detained until this verification has been carried out. Once the family link has been established the guardianship will in principle end. If the parents are already legally residing on the Belgian territory, they can make an application according to the so-called regularisation procedure mentioned in art. 9 bis of the Aliens Act.¹⁴⁷

¹⁴⁷ 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 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) are 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 no longer qualify as unaccompanied minors 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 in Belgian territory and they have the same needs and are considered vulnerable. It can also be mentioned that 17% of the applications for the procedure for victims of human trafficking (adults and minors) originate from one of these two countries.¹⁴⁸ 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 Circular¹⁴⁹ of 2 August 2007 created a new service within the Guardianship Service for European UMs in a vulnerable situation, namely SMEV (Signalement des MENA européens vulnérables). Not all European UMs are considered, just those in a 'vulnerable situation'. This means those in an irregular administrative or unstable social situation, those that are pregnant or have a mental or physical handicap, victims of human smuggling or trafficking, and those in beggary.¹⁵⁰

If the police encounter such a European UM, they will inform the SMEV within the Guardianship Office. This service will take 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 will sometimes be referred to the Youth Welfare Services of the Communities, to the non-profit organisation Foyer¹⁵¹ in Brussels that has a specific service for young Roma, or to the specialised centres for victims of human trafficking.¹⁵² For some EU UMs, however, there is no specific reception and they are left on their own again. They will not have access to a guardian. The SMEV tries to find a solution for these UMs. Temporarily taking charge of EU UMs aims to protect them against vulnerable situations, such as crimes and human trafficking.

Currently, there is a debate in Belgium on whether to include European UMs in the definition of the Guardianship Act, so they can have the same treatment as other UMs. Recommendations from NGOs and a private bill have been formulated in that sense. It is suggested that these European UMs should be included in the definition, at least as a provisional measure. Additionally, Belgium does not want this to become a pull factor by wrongly suggesting that the appointment of a guardian implies a right of residence. In the interest of the European UM, a return to his/her country of origin should be encouraged, insofar as this would not be manifestly against the best interests of the UM, and therefore bilateral readmission agreements could be negotiated. It should be mentioned that Belgium and other countries have a duty to point out to the Member States concerned that they have a duty to provide sufficient reception for these UMs.¹⁵³

Meanwhile the Immigration Department relies more on cooperation between the EU Member States and on 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 family members in the country of origin. It should also be mentioned that European UMs often come to Belgium to get education; therefore specific EU programmes in those Member States could help tackle this problem. Meanwhile there is an awareness that specific initiatives should be developed in Belgium, as these UMs often disappear from the OOCs, and refuse the help offered to them.

¹⁴⁸ Dienst Vreemdelingen zaken, Activiteitenverslag 2007.

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

¹⁵⁰ Vlaams Minderheden Centrum. Verblijf in België van niet-begeleide minderjarige vreemdelingen.

www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=148

¹⁵¹ Foyer: www.foyer.be/?lang=en&pageb=article&id_article=1353

¹⁵² UNICEF : de bescherming van niet-begeleide minderjarige vreemdelingen slachtoffer van kinderhandel en –smokkel. Verkennend onderzoek – samenvatting. November 2008.

¹⁵³ 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 are a major concern for Belgium. Accordingly, a collaboration protocol has been signed to manage disappearances from the two Observation and Orientation Centres¹⁵⁴ - 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 the disappearance of UMs as much as possible and to ensure the speedy return of UMs who nevertheless disappear. In particular, this should help protect them from the risks of sexual abuse or other forms of exploitation although in practice the difference between real disappearances and “voluntary departures” is not always clear.

To give an idea of the importance of the situation: in 2006 there were 951 disappearances from one of the Observation and Orientation Centres (first reception phase), which is more than 50% of the total number of UMs that were registered with the Guardianship Service. In 2007 there were 902 disappearances (about 45% of the total).¹⁵⁵ In 2008 this number was 562.¹⁵⁶ Most disappearances occur within the first days of arrival at the OOC, even before a guardian has been appointed. One has to bear in mind that these OOCs are open centres and that the UMs are free to leave if they so desire.

These numbers are enormous; however, they 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’. For example, they may be on their way to join their family or the group they belong to in Belgium or abroad; they may be using the reception in the OOC as a temporary shelter while they are having problems within their community; they may have another final destination, e.g. UK or Scandinavia; and some disappearances might be double-counted as UMs sometimes use different identities or are referred to the OOC multiple times. However, there are also disappearances further on (2nd and 3rd 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;¹⁵⁷ or those who have received negative decisions in one of the procedures that could have provided them with a residence permit (see above); or they just decide to seek 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 travelling alone” formulated some recommendations for better protection of these minors. A task force is currently being organised to put these recommendations into practice.¹⁵⁸ Other coordination initiatives are being developed by different stakeholders¹⁵⁹ to deal with UMs that use Belgium as a transit country and/or who refuse the offered reception. In this respect, the areas in and around the port of Zeebrugge (gateway to the UK) are specifically faced with transit migrants.

¹⁵⁴ Most disappearances occur from the 2 Observation and Orientation Centres: Steenokkerzeel (French-speaking centre) and Neder-Over-Heembeek (Flemish-speaking centre). The protocol has been signed by the following authorities: 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 Guardianship Service; and Child Focus. More information about this protocol is available on the Child Focus website www.childfocus.be/fr/

¹⁵⁵ Child Focus, Annual Reports 2006 and 2007

¹⁵⁶ 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

¹⁵⁷ as UMs have to give their consent for a voluntary return to be organised but some of them might still be under a removal order renewed until they are 18, and thus become illegal adults who could be returned

¹⁵⁸ International Children’s Rights Day, Child Focus, the King Boudewijn Foundation, and the Federal Police jointly collaborated in the drafting of this study; more information on the study including the recommendations made in this framework is available on www.childfocus.be.

¹⁵⁹ 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 the measures that should be taken in the case of disappearances:¹⁶⁰ the police should be informed and should in turn inform other competent authorities such as Child Focus in the case of a worrying disappearance.

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

If the UM is in a particularly vulnerable situation, the reception centre informs the police immediately after the disappearance has been established. The guardian and the Guardianship Service are also 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.¹⁶¹ The above-mentioned collaboration protocol formalises 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 to fight against their sexual exploitation. However, a file is not opened with Child Focus for all disappearances (in the past this used to be the case). Since 2006 Child Focus has had a new *modus operandi* and will only open a file if there is a minimum of information available on the UM and the circumstances of his disappearance, and if Child Focus's help can offer added value. This will in most cases be for worrying disappearances. For example, in 2008 about 14 cases in the OOCs qualified as 'worrying disappearances'.¹⁶² However, a lot of cases probably still remain undetected. For policy makers it remains difficult to find a balance between, on the one hand, some sort of detention of the UM to protect him/her against him/herself or third parties and, on the other hand, the UM's right to freedom. Reception centres like Minor Ndako, Juna, Esperanto are good examples of 'secure' centres which have found this balance.

¹⁶⁰ 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

¹⁶¹ International Organisation 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.

¹⁶² 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 Child¹⁶³ and a number of international Human Rights instruments including the European Convention on Human Rights¹⁶⁴ (ECHR), and the European Union's Charter of Fundamental Rights.¹⁶⁵ Belgium has thus ensured that UMs' fundamental rights are safeguarded. As will be further explained in this Section, substantial funding has also been allocated to support sustainable returns. Eventually, safeguards can also be taken by 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 of the 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 Belgian territory. Forced return comes within the specific responsibility of the Immigration Department, while the Federal Agency for the Reception of Asylum Seekers (Fedasil) – responsible to the Programmatic Public Service for Social Integration - in collaboration with the International Organisation for Migration (IOM) is in charge of organising voluntary return, within the framework of the REAB Programme (Return and Emigration of Asylum seekers from Belgium).

As far as unaccompanied minors (UMs) are concerned, Belgium has decided not to enforce forced return for this vulnerable population, even when a removal order has been issued. Indeed, decisions with regard to return are taken in two steps: issuing of a removal order followed by its implementation (which in principle never occurs for UMs, voluntary return being the only solution within 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 subject to the Belgian removal regulation which is in principle applicable to illegally resident adults. In accordance with the Circular of 15 September 2005, UMs are subject to two specific measures:

- Removal at the border Minors who do not comply with the conditions of access to the territory can be subject 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)¹⁶⁶ issued 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 adopt a measure for the UM to be removed and denied access to the Schengen territory. Special attention¹⁶⁷ is given to minimising the potential stress and psychological trauma caused to UMs in such a situation. The Guardianship Service (GS) is thus directly informed of the presence of UMs and immediately appoints a permanent or temporary guardian.

Its 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 placed in a closed centre near the airport when the minor has claimed asylum, and at INAD¹⁶⁸ if no asylum claim has been lodged, for 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,

¹⁶³ UN GA Resolution 44/25 of 20 November 1989

¹⁶⁴ Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No 11, Rome 4.XI.1950

¹⁶⁵ OJ C 364, 18.12.2000, p.1

¹⁶⁶ Annex 38 is addressed within Circular 2005.

¹⁶⁷ In accordance with Art 6 paragraph 4 of the Guardianship Act and Art 37 of the Convention on the Rights of the Child (ref)

¹⁶⁸ INAD stands for Inadmissible Passengers

he/she is placed in an OOC but with a status “considered at the border” (a.k.a. extraterritorial) within fifteen days, renewable once for five days. Should expulsion not occur within these twenty days, the UM would then be allowed “access to the territory” but would nevertheless remain in the same centre for another 10 days, since in principle, OOCs host UMs for 15 days renewable once.¹⁶⁹ A person detained in another centre who declares that he/she is a minor afterwards also benefits from the same procedure.

Removals of unaccompanied minors at the border (the airport) hardly ever occur in Belgium. It would only happen 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 minor concerned agrees to return.

The role of the guardian within 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 within 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 foster child 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 embassies¹⁷⁰ in the country of origin or directly between the guardian 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 order¹⁷¹ (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 responsibility of the Immigration Department. However, in the case of a voluntary return, the guardian can accompany the UM to his/her country of origin. According to the Guardianship Act (art. 24§1 para. 4) the guardian’s mission ends at the moment the UM is removed from 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 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 2005 Circular.¹⁷² It should be noted that from 1 June 2009, interviewing of UMs and their guardians by the Immigration Department within the framework of the 2005 Circular 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 to organise the voluntary return¹⁷³; or

¹⁶⁹ In reality, UMs stay longer in the COO since there is a lack of space in other centres, which could take over.

¹⁷⁰ 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.

¹⁷¹ Bevel tot terugbrenging/ordre de reconduite

¹⁷² 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.

¹⁷³ 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.

- hand over the UM to the family, if relatives have come to pick him/her up.

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 Convention¹⁷⁴;
- 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 this happens, 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 the 2005 Circular).

The situation is more critical when a removal order has been issued, but the UM decides not to proceed with voluntary return;

- In principle, the removal order should then be renewed on a monthly basis within 6 months; the UM's lawyers can 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.

The Belgian authorities are aware of this sensitive issue, which leaves 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 a 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 within the framework of the IOM Assisted Voluntary Return and Reintegration (AVRR) programmes, more specifically the REAB programme.¹⁷⁵ Created in 1984, REAB is funded by Fedasil and is implemented by the IOM Brussels Regional Office in cooperation with Fedasil and other partners.¹⁷⁶ As far as UMs are concerned, the voluntary return assistance is provided in line with the principle of the best interests of the child, the UNHCR Guidelines for the Repatriation of Minors¹⁷⁷ and the Council resolution on Unaccompanied Minors who are Nationals of Third Countries¹⁷⁸.

¹⁷⁴ Convention on International Civil Aviation, Chicago, 7 December 1944

¹⁷⁵ More information about the IOM REAB programme in Belgium is available on www.belgium.iom.int/REAB/

¹⁷⁶ 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.

¹⁷⁷ 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>

¹⁷⁸ 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 the 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: advice to the migrant and social worker prior to 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 was 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 a UM's return usually includes the following steps:

- The guardian is the main interlocutor when proceeding with a UM's request to return to his/her country of origin. He/she contacts IOM Brussels to launch the voluntary return procedure; when IOM is contacted directly via another means 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 does not usually meet the unaccompanied minor, unless there is a specific request from the minor (via the guardian) to do so;
- A social report is filed, for IOM to process the AVRR 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 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 make 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 organised; specific requirements are assessed, such as for medical assistance during travel, assistance with specific transport 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 instruments of €700 each, created in 2006 and aimed 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 were set 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 the reintegration of UMs, decisions being made on a case-by-case basis. In principle, this amount should be spent within six months of the return to the homeland, but exceptions (e.g. funding spent within one year instead of six months) are possible to allow for 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 to and reintegration in 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 a small business, access to 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 if family reunification is not immediately possible, or for referral to health care and psychological counselling and/or medical assistance, etc. Family tracing is initiated mainly via the Red Cross¹⁷⁹;
- It should be mentioned that special attention is given to support for the continuing education of the child; or to provide specialist advice to orientate them in 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 will be granted, and that the applicant will have to 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 as far as their 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 will 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 require it, with the support of other national financial structures;

For the return of UMs who have been victims of human trafficking, IOM gets support from its partners specialising 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. if parents have been knowingly or unwittingly 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 when the UM has not been given “victim of human trafficking” status.¹⁸⁰

5.2.1.2. Other important issues

IOM would generally be aware of family disputes (if any) prior to the departure of the UM, 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 for 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 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 agreed, 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 countries of return might be considered on a case-by-case basis. Information consolidated within the

¹⁷⁹ www.rodekruis.be/NL/Over/Links/Tracing/

¹⁸⁰ International Organisation 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.

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 counselling sessions were organised by the IOM at the request of REAB partners and/or guardians wishing to provide additional information to UMs or to discuss some specific cases. These counselling 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 help the guardians, REAB Partners and UMs to make 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 from unaccompanied minors were received, 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: the UM was no longer willing to return, returned by other means or continued the asylum procedure.

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

Source: IOM

5.2.2. *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 managing projects supported within the framework of the European Return Fund (ERF) and establishing relationships with the official representatives of countries of origin located in Belgium to discuss measures to prevent 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 abuse 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.¹⁸¹ Moreover, the number of UMs intercepted has increased and most of them are illegal UMs who have already been arrested for a criminal offence. Out of the approximately 30,000 interceptions in Belgium in a 12-month period in 2007- 2008, 8.5% were UMs. They were often intercepted multiple times (e.g. 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.¹⁸² In this respect, the Immigration Department has also raised its concern over the criteria used for determining the best interests of the child as this often leads to the UM not being sent back to his/her country of

¹⁸¹ This is the outcome of an internal study made by the Immigration Department.

¹⁸² This is the outcome of an internal study made by the Immigration Department: Bart Verstraete, onderzoek naar dubbele intercepties 2007- 2008.

origin even when the family has been found and a thorough assessment in the country of origin has established that a return would be safe. It has been suggested that the role of the Guardianship Service should be clarified within 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 other things support the reintegration of criminal offenders, vulnerable people 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 jointly agreed to organise the safe return of ten children within this framework, it was decided not to proceed since the decision to return was eventually not supported by the guardian; this decision was made 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 were found, the UMs were eventually not sent back since the juvenile courts were not in favour of forced return.

With regard to relations with countries of origin’s official channels in Belgium, contacts have mainly been 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 have 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 the Dublin II Regulation¹⁸³ is to establish which country should be responsible for examining an asylum claim. As far as unaccompanied minors are concerned, 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”.*¹⁸⁴

Other relevant articles are:

- Article 3 paragraph 2¹⁸⁵; and
- The humanitarian clause, Article 15.¹⁸⁶

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 the 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, and the best interests of the child should be carefully assessed in cooperation with the guardian. Requests to take charge are made within DubliNET,¹⁸⁷ using a dedicated form. Both the request and the answer have to be made within two weeks if there is a “hit” within EURODAC¹⁸⁸ i.e. if it is established that an asylum claim has already been lodged in another Member State, or within one month if there is no EURODAC “hit”. When a visa has been delivered by another Member State; this period is extended to two months. After these deadlines have passed, the Member State concerned automatically becomes responsible for examining the asylum request. The transfer should in principle be organised within six months of the explicit or implicit acceptance of the request; failure to do so also leads to Belgium assuming responsibility.

¹⁸³ 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 is available at <http://europa.eu/scadplus/leg/fr/lvb/l33153.htm>

¹⁸⁴ This implies that he can lodge 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.

Consequently, the fact that the UM is known in another Member States does not necessarily trigger the utility to demand a transfer.

¹⁸⁵ 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.

¹⁸⁶ 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 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 exist 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. [...]

¹⁸⁷ 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.

¹⁸⁸ 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 State 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:

- When Belgium is the first place where the asylum claim is lodged 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 within the framework of the Dublin II process prior to the appointment of a guardian;
- The role of the guardian within this framework is once again crucial since no UM will be sent back within the framework of Dublin if the guardian does not agree to it;
- Some countries have decided not to answer the request to take people back. In such a case, Belgium would then order the transfer and wait for information about 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 UM’s potential family and his/her age, establish if he/she was unaccompanied, etc.

As for UMs who have already lodged 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 agreed to take back a minor accompanied by his sick grand-mother, following a request from France, because the minor’s uncle was already in Belgian territory.¹⁸⁹ Had the grandmother been healthy, Belgium would have not agreed to take them both.

Although there are “many cases” of UMs within the Dublin procedure, it is very unfortunate that no statistics are available; it seems that Belgium does not consider UMs within Dublin in their national statistics since there are 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 not a legal obligation. Once UMs have been taken back, there is no obligation for Belgium to follow up the cases.

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

Sixteen so-called “Benelux Agreements”¹⁹⁰ have been signed by Belgium, together with the Netherlands and Luxembourg, starting with France in 1964, with the latest one signed with Bosnia and Herzegovina in July 2006. Furthermore, 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 Macedonia¹⁹¹. 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 agreements¹⁹² can also be signed at executive level, e.g. with the immigration department of a third country. Their negotiation, signature and implementation¹⁹³ are easier since these agreements do not call for a ratification procedure. While each of these memoranda includes specific provisions to guarantee 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, the family should be willing to welcome the minor, and

¹⁸⁹ Ref Art 15 paragraph 2

¹⁹⁰ 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), former 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).

¹⁹¹ When an EU readmission agreement is signed with a country which has already signed a Benelux agreement, the former takes precedence over the latter.

¹⁹² MoUs have been signed with the following countries: Congo, Vietnam, Nepal, Niger, Ecuador and Burundi. Negotiations are currently ongoing with Brazil, Kosovo, Afghanistan, Iraq and Mongolia.

¹⁹³ For example, the readmission agreement signed with Ecuador was negotiated in 6 months, between July 2008 and January 2009.

an official body should also welcome the UM at the airport and take responsibility for the minor's safe return to the family. Usually, however, no differentiation is made between third country "nationals" and UMs and other vulnerable populations.

5.3.3 *The Return Directive: current practices within the remit of Articles 10, 14 and 17*

In 2008, the EU adopted the "return directive"¹⁹⁴ which defines procedures for the return of illegally staying 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 voluntary return jointly decided with the guardian and within 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, should the family tracing process be initiated by the guardian. Should a guardian not be satisfied with the issuance of a removal order, he/she 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/she is 18. These safeguards would nevertheless stop when the UM turns 18. The role of the guardian is thus very important, to prepare the minor for 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 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 run the risk of being forcibly removed. The fear is that these minors could be sent back into human trafficking networks.¹⁹⁵

- **Article 17 "Detention of minors and their families"**¹⁹⁶

Within this 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.

¹⁹⁴ 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.

¹⁹⁵ The conditions in centres for third-country nationals (detention camps, 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

¹⁹⁶ 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 removal, have been accommodated in private single-family houses or apartments, without any restrictions on 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 with their identification and 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 have been 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%).¹⁹⁷

¹⁹⁷ 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 Belgian legislation. There was no national law that specifically protected UMs. In the 1990s Belgium was confronted with a rising number of UMs arriving in 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 the right time. Tabitha was a five-year-old Congolese girl who wanted to rejoin her mother in Canada. On arrival in Belgium, she was held in a detention centre at the border for two months and was finally returned to Congo. Belgium was convicted by the European Court of Human Rights. The existence of a network of non-profit organisations and NGOs that defend the interests of the minors also 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 (NGOs, government institutions, guardians, etc.) on the different elements touched upon in this study. However, this is not an exhaustive list, but the most commonly recurring remarks (both positive and negative) 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 endeavour with many tasks and responsibilities being attributed to the Guardianship Service. Still, it has been 5 years since the Guardianship Act was adopted, and all parties agreed that the time has come to conduct an impact assessment, and it was decided that this was going to be launched in September 2009 with the following issues deserving particular attention:

Should there be one uniform status for all guardians? At the present moment the guardianship system consists of a majority of voluntary guardians and just a few professional guardians. It is claimed that the quality of the work of the guardians differs too much, depending on factors such as the competence and 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). For example, some guardians do not respect the procedural deadlines, and some do not provide enough evidence to prove the integration of the UM. These actions or lack of them can have a direct consequence on the situation of the UM. The disparities between guardians (professional v. voluntary, but also voluntary v. voluntary) are numerous and the UMs do not currently benefit from the difference made between professional and voluntary guardians. There is thus a call for one uniform status for all guardians. Some even propose having only professional guardians. In the meantime, better remuneration of both types 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, but this is not enough to gain real experience. The payment of €500 per guardianship is considered to be too little.

The question of more specialisation for the guardians is also mentioned. At the moment most guardians are assigned depending on their geographical proximity. The criteria for allocating a UM to a guardian could be clearer, with the guardian's past cases, specialisation in certain countries, etc. being taken into consideration. As the situation of each UM is specific (e.g. victim of trafficking, asylum seeker, UM with psychological problems), it requires a specific approach. One might 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, psychological or other problems, etc. A guardian who was too specialised would thus not be able to offer the best possible help. Continuous training of the guardians on all different aspects is considered a good option. In this regard, a lot of expectations have been raised about the Guardianship Service (especially by guardians) taking up its duties fully: more supervision with monitoring of the guardians; more support in the form of organising specific and multidisciplinary training; coordination and standardisation of practices; exchange of experiences between guardians; provision of more guidelines; improved counselling and assistance of the guardians; a formal assessment at the end of the guardianship; and quality control of the guardians, etc. Specialisation of 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 other. 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 responsibilities in the field. As a consequence this can sometimes lead to different interpretations 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 UMs would benefit from a code of deontology being created. This would allow the resolution of 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 by professional secrecy, etc. For the Immigration Department it would be important to know the UM's motive in coming to Belgium. Does the UM have identity documents? What is the UM's family situation? 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 and the answers to these questions can be valuable if the durable solution for the UM is to return to his/her country of origin. Professional secrecy also hinders the Guardianship Service and other guardians from having a clear view of the way cases are dealt with (best practices). Guardians are considered to be too autonomous sometimes.

Another criticism that is often heard is 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 streamlining the various procedures. This often has to do with the fact that the identification procedure takes longer than initially foreseen. For instance, when a doubt is expressed about 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 about 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 the lowest attested age is taken into consideration, should provide enough guarantees that 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 criticised. Some argue that it should only be used as a last resort and that the UM's declarations and documents should be investigated first and foremost. In practice, the immigration and asylum authorities are often confronted with fraudulent declarations and documents, hence their reluctance to base their opinion solely on that. There is also growing demand towards the Guardianship Service having more transparency on other criteria used to determine the age (e.g. to what extent school reports can be used).

The case law of 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 about his age and a medical test was undertaken. The results showed a result other 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.¹⁹⁸ In another case, a boy was considered to be a 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

¹⁹⁸ Platform kinderen op de vlucht. Nieuwsbrief 23, oktober 2008.

proven authentic by the embassy of his country of origin, a doubt remained over his age and he should be considered as a minor.¹⁹⁹

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 as a priority by the CGRS, etc. The interview is adapted to the degree of mental development and maturity of the child; and, when deciding on the asylum application, minority is taken into account. However, these practices are not part of a legal framework, but are handled using the CGRS's internal guidelines. Little criticism can be heard of the CGRS's practices; 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 developed, hence the active participation of the CGRS in the European Asylum Curriculum (EAC) project. There is also awareness that it is not easy to deal with/interview traumatised UMs (e.g. child soldiers) and to make an assessment of their problems based on this interview.

September 2005 Circular Procedure

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 in Belgian territory a procedure that can lead to a durable solution in the best interests of the child.

However, there is concern from some NGOs about the procedure set up in the 2005 Circular in general, and more particularly with regard to the determination 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, consequently, 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 to 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 of 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 systematically interviewing UMs from 1st 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 included guidelines on which persons are entitled to make such a decision, how the decision is made, what means are allocated to the procedure, what the rationale is which leads to one decision rather than another, etc.

With regard to the residence documents issued, the procedure under the Circular provides that the Immigration Department can issue or extend the 'declaration of arrival' or the 'Annex 38'. Since this is a favour and not a right, the UM has to fulfil certain conditions and, in the worst case, can 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 and they propose that all UMs should receive a (temporary) right of residence as long as no decision has been made 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 him/herself. 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 a UM to undertake the necessary steps to obtain a passport/identity documents (contact with authorities, knowledge of the procedure, etc.). This again leads to more fraudulent use of passports/identity documents.

¹⁹⁹ Platform Kinderen op de vlucht, Nieuwsbrief 20, April 2008.

The fact that this procedure is described in a Circular means that it provides less legal security. Propositions to incorporate the Circular 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 UMs with a nationality of the European Economic Area. As they constitute a significant number of the UMs located in Belgium, a specialised service SMEV (Signalement des MENA Européens Vulnérables) has been created, which allows these European UMs to be placed in a reception facility (OOC) for 1 month maximum. However, no guardian will be assigned to them. NGOs ask nonetheless that these minors also be included in the Guardianship Act as they are first and foremost children in need.

From the point of view of the Belgian authorities their situation should be treated differently than that of UMs as Community law guarantees the fundamental and personal right to reside and move freely in the territory of the Member States of the European Union to all 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.²⁰⁰ The Immigration Department examines the individual residence situation of each European UM and searches for an appropriate solution in a European context. 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 improving the protection of these European UMs possible.

Reception of UMs

The introduction of the three-phase reception procedure is 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 responsibilities in the reception of UMs makes things more complicated. It also means that in theory the reception of the UM depends more on his/her administrative status and less on his/her 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 body Fedasil which is responsible for accommodating the UM. This guarantees that UMs are not left on their own due to a lack of places in the reception facilities. An agreement formalising this type of cooperation should be concluded but has not been signed yet. Official clarification of the different federal, regional and municipal roles and responsibilities would certainly help improve reception conditions. However, the downside is that the Fedasil centres also become saturated; and that not all UMs receive the accommodation that is best suited for their situation. For example, 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 also seems to be a difference in the 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 UMs, 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 worse 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.

It is believed that UMs are best accommodated in small-scale reception centres of 40 persons maximum or in families. For really young children (<12 years old), reception in a foster home is considered the best option.

²⁰⁰ 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.

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, mixed feelings can be discerned. On the one hand, the principle of integration is welcomed. On the other hand, the uncertain residence status of a 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 of definitive residence status. Hence there is an effect 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 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.

Access to medical assistance is also considered well developed; however, people with uncertain residence status will have more problems. 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 at the 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.²⁰¹

The detection of UM victims of trafficking is crucial and there are several gaps, especially when it comes to economic and inter-family exploitation. People within the front-line services, but also guardians, are insufficiently aware of the UMs’ problems and often lack training to detect cases and 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 provision of a guardian and thus lack help if they do not receive the status of a victim.

The most frequently 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 another procedure (asylum, 2005 Circular) which is, however, less suited to their specific needs. This point has been recognised by the Belgian government and in July 2008 it approved an action plan that provides that, after the evaluation of “the Circular of 26 September 2008 on the introduction of 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 Belgian legislation or take other measures.

Victims are not always immediately 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 little verification is made about the quality of the reception mechanism or of the link between the child and the person hosting him/her.

²⁰¹ UNICEF: de bescherming van niet-begeleide minderjarige vreemdelingen slachtoffer van kinderhandel en –smokkel. Verkennend onderzoek – samenvatting. November 2008.

Here too 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 number of voluntary returns is very low. The reasons for this should be further examined. The Immigration Department is under the impression that guardians are often reluctant to see this as a durable solution in the best interests of the child. A removal order that is issued for a 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 relationship of trust between the guardian and the UM, sometimes hinders 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 not happen in the end. Better collaboration and information exchange between the two services could be envisaged.

We 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 in Belgian territory. For instance, statistics from the Guardianship Service differ from the statistics from the Immigration Department. A uniform and centralised registration system would lead to better matching with the information needed and better assessment of the situation of UMs.

At the initiative of the Belgian Commission of the Rights of the Child, efforts are being undertaken to map the different statistics and to coordinate with the different data providers on UMs in Belgium. Also within the Immigration Department for instance, plans are being put into 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 the 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 cases of disappearance. All want to prevent disappearances as much as possible, and if they do occur, to try to locate them rapidly with the purpose of protecting them against possible risks of exploitation or abuse.

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

Child Focus only initiates search 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 of the situation of all UMs.

The reception system for UMs involves open facilities that accommodate all UMs who want to be helped. There is still 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.

Suggestions have also been made to enhance practical cooperation at European level for tracking UMs.

Opinion of the UM

In a UNICEF study “What do you think?” UMs themselves made some recommendations. This study dates back to 2004, so some of the study’s insights have already been put into practice in 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 quality 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 been taken at different levels (task force, protocol agreements, Guardianship Service, etc.) but there is always room for improvement

Statistics

Annex 1: Number of Unaccompanied Minors in Belgium

The known number of UMs in 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 a UM in Belgian territory or arriving at the border has an obligation to inform the Guardianship Service. So the GS has the most complete listing. It can, however, happen that a 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 on 1 May 2004, so the statistics are only available from this date onwards.

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
DR Congo	111
Guinea	105
Yugoslavia	103
Afghanistan	98
Morocco	78
Moldova	71
Angola	69
All countries	1793

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

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

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

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

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%
Total	1974		2065		1741		1577		1886	

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 registering 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 among other things 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.

2002	Asylum applications of unaccompanied minors										CGRS Decisions on asylum		
	Total	Age											
Country of origin		0-5	6-10	11-15	16	17	18	19 +	M	F	Ref	SP	Neg
DR Congo	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
F.R.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
All countries	913	21	53	197	93	235	40	274	652	261	39		215

Considered minors after medical test: 599

2003	Asylum applications of unaccompanied minors										CGRS Decisions on asylum		
	Total	Age											
Country of origin		0-5	6-10	11-15	16	17	18	19 +	M	F	Ref	SP	Neg
DR Congo	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
F.R.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			
All countries	788	8	36	135	147	240	18	204	520	268	48		115

Considered minors after medical test: 566

2004	Asylum applications of unaccompanied minors								CGRS Decisions on asylum				
	Total	Age						Gender					
Country of origin		0-5	6-10	11-15	16	17	18	19 +	M	F	Ref	SP	Neg
DR Congo	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
All countries	675	7	22	128	163	262	19	74	463	212	71		137

Considered minors after medical test: 582

2005	Asylum applications of unaccompanied minors										CGRS Decisions on asylum		
	Total	Age									Gender		Ref
Country of origin		0-5	6-10	11-15	16	17	18	19 +	M	F			
DR Congo	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			
All countries	654	3	12	117	123	230	82	87	415	239	88		376

Considered minors after medical test: 485

2006	Asylum applications of unaccompanied minors										CGRS Decisions on asylum		
	Total	Age											
Country of origin		0-5	6-10	11-15	16	17	18	19 +	M	F	Ref	SP	Neg
Afghanistan	74	0	0	13	21	23	7	10	73	1			7
DR Congo	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
All countries	491	3	19	101	93	171	42	62	331	160	96	316

Considered minors after medical test: 387

2007	Asylum applications of unaccompanied minors										CGRS Decisions on asylum		
	Total	Age							Gender				
Country of origin		0-5	6-10	11-15	16	17	18	19 +	M	F	Ref	SP	Neg
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
DR Congo	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
All countries	555	5	19	121	108	182	53	67	379	176	61	12	191

Considered minors after medical test: 435

2008	Asylum applications of unaccompanied minors									CGRS Decisions on asylum		
	Total	Male				Female				Ref	SP	Neg
Country of origin		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
DR Congo	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
All countries	470	24	35	155	89	29	20	101	19	114	22	184

Considered minors after medical test : 364

Source applications: Immigration Department

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

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

Annex 5: Statistics on Returns

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

2003			
Country	Female	Male	Total
Brazil	2		2
DR Congo	1		1
Ecuador	1	1	2
Moldova		1	1
Pakistan		1	1
Poland	1		1
Total	5	3	8

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

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

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
Total	11	10	21

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
Total	8	8	16

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

2008	
Gender	
Male	11
Female	11
Total	22

2008	
Age groups	
0-11	4
12-17	17
18-25	1
Total	22

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 from the Immigration Department, MINTEH Bureau. However, it is only since 2006 that specific data regarding the profile of these UMs has been available. In these statistics one can find information on nationality, date of birth, gender and sector of exploitation. To obtain information from before 2006, one should go through the specific files. The number of UMs that initiate the victims of human trafficking procedure is relatively low. As has been mentioned before, the conditions to be recognised as a victim are considered hard to meet.²⁰²

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		
DR Congo	1	China	4		
Kazakhstan	1	Croatia	3		
Latvia	1	Russia	3		
Bulgaria	1	Morocco	2		
Morocco	1	Poland	2		
		Afghanistan	1		
Total	15	Total	31	Total	22

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		
Total	7	Total	16	Total	9

2008	
Country of origin	Number of persons
?	?
Total	6

²⁰² 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 fall 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, for instance, a Polish UM was reported to them in 2006 could be considered as a mistake by the reporting authority as Poland has been 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 has not yet been able to provide statistics from the SMEV service (Signalement des MENA européens vulnérables). To have an idea of the number of EU UMs in 2008 we can refer to the number of interceptions by police authorities (2008* column). 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 Service

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

Source: Guardianship Service

*Source: Immigration Department

Annex 8: Number of interceptions of UMs

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

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

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

Source: Immigration Department

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

Annex 9: Identification form for unaccompanied minors

ALIEN UNACCOMPANIED MINOR FORM²⁰³

The alien unaccompanied minor form is sent 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-mail²⁰⁴: tutelles@just.fgov.be

Aliens Office: Antwerpsesteenweg 59 B, 1000 Brussels, e-mail²⁰⁵: minfiche@dofi.fgov.be

Report number:

File number of the Aliens Office:

The individual declares he/she is an unaccompanied minor alien: YES – NO

Fingerprints have been taken²⁰⁶ or other biometric features have been collected: YES – NO

Identity of the service completing the form (stamp)

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

Instructions 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. Please insert the words “not applicable” if no observations are to be made, in whatever section.

SPECIAL SECTION FOR (POTENTIAL) CLANDESTINE PASSENGERS

This concerns an individual who declares that he/she is, 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 ship²⁰⁷ (lay days²⁰⁸) ☐ > 24 hours ☐ < 24 hours

Doubts about the alleged minority:

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

The Aliens Office requests a medical examination: YES – NO

Identity

Name, first name

Place and date of birth²⁰⁹

Nationality

Address in Belgium

Address in country of origin or other country

Other identities used

²⁰³ An “alien unaccompanied minor alien” (hereinafter called “AUM”) is a person who seems to be or declares that he/she is 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 Area (EEA) and who is in one of the following situations:

- has applied for asylum;
- does not fulfil 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.

²⁰⁴ If there is a technical problem, the form can be faxed to the following number: ☎ **02 542 70 83**

²⁰⁵ 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).**

²⁰⁶ Article 30 b, (3) and (4) of the Law of 15 December 1980 on entry into the territory, residence, settlement and removal of aliens.

²⁰⁷ Please tick where appropriate.

²⁰⁸ Period of time for loading and unloading a ship.

²⁰⁹ If the person only knows his/her year of birth, 99/99/ followed by the year should be mentioned.

Identity established on the basis of:

● Statement: YES – NO

● Documents: YES – NO

²¹⁰Passport – false or falsified passport – authentic passport fraudulently obtained– identity card – other²¹¹:**Features**

● Height: cm ● Hair colour: ● Eye colour:

● Mother tongue: ● Spoken language:

● Personal objects:

Luggage – clothes – money – mobile phone – jewellery – other:

Family members and acquaintances of the minor

● Parents

✧ FATHER

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

✧ MOTHER

Name, first name

Place and date of birth

Nationality

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

²¹⁰ Circle the appropriate response.²¹¹ 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 means of transport used)

- Reason for immigration into Belgium (who organised 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

²¹² Passport - false or falsified passport- fraudulently obtained passport on basis of declarations- identity card- other²¹³:

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:

.....

.....

.....

²¹² Circle the appropriate response.
²¹³ To be specified.

Bibliography

- **Austria BMI, IOM.** Resource Book for law enforcement officers on good practices in combating child trafficking, March 2006 p.46.
- **Académie nationale française de médecine.** Report 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
- **Bouckaert Steven,** Documentloze vreemdelingen. Grondrechtenbescherming doorheen de Belgische en internationale rechtspraak vanaf 1985,2007.
- **Centre pour l'Egalité des Chances et la Lutte Contre le Racisme.** Rapport Annuel Migration 2008.
- **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
- **Child Focus & Fedasil.** Het profiel en de traject-monitoring van de niet-begeleide minderjarige asielzoeker in België. Juli 2005.
- **Child Focus.** De luchthaven, een veilige plek voor alleenreizende minderjarigen? Verkennend onderzoek naar het risico op slachtofferschap en misbruik op Brussels Airport. November 2007.
- **Child Focus.** Annual Report 2006.
- **Child Focus.** Annual Report 2007.
- **CLOET Margot.,** Voldongen feit? Opvang en begeleiding van buitenlandse, niet-begeleide minderjarigen, Garant, Antwerpen- Appeldoorn, 2007.
- **Comité Consultatif National français d'Ethique pour les Sciences de la Vie et de la Santé.** advice No.88 regarding methods of age assessment in a judicial context, 23 June 2005, www.ccnne-ethique.fr
- **Commissariaat-generaal voor vluchtelingen en staatlozen.** Jaarverslag 2007. www.cgvs.be
- **Communauté française de la Belgique,** The education system in the French Community of Belgium (2007/08): www.eurydice.org
- **De Grave Ilse.** Het profiel van Afghaanse minderjarigen in België. Eindverhandeling. FOD P&O- OFO. Augustus 2008.
- **Derluyn, I & Broekaert E.** (2007). Niet-begeleide buitenlandse minderjarigen: onoplosbare paradoxen. Orde van de Dag: Criminaliteit en Samenleving 37(10); 29-34.
- **Derluyn, I & Broekaert E.** (2005); Niet-begeleide buitenlandse minderjarigen. Tijdschrift voor Jeugdrecht en Kinderrechten, 6, 1, 12-21
- **Derluyn I** (2007). Niet-begeleide buitenlandse minderjarigen. In: K. Van Buyten (ed), Kinderrechten en ouderlijke verantwoordelijkheid. Verzamelde commentaren. Gent: Universiteit Gent- Centrum voor de Rechten van het Kind, pp.59-80.
- **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.
- **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.
- **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
- **Dienst Vreemdelingenzaken,** intern document, terugkeer niet-begeleide minderjarigen 13/06/2008.
- **Dienst Vreemdelingenzaken,** intern document, Bart Verstraete, onderzoek naar dubbele intercepties 2007-2008.
- **Dienst Vreemdelingenzaken,** activiteitenrapport 2008.
- **Fedasil,** wegwijzer voor niet-begeleid buitenlandse minderjarigen in België, januari 2008.
- **Fedasil.** Jaarverslag 2008.
- **Fedasil.** eerste evaluatie van de toepassing van de wet van 12 januari 2007 betreffende de opvang van asielzoekers en bepaalde categorieën van vreemdelingen. Jni 2008 met update februari 2009.
- **Federale Overheidsdienst Justitie, Dienst Voogdij.** Vademecum voor voogden van niet-begeleide minderjarige vreemdelingen. Eerste uitgave – bijgewerkt op 31 augustus 2007.
- **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.
- **International Juvenile Justice Observatory (IJJO), Daniel Senovilla Hernandez.** Situation and treatment of unaccompanied children in Europe. September 2007.
- **J.P.Jacques.** "Quand la science se refroidit, le droit éternue!" et O.Diamant-Berger, « Détermination médico-légale de l'âge d'un adolescent » ; J.D.J, november 2003, nr.229
- **Jollet Christophe.** La procédure des MENA. Comparaison avec les demandeurs d'asile adultes. Mémoire de stage. SPF P&O- IFA. Août 2008.
- **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

- **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
- **Kinderrechtencommissariaat.** Heen en retour. Kinderrechten op de vlucht. September 2007.
- **Mentor Escale.** Begeleiding van jongeren op de vlucht, jaarverslag 2007.
- **Nationale Commissie voor de Rechten van het Kind.** Derde periodieke rapport van België betreffende het Internationaal Verdrag inzake Rechten van het Kind. Juli 2008.
- **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.
- **L'Observatoire.** Revue d'action sociale et medico-sociale. Nr57/2008. Juillet 2008.
- **Platform “Kinderen op de vlucht”.** nieuwsbrief 7, oktober 2006. Het El Paso centrum in de schijnwerper.
- **Platform “Kinderen op de vlucht”.** Nieuwsbrief 20, april 2008.
- **Platform “Kinderen op de vlucht”.** Nieuwsbrief 23, oktober 2008.
- **Platform “Kinderen op de vlucht”.** Nieuwsbrief 24, November-december 2008.
- **Renard Valérie.** Les “enfants-soldats” dans la procédure d’asile au Commissariat Général aux Réfugiés et aux Apatrides. Mémoire de stage. Août 2008.
- **Rode Kruis Vlaanderen.** Onderzoek naar psychosociale en therapeutische hulpverlening aan asielzoekers, maart 2004.
- **Service Droits des Jeunes.** What part does your guardian play:
<http://www.sdj.be/admin/docmena/A5ANGL40pages.pdf>
- **Timmerman C., Vandenhoele W., Vanheule D.(eds.).** Kinderen zonder papieren: feiten en rechten. Juli 2009.
- **UNICEF:** de bescherming van niet-begeleide minderjarige vreemdelingen slachtoffer van kinderhandel en –smokkel. Verkennend onderzoek – samenvatting. November 2008
- **Van de Kerckhove Kathleen.** Procedure mensenhandel en niet-begeleide minderjarigen. Moeilijkheden en voorstellen tot wijziging voor het verbeteren van de zorg voor minderjarigen. Eindverhandeling in het kader van benoeming. FOD P&O, OFO. Augustus 2008.
- **Van Zeebroeck Charlotte- Plate-forme Mineurs en exil.** Aspects législatifs de la situation des mineurs étrangers non-accompagnés en Belgique. Mars 2008.
- **Vanlischout Ward.** Recht vs realiteit. Het verblijf, de opvang en de begeleiding van niet-begeleide minderjarige vreemdelingen en minderjarige slachtoffers van mensenhandel. Eindverhandeling ingediend voor het behalen van het bachelordiploma sociaal werk. Academiejaar 2007-2008.
<https://doks.khleuven.be/doks/do/record/Get?dispatch=view&recordId=SKHL413e0ac71854e73401185627e9091e3d>
- **Vlaamse Gemeenschap.** Flemish EURYDICE Report 2008, pp. 408-412,
www.ond.vlaanderen.be/publicaties/?get=INT&nr=347&i=1
- **Vlaams Minderheden Centrum.** Verblijf in België van niet begeleide minderjarige vreemdelingen.
www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=148
- **Vluchtelingenwerk Vlaanderen.** E-fugee nr,10 2007, Interview met Geert Serneels en Hilde Smits, vzw Solentra.

