10th European Forum on the rights of the child

The protection of children in migration

► 29-30 November 2016

REPORT
EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate C — Fundamental rights and rule of law
Unit C.2 — Fundamental rights policy

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European Commission
B-1049 Brussels
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NOTE:

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1. **INTRODUCTION**

On 29 and 30 November 2016, the European Commission hosted the *10th Annual European Forum on the rights of the child*, on the *protection of children in migration*. The Forum brought together more than 300 experts in asylum and migration as well as child protection and child rights, from the 28 Member States of the EU, Iceland and Norway. Participants included national authorities, civil society, international organisations, ombudspersons for children, academics, practitioners, and EU institutions and agencies, roughly broken down as follows. See Annex 1 for more details.

<table>
<thead>
<tr>
<th>Civil society organisations</th>
<th>69</th>
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</thead>
<tbody>
<tr>
<td>MS authorities as well as Norway and Iceland (Ministries, child protection agencies, judiciary, etc.)</td>
<td>93</td>
</tr>
<tr>
<td>EU institutions and EU agencies: European Parliament (3 MEPs, Council, EEAS, EESC, CoR, EASO, FRONTEX, FRA), Commission (JUST, HOME, ECHO, REGIO)</td>
<td>56</td>
</tr>
<tr>
<td>International organisations (Council of Europe, UNICEF, OHCHR, UNHCR, IOM, Council of Baltic Sea States, Red Cross)</td>
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<tr>
<td>Academics on rights of the child/child protection/child welfare/asylum and migration</td>
<td>11</td>
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<tr>
<td>Ombudspersons for children (or their representatives) (CY, DK, EE, EL, FR, HU, IT, LT, LU, LV, MT, NL, PL, SK, SL, SW, UK)</td>
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</tr>
<tr>
<td>Guardianship authorities and individual guardians</td>
<td>10</td>
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<tr>
<td>Other practitioners working for and with children</td>
<td>19</td>
</tr>
<tr>
<td>Independent experts</td>
<td>5</td>
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<tr>
<td><strong>Total</strong></td>
<td>304</td>
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The discussions were informed by a *general background paper* including the challenges faced by children in migration contained in Section 3.3 of the general background paper and *topic-specific papers for the four more indepth parallel sessions*, as well as the *10 principles for integrated child protection systems*, around four broad themes: identification and protection, reception, access to asylum procedures and procedural safeguards and durable solutions.

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National and European policy-makers, people working directly with and for children in migration and child rights advocates discussed challenges and gaps, explored opportunities and gave examples of good and promising practices in the protection of all third country national children arriving to and residing on EU territory.

Preceding the Forum, the Commission also organised a side event on guardianship on 28 and 29 November 2016 bringing together 115 participants: practising guardians, guardianship institutions, national asylum and migration and child protection authorities, ombudspersons for children, child rights advocates, civil society, international organisations and EU institutions, to address challenges in effective guardianship and looking ahead to the strengthening of provisions in EU law on guardianship.

Where available, speakers’ presentations are linked. Please see the electronic version of the report to follow all the hyperlinks.2

2. DAY 1, PLENARY SESSIONS, 29 NOVEMBER 2016

2.1. Plenary Session I – EU and international commitments on the protection of children in migration

Tiina Astola, Director General, DG Justice and Consumers, welcomed participants to the Forum and urged them to focus on discussing solutions to protect children in migration and make progress. She expressed her hope for the Forum to be a catalyst and for it to lead to clear follow-up actions to ultimately contribute to better outcomes for children.

2 http://ec.europa.eu/newsroom/document.cfm?doc_id=44074
Commissioner Věra Jourová³ outlined the situation of some of the children in migration, recalling that as well as asylum applicants, this means children who do not claim asylum, undocumented and stateless children, and said that a comprehensive approach to the protection of children in migration concerns all third-country national children who arrive in the EU and at its borders. She said that implementation on the ground and the impact or effects on individual children needs to be assessed. She touched on key challenges, such as processes adapted to the needs of children, identification of and responses to vulnerability, effective guardianship, support for the family as primary caregiver, access to services, the need to do more to ensure a viable range of alternatives to administrative detention, and documentation of robust best interests assessments in the context of durable solutions and the urgency principle for proceedings involving children⁴. She called on participants to contribute actively to finding solutions and sharing good practice to implement a collective and coherent comprehensive approach. She announced that Forum conclusions will feed into further policy developments at both the EU and Member State level. Finally, she underlined the urgency of taking action now.

Commissioner Dimitris Avramopoulos⁵ said that the protection of children in migration is one of the EU's top priorities. He said “Even if we succeed in all [other] areas, if we do not succeed in protecting children, we have not succeeded at all.” He outlined existing EU law guarantees for children who seek international protection in Europe, and said that the Commission has proposed strengthened provisions for the protection of children in migration in the reform of the Common European Asylum System (hereafter CEAS) in summer 2016. He said that accelerated procedures are proposed and in particular detention measures can only be applied to unaccompanied children in very exceptional cases; detention is to be avoided as a rule. He underlined the need to focus on alternatives to detention. The reform also proposes clearer deadlines and obligations for guardians, to ensure effective guardianship for unaccompanied children. The Commission has also proposed to lower the minimum age for fingerprinting to reduce the risks of children going missing. He called on Member States to urgently increase their pledges for relocation and recalled the role of EU funds in protecting children in migration. He also referred to child protection provisions in the new European Border and Coast Guard Regulation adopted in September 2016. He stressed that it is not just about making sure that children's rights are generally safeguarded and implemented, but it is also about making sure that their vulnerabilities are not exploited, particularly in the context of the ongoing refugee crisis.

⁴ In line with the Council of Europe Guidelines on child-friendly justice: 50. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.
He called on all Forum participants to find ways to step up efforts for the protection of children in migration.

Anna-Maria Corazza Bildt, Member of the European Parliament and co-chair of the European Parliament's Intergroup on children rights, stressed that Member States need to urgently do more to resettle and relocate unaccompanied children and ensure that they enter and stay in the protection system. Member States also need to make better use of EU funding to step up reception facilities and build capacity to combat trafficking and abuse. EU policies, funding and support are in place and under improvement. The key challenge is the lack of political will in some Member States to implement the asylum package. On behalf of the Intergroup, she called on the Member States to act to speed up procedures for asylum, guardianship, relocation and family reunification of children. She also appealed to prioritise missing children, pointing out that "Europe should mean safety for children, we should not turn our back on them. Member States should provide children with dignified accommodation, immediate access to healthcare and education. The EU should change the narrative, stop seeing children as a burden, and instead seeing them as individual right holders and as a benefit for our inclusive and diverse societies."

Caterina Chinnici, Member of the European Parliament and co-chair of the European Parliament's Intergroup on the rights of the child, stressed that we must listen to children, to hear what they need. Children who flee reception must be identified and traced as they are at heightened risk of trafficking and sexual violence. She emphasised the collective responsibility of the EU and its Member States concluding that "we are unified here in our concern for children, and it falls on us to seek tangible solutions for them".

François Crépeau, the United Nations Special Rapporteur on the Human Rights of Migrants, stated, in a video message, that "protecting children is more important than protecting borders". The best interests of the child must be a primary consideration during all stages of the migratory process. He criticised the detention of children, stating that even short periods have
an adverse effect on a child’s development, and their physical and mental wellbeing. He urged the EU to mainstream a child’s rights based approach to migration into its plans, programmes and policies, and consider the impact of migration on children in the elaboration and implementation of development frameworks.

2.2. Plenary Session II – challenges and opportunities for the protection of children in migration

Michael O’Flaherty, the Director of the EU Agency for Fundamental Rights (FRA), highlighted the findings documented in the monthly FRA overviews on the migration crisis. He noted the lack of safety and protection at reception facilities; violence and hate crime against migrants; the lack of direct contact between migrants and receiving communities, often resulting in hostile attitudes, and inadequate protection of children, especially those who are unaccompanied or separated. He stressed the need for child protection safeguarding standards and effective guardianship systems, as well as the need to develop and monitor reception standards. He pointed to opportunities as well, including the reform of the CEAS and efforts to make child protection systems more integrated. He presented some elements of the FRA opinions on the impact on children of the proposals for a revised Dublin Regulation and the situation in hotspots.

Tomáš Boček, the Council of Europe Special Representative of the Secretary General on Migration and Refugees, emphasised that all children should be treated as children regardless of their citizenship, immigration status or background. He announced the Council of Europe thematic report on children in migration to be published in December 2016, followed by a Europe-wide action plan on the protection of children in migration (including unaccompanied children), proposing concrete actions and objectives that the Council of Europe and its member states should take until 2019.

Manuel Fontaine, UNICEF Regional Director for West and Central Africa Region, emphasised that protecting children needs leadership and an agreed policy framework that defines goals and measures progress. This crisis represents a “global children’s crisis”.
requiring urgent actions, where Europe has an opportunity to innovate and build systems that are more resilient, more effective and better able to protect children. He urged Member States to accelerate pledges and extend the existing relocation scheme on the basis of vulnerabilities and children’s best interests, not nationalities, while fighting smugglers though speedy and humane family reunification procedures, and by removing all discriminatory practices that limit access to critical services. He called for a comprehensive EU action plan to protect children in migration as an outcome of the Forum.

George Moschos (speaking points in Greek), the Deputy Ombudsperson for Children’s Rights (Greece), highlighted the difficult situation in Greece, recalling collective responsibility and an answer of solidarity from Europe on the future of children in migration. He underlined the need to accelerate procedures, including with regard to relocation where the number of unaccompanied children relocated remains low. He called for guidelines to ensure that the EU protects the rights of all children, refugees and migrants, and gives them a future.

Raffaela Milano (speaking points in Italian), the Director of EU and Domestic Programmes and Advocacy in Save the Children Italy, addressed the need for coordinated and comprehensive EU action on children in migration. She stressed the importance of harmonising asylum procedures as long as this is based on the highest standards of protection. She presented the new Italian bill on reception and protection of unaccompanied children. She concluded with a call to actively involve local communities to develop inclusion capabilities, fight xenophobia and facilitate integration.

3. **Day 2, Plenary Sessions, 30 November 2016**

3.1. **Plenary Session III – towards durable solutions, including integration, for children in migration**

Gulwali Passarlay, author of a memoir "The lightless sky" and a former unaccompanied child, gave a testimony of fleeing Afghanistan at the age of 12. Along his journey, he was imprisoned several times (with adults), almost drowned while crossing the Mediterranean, and risked his life to get from Calais to the UK on a lorry. He was told he was "too smart for a 13-year-old" at his age assessment. During his one-year journey towards the UK he was never informed about his rights as a child. He underlined the need to create safe and legal routes for persons fleeing war and conflicts, rather than enabling the multi-billion euro smuggling business to further develop, asking...
"what would you do if your home became a war zone?" He also gave a brief interview in the margins of the Forum.

3.2. Plenary Session IV – concluding remarks and next steps

Ioannis Mouzalas (speaking points in Greek), the Minister of Migration Policy of the Hellenic Republic, provided statistics on the number of stranded refugees and unaccompanied children in Greece, providing an overview of the situation in reception facilities and safe zones for children. He presented legal provisions to strengthen the Greek guardianship system, to be adopted by end January. He thanked the EU and civil society and other international organisations for their assistance during the crisis. He underlined the fact that further progress, nonetheless, is needed. He concluded by calling for collective support and solidarity, urging the prompt relocation of children, regardless of their nationality.

Prefect Mario Morcone (speaking points in Italian), the Head of the Civil Liberties and Immigration Department of Italy's Ministry of Interior, clarified that Italy's position is that all children shall be considered as vulnerable, regardless of their request for international protection. Apart from complying with the State's obligations in respect to these children, it is a collective task to transform their difficult journey into an opportunity. Providing adequate shelter is essential, and a necessary step to build their future. He referred to good practices related to children's participation in schools and sports, in direct contact with the local community, to also promote an effective path to integration.

Nathalie Griesbeck (speaking points in French), Member of the European Parliament and vice-chair of the Intergroup for the rights of the child, criticised the lack of a comprehensive approach at EU level. All Member States have signed the UN Convention on the Rights of the Child, making promises that must be kept. She concluded by stating that it is a collective obligation to do more and hoped for further concrete measures.

Vincent Cochetel, the Director of UNHCR’s Bureau for Europe, emphasised the need for better identification and registration procedures and the importance of cultural mediators in this process. Common registration systems among Member States are crucial to prevent children from going missing. Cooperation with countries of origin and transit is crucial. In
the area of guardianship, there is disharmony, not only between Member States, but also within a single country. He concluded with a call to take a more child-centred approach, which would focus more on child protection and not necessarily always frontload the asylum procedures, with a view to guaranteeing respect for the best interests of the child.

First Vice President Frans Timmermans thanked the 78 international and non-governmental organisations which issued a Joint Statement on the first day of the Forum. He said that focus should be on all children in migration, not only unaccompanied children. He underlined the need to improve registration of children and develop policies keeping in mind children's rights. He stressed the need to strengthen child protection systems, particularly in how they cooperate and coordinate cross-border. He expressed his concern about secondary movements and the need to work on sustainable solutions, working also with countries of origin. He emphasised that the different systems in place need to communicate better together, and share information and best practices, including on children going missing. He said that the Commission will do all it can to make child protection systems talk to each other. He underlined that "We need to have a sense of focus and urgency when it comes to children [crossing borders] who are so vulnerable to exploitation in all areas." He thanked all of the participants for their efforts on the protection of children in migration, and called for a collective effort to put children higher on the agenda. He applauded the work that was done at local level, by local authorities, schools, churches and companies to create better situations for refugees. He underlined the need to exchange good practice and said that the EU needs a database on good practice and experience that everyone can tap into. He said that the measure of our success will be the level in which we can engage with Member States, international organisations, NGOs, local and regional actors. He called for solidarity, stating that "we need a collective effort to put children higher on the agenda".
4. **DAY 2, PARALLEL SESSIONS, 30 NOVEMBER 2016**

4.1. **Session I – Identification and protection**

The session was chaired by **Martin Schieffer**, Head of Unit, Migration Management Support, DG Migration and Home Affairs, and co-chaired by **Irina Todorova**, Migrant Assistance Specialist, Brussels, International Organisation for Migration, Regional Office. In this session, seven panellists shared their views and experience, followed by a discussion with participants.

The **chair** introduced the scope of the session and underlined that protection starts with correct identification and then referral on to the right services. This is largely the responsibility of EU Member States, but there is a European dimension. The chair briefly outlined the EU legal framework, in particular the provisions on unaccompanied children (e.g. Reception Conditions Directive, Return Directive, Eurodac Regulation, the Directive on combating trafficking in human beings, and the current legislative reform of the Common European Asylum System (CEAS)). A second important strand comprises EU funding support, notably through the Asylum Migration and Integration Fund (AMIF) and Internal Security Fund (ISF) to protect migrants on arrival at EU external borders. A third strand concerns monitoring, both of implementation of EU law and the use of funding. A new dimension for the Commission and EU agencies is operational support to Member States and the chair himself heads a newly created unit for operational support, which encompasses the new hotspot approach for frontline Member States. In this context, it is even more important to exchange good practice, listen to different perspectives and ultimately to improve the reality on the ground. The **co-chair** outlined IOM’s role in frontline Member States and her own role in supporting colleagues in Greece, with a focus on individual case management support. She underlined the importance for children of accurate information, good initial contacts and the presence of guardians at the point of arrival.
Major Jos Klappe, Commandant Border Security Team, Chief of Intelligence, Royal Marechaussee, Ministry of Defence, the Netherlands showed a short video of the reality of sea arrivals on the island of Chios, and described Dutch support via a team of 44 people from January to end June 2016 to assist Greece, under the auspices of Frontex. Their role was to help strengthen border security and register and screen migrants, including for identification of risks of trafficking, always under the responsibility of the Greek authorities, and in an assistance role. Major Klappe invited participants to take account of the numbers: Chios, with a population of 55,000 inhabitants, received 125,000 refugees in 2015. The Netherlands, with a population of 17 million, received 58,000 refugees in 2015. Forty per cent of arrivals were children, via 20-30 boats per day. Every boat meant €25,000 euro; i.e. up to €1m per day for smugglers just for Chios. He outlined the difficulties of such a large influx of people for an island without the necessary infrastructure, and the necessary coordination mechanisms in place, even with the best will in the world. In particular, he described the risks for children and the difficulties in identification and verification of stated family links. Major Klappe underlined the need for proper identification and registration and recommended the use of DNA for the future, especially given the ease with which anyone can take and travel with a child within Europe. He recommended an integrated, centralised child protection system, including cross-border. He said a different approach could be taken in the hotspots, to pilot a new system and ensure coordination and make it work well.

Kostas Simitopoulos, Coordinator for Unaccompanied Children, Reception and Identification Service (RIS), in Moria, Lesbos Island, Greece said that his role in this state service is to ensure that unaccompanied children are safe and their needs met. He said one difficulty in identification is verification of family links especially outside the nuclear family. The EU-Turkey agreement means that children may stay for five months in closed facilities intended for 2-3 days. This required a change of approach and more focus on education and recreation, with the help of organisations such as Save the Children. Above the age of 15, children were allowed to go out, and more focus was put on effective care and support. Persisting challenges are the length of asylum and family reunification procedures and the general lack of shelters for unaccompanied children, bearing in mind that there is a continuous trickle of new arrivals to the islands also, the absence of an effective guardianship system, the lack of trust, age assessment procedures, the personal motivations of unaccompanied children. Children do not go missing in Lesbos as they cannot leave the island. Mr Simitopoulos invited participants to recall the pressure children may be under to get a job and start repaying family debts linked to their flight. He called for more to be done to share good practice and said that first impressions are important and more focus should be put on reception. Whatever a smuggler is needed for, we need to do it better and faster and above all we need to prioritise hope for unaccompanied children.
François Bienfait, European Asylum Support Office (EASO) Liaison Officer to the EU institutions in Brussels, described EASO’s contribution via tools created in cooperation with Member States and NGOs and EASO operational support. Of particular note is the tool for the identification of persons with special needs (IPSN)\(^6\), which can be used by any officials in contact with asylum applicants, even without specialist knowledge. EASO will publish new guidance on age assessments in 2017, going further in terms of recommendations on good practice, as well as on best interests assessments. In practical and operational terms EASO had deployed some reception centre officers to Moria for unaccompanied children, but this is now on hold due to lack of Member State experts being deployed. EASO helps the Greek Asylum Service (GAS) on admissibility procedures and on vulnerability assessments, under Greek law.

Athanasia Retinioti, Manager of an accommodation centre for unaccompanied children, Médecins du Monde (MdM), Greece, described MdM’s role in access to healthcare across several European countries, remarking that many health systems need rebuilding or consolidation, to ensure children’s equal access to healthcare, irrespective of status and without discrimination. Of 1764 children seen by MdM, 30% were not vaccinated against tetanus and 40% were not vaccinated against measles, mumps and rubella (MMR). She also raised the issue of increasing xenophobia. Ms Retinioti outlined key statistics on refugee and migrant children in Greece and reported incidents of Greek police violence against children in Moria. She cited the difficulties due to prolonged detention for thousands of people, centres that have exceeded capacity, delays in procedures, poor conditions in many maps, lack of formal operating procedures, the increase in the mental health case load, violence against children and the absence of an official guardianship system. In light of these difficulties, MdM operates a new shelter for unaccompanied children in Attica, which is EU-funded, in partnership with IOM. She reminded participants that children learn to define love by how they are treated.

Amir-Hashemi-Nik, Development Manager, County Administrative Board (CAB) of Stockholm, Sweden, said that in 2015 35 000 unaccompanied children had arrived in Sweden, and a further 2000 unaccompanied child asylum applicants in 2016. Concluding observations were addressed to Sweden by the UN Committee on the rights of the child in March 2015 on unaccompanied children going missing.\(^7\) As a result of that, in January 2016, a government assignment was given to the CAB to carry out a study and mapping of

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\(6\) https://ipsn.easo.europa.eu/

the situation, to analyse it and to prepare a national action plan, to be delivered in February 2017. They also had an obligation to consult children themselves, to ensure that the work done meets their needs. Sweden is aiming for an integrated approach, involving the children’s ombudsman, the Swedish Migration Board and the police. The best interests of the child are central. He outlined the findings of the mapping phase, published in November 2016.8 Between 2013 and May 2016, 4% of all unaccompanied children went missing, i.e. the equivalent of two school classes per month. The study looked at trends and patterns and whether there were preventive and responsive protocols and mechanisms in place in municipalities. He underlined that many children disappear because of fear and uncertainty and some can be directly linked to trafficking. Traffickers benefit from the increase in the number of vulnerable systems, with a bigger market, and many children are living invisible lives. In a 2015 report on suspected child trafficking cases over a three-year period, 64% were unaccompanied children. Mr Hashemi-Nik said that Sweden now has a better understanding of the phenomenon, to inform their action plan, and he encouraged other Member States to carry out similar work.

Swati Pande, Assistant Team Manager, Child Trafficking Advice Centre, UK, described the work done to ensure cooperation and coordination of efforts with law enforcement, immigration authorities and civil society on child trafficking. In practice, they now function as a child trafficking advice centre, although the expertise came as a result of working with trafficked children. Ms Pande challenged the notion of ‘deserving’ versus ‘undeserving’ children, which has an impact on responses, and she reminded participants that labels the language used can pose problems. She underlined that protection is a process, not something one off and ad hoc, and it is run through all countries and all systems, as part of a coordinated approach. She said it is important to ask young people themselves what works, as evidenced by Gulwali Passarlay’s intervention at the Forum, and not only when asked to do so by the European Commission in order to get a grant. Following on from Major Klappe’s intervention, she said that fingerprinting and DNA, with commensurate safeguards, work. DNA is also used in family courts and trafficking processes, so there should be space for discussion rather than a blanket shutdown. On the basis of a very vulnerable child arriving in the UK, she said it was impossible to trace back what had happened to that child in the absence of registration and identification, and lots of time and effort is wasted due to a lack of a harmonised approach. Such an approach is very important for practitioners, but most of all for the child.

Chris Nash, Director and co-founder of the European Network on Statelessness, said that the intersection between migration and statelessness is often overlooked. He outlined some of the risks linked to migration such as: where a child’s family link or connection with a country cannot be established (no birth registration, or not properly recorded), children born to stateless parents, where parents are unable to transmit nationality to their child.

because of discriminatory laws for women (27 countries including Syria, Iraq, Iran, Libya, Jordan), if the father is killed or where this is no documentary evidence of paternity. A process can be distilled to prevent and respond to statelessness in line with the UNCRC, by ratifying the European Convention on Nationality and the 1961 Statelessness Convention. A key standard, existing in 23 Council of Europe states, is to grant nationality to an otherwise stateless child. Mr Nash said it is critical to record cases of statelessness at arrival/identification/registration and wrongful attribution of a nationality can simply mask and perpetuate statelessness. He said the EU needs to act on this, also with regard to external relations policy.

All discussed centred around coordination and cooperation and the need to work together to protect children better, as well as in consultation with children themselves. Specific elements discussed covered:

- **The need to address childhood statelessness in order to ensure that children have a future and realise their potential**
- **The prejudice** that children in migration face: panellists confirmed that they are confronted with this on a daily basis. In this context, the first steps should always cover coordination, work with the host community and training. In Greece, the way events transpired meant that these steps came last rather than first. Others said that this is the elephant in the room, especially if we are talking about boys who are Muslim, coming from certain countries, and that there had been a huge shift in discourse over the last year. One panellist remarked that if practitioners are basically discriminatory, then even the best tools will not help. A second said prejudice needs to be identified and we need to dare to talk about it.
- **Fingerprinting** of unaccompanied children for their protection: a participant suggested that all EU Member States should register fingerprints in a common register to combat trafficking in human beings and that given transnational aspects all states need to do this; it cannot work on a country-by-country basis. Major Klappe and Ms Pande, in the light of their experience, supported the use of fingerprints/DNA with commensurate safeguards, to better protect children and place the child at the centre.
- **Assistance by other EU Member States to frontline Member States:** in response to a question, Mr Simitopoulos said that assistance to Lesbos from other Member States was via EU agencies, no other help could be identified, apart from some indirect help through funding. EASO underlined that there was a shortfall of 150 experts from EU Member States for deployment.
- **Quality of care:** in response to a question on this (more properly discussed in the reception session), IOM said aside from the issues already mentioned, there is a need to focus on long term solutions, and more family-based care, especially for long-term integration. On a question on interactions between asylum and migration and child protection actors, the co-chair pointed out that the Forum set out to bring these two sectors together.
- **Contracting out of services:** Mr Hashemi-Nik pointed out that in the Swedish study, there is a noted difference in prevention and responses when shelters are subcontracted out, with subcontracted shelters faring more badly. On the use of
hotlines, he said that the missing children hotline is not used at all in Sweden for unaccompanied children, and this is being analysed. Several people remarked on the difficulties in reporting unaccompanied children missing, in the absence of a parent to do so, and their generally more precarious situation.

The chair closed, by underlining that many of the problems and challenges discussed related to implementation, including monitoring and follow up. He said that this needs to be brought to the attention of all decision-makers and he underlined that frontline workers, working very hard, are often left alone because of a lack of political support and awareness, not only in Greece. The description of the crisis in Greece as an implementation challenge is broadly shared.
4.2. Session II – Reception

The session was chaired by Ellen Gorris, Assistant Policy Officer, Rights of the child team, Fundamental Rights Policy, DG Justice and Consumers and co-chaired by Ester Asin, Director and EU Representative, Brussels Advocacy Office, Save the Children. In this session on reception, seven panellists shared their views on specific topics, followed by discussion with participants.

The chair introduced the discussion by mentioning some of the issues affecting the reception conditions of children in Member States, such as children being hosted together with unrelated adults, a lack of quality of reception and a lack of monitoring. Reception is crucial for the protection of children. It was highlighted that children have rights, under EU law, to reception conditions adapted to their needs as well as access to education and healthcare but that challenges at the national level prevent the full enjoyment of their rights. This was reiterated by the co-chair, who stressed the need to listen to children, highlighting the importance of providing access to education, leisure, healthcare and psychological assistance while securing children’s status in the procedures. Detention is never in the best interests of the child and alternatives should be available. She stressed that the ongoing reform of the CEAS provides ample opportunity to make a positive change for the protection of children in migration.

Christos Hombas, Head of the Division for Social Interventions at the National Centre for Social Solidarity (EKKA), Ministry of Labour (Greece), provided an overview of EKKA’s role in the protection of unaccompanied children and their reception in Greece. Once an accommodation request for a child is made, EKKA treats the matter as a child protection case, regardless of the child’s request for international protection. Placement is prioritised according to vulnerability criteria. Age and gender, living conditions (such as detention),

physical and psychological health, traumatic events that might have been experienced and any other information present in the referral request is taken into account. Training seminars both for field workers and shelter staff have been initiated in order to harmonise referral procedures and make sure that signs of vulnerability are detected and followed up. Shelters run by NGOs that are included in EKKA’s referral system need to comply with certain standards and be accredited (e.g. maximum capacity of 30 children, one social worker for every 15 children, presence of interpreters, legal representatives, access to education and leisure activities). In case a child goes missing, the police as well as the public prosecutor and EKKA are notified within 24 hours. Plans for the creation of safe zones in open camps before children are placed in shelters are underway. EKKA will have a coordinator role in this matter. Once new legislation on guardianship is adopted EKKA will be responsible for recruiting, training and monitoring guardians. EKKA publishes a weekly update\(^\text{10}\) on its referrals on the www.EKKA.org.gr website also in English.

**Litsa Arsenopoulou**, Decentralised Administration of Aegean, Head of Department of Civil Status, Migration and Social Integration of Prefecture of Chios (Greece), spoke about the life of a refugee child in the hotspot on Chios, from the child’s arrival at the island until the transfer to a reception centre. The care and protection of unaccompanied children is foreseen in Greek law, but there are many challenges in correct implementation by institutional authorities. The Greek guardianship system frequently does not work efficiently; there is a lack of specialised institutions and networks of guardians that are appropriately trained. Prosecutors acting as guardians might be responsible for thousands of children and thus unable to effectively exercise their duties. Delays in processing requests to transfer children to hosting facilities on the mainland has led to children absconding from facilities and attempting to travel (mostly successfully but by illegal means) to the mainland. A more effective legal framework on guardianship needs to be reinforced in order to better implement child protection. Living conditions at the reception camps have proved to be insufficient with poor sanitary conditions and nutrition, as well as a lack of psychological assistance to children and families who suffer from post-traumatic stress disorders. Projects providing recreational activities, such as sport, and access to education to children have been essential in the lives of children living in Chios. Ms Arsenopoulou stressed the need to provide constant training to all actors working with children, particularly paying attention to signs of human trafficking. Information campaigns addressed to the local population are also very important.

**Ben Lewis**, Advocacy Coordinator at International Detention Coalition strongly condemned the administrative detention of children. Detention is extremely harmful for children and their development. He provided an overview of the international legal framework that clearly prohibits the detention of children and does not allow any justifications based on the child’s migratory status or due to being an unaccompanied child. Reception should be primarily about providing protection, effective care and support. Many ways

exist to prevent children from being placed in detention facilities starting with the prompt appointment of a guardian. Alternatives to administrative detention should be implemented as they prove to be more effective, humane and affordable. Mr Lewis provided a brief overview of the Community Assessment and Placement (CAP) model developed by International Detention Coalition to find alternatives to detention.

David Lowyck, Director of Minor-Ndako (Brussels), a specialised reception centre for unaccompanied children in Flanders, reported the Belgian experience in the shift from residential care to foster-care for unaccompanied children to face the large number of arrivals of young unaccompanied children at the end of 2015. Minor-Ndako’s work has shown that family foster care needs to be integrated as a structural part of the reception system for unaccompanied children before a Member State is confronted with an increase of arriving children in need of reception. Lack of a pre-existing system is a big challenge. Diversity in the group of families who are candidates to receive an unaccompanied child is needed: an unaccompanied child might be better accommodated with families from the same cultural background. Struggles still exist in the implementation of a common vision on foster family care for unaccompanied children. Guardians, educators and social workers in reception centres are often not convinced that foster care represents the best solution for the child. The shift from short-term residential care to foster care must be faster, as it might be more challenging to transfer children from a residential community where they have been living for months. It is important to note that many unaccompanied children have relatives, acquaintances and friends of the family living in Belgium, or might have arrived together with older brothers, sisters or cousins. Keeping this family network is very important and needs to be integrated into the foster care system. In addition, involving the parents of the unaccompanied child from the start of the procedure (e.g. by phone, skype) has a significant positive impact on the child when moving towards a foster family. He also mentioned the importance of providing assistance to children all along their migration journey, stating that in the reception centre it is estimated that almost 80% of the boys have been sexually abused on their migration journey (e.g. by smugglers, by other migrants, along their journey but also in reception centres). Only providing assistance at the end when they arrive in Belgium may be too late.
Vega Velasco Sampredo, Secretary General of Integration of Migrants, Directorate General of Migration (Spain) provided a general overview of Spain’s activities in the reception of children in Spain. The General Secretariat of Migration and Emigration is responsible for the development and management of the Reception and Integration System for children accompanied by their families seeking international protection, with a stateless status or to which temporary protection in Spain has been afforded. Guardianship and the reception of unaccompanied children falls under the responsibility of the Regional Governments. Most of the children are in the Autonomous Regions of Andalusia and Catalonia; and there are in particular two Centres for the Temporary Stay of Migrants (CETI) in the Autonomous Cities of Ceuta & Melilla. These Centres provide access to healthcare, schooling, leisure time activities, language support and psychosocial assistance for children. A system of early detection of risk situations, such as presumed child victims of human trafficking, has been set up so that all forms of violence are immediately reported to law enforcement authorities. Child-friendly spaces have also been created in collaboration with the IKEA Project on “The power of childhood with the refugees”.

Bernadette Kumar, Director, Centre for Migrant and minority health (Norway), spoke about the access of children in migration to healthcare. Despite the existence of normative tools, having rights and laws does not ensure that healthcare is provided on the ground in terms of both implementation and entitlements. Health is not static and a holistic approach to children’s access to healthcare is needed, endorsing a life-course perspective. The limited budget available should be prioritised, providing good quality service for basic health issues at children's arrival. Before thinking about serious diseases, basics needs related to health, nutrition and hygiene should be provided. Migrants should not be perceived as being a burden to the national health system. Working together is essential in order to reduce the exposure of children to health risks. There is a need to identify the gaps and think about the cross-border nature of children’s journeys, providing the healthcare needed and avoiding duplications. Psychological support to families and children with post-traumatic stress disorder as well as for lower scale incidence of anxiety and depression is needed, Communication with children, through the presence of interpreters, is of the essence.

Benoit Van Keirsbilck, President, Defence for Children International, presented the Belgian experience in the use of the European Committee of Social Rights collective

Within the framework of the IKEA Project on “The power of childhood with the refugees, the first action line “LIVE” included the donations of furniture and adaptation of spaces for children in different shelter facilities all over Spain. Second action line of the project “GROW UP” will aim at improving the employability of refugees, (especially fathers and mothers) through training programmes and work experience in IKEA shops.
complaint mechanism in the framework of the Council of Europe’s European Social Charter as a possible avenue that could help improving the reception conditions of children and families. Belgium experienced cases where large numbers of children with or without a family had been living in the streets or in inappropriate reception facilities. From the NGO perspective, solutions to this context were explored, opting for the use of the European Social Charter, which gives rights to children and special protection against physical and moral danger (Article 11 and 17). The decision resulting from the collective complaint confirmed that the Charter applies also in cases where children migrants do not have a legal status in the country and that the Charter needs to be applied in harmony with the UNCRC, taking into account the values of dignity, solidarity, and the principle of non-discrimination. It was clear that the situation in Belgium was violating several rights of the European Social Charter. Though the collective complaint is still a long procedure and implementation of the decisions is weak, it can be used as a possible avenue for solutions in similar cases. Through this procedure, an individual child does not have the burden to carry the complaint as it is of a collective nature. There is no need to exhaust national remedies, resulting in faster procedures. The mechanism has had an impact in Belgium and is used as a reference in Belgian jurisprudence. Many countries that have ratified the Charter also face the same kind of difficulties related to reception conditions and could use this decision at national level, without having to go back to the European Social Charter.

In the discussion that followed participants brought forth many challenges and recommendations to improve reception for (unaccompanied) children. Many acknowledged that whilst the current situation posed many challenges, it also provided an opportunity to put in place a system that works better. A main recommendation was centred on having a three-pronged approach: (1) ensuring that standards are in place, (2) ensuring that these standards are monitored, and lastly that (3) the standards are enforced. Many participants stated that the issue at hand is not one of bringing forward new standards, as existing (EU) law already provides for these, but rather one of monitoring and enforcement, as well as ensuring that adequate reception of children is prioritised in general.

A summary of further key messages from the discussion with participants:

- In many Member States there was no pre-existing functioning reception system, and gaps in quality of reception were exacerbated due to the crisis.
- The focus should be on the purpose of reception to provide safety, care, support, and protection. Reception should not be about controlling movements and enforcement. A consistent vision is needed for the reception of unaccompanied children. Facilities of 50+ children should not be promoted or financed.
- National child protection systems need to be strengthened. Actors active in child protection and those working in asylum and migration need to work together.
- Actors working for and with children should be trained on child protection and safeguarding. A key element is also to build trust and develop a positive relationship with the child.
- The cross-border nature of children in migration must not be forgotten. Children may arrive traumatised from their journey, but providing assistance only at the final destination may be too late: it is important to provide assistance all along their journey, and have key standards in place in reception to prevent violence. EASO has developed standards for reception facilities that can be used as starting point even if they do not explicitly cover unaccompanied children.
There is a growing need to strengthen oversight mechanisms (independent and trained to monitor properly), particularly with the increase of private sector involvement in reception centres. Harnessing corporate social responsibility and making the connection to non-traditional actors is a possible innovative solution, but it must be ensured that the proper standards apply when services are outsourced to private companies or associations.

Information exchange with other Member States on health measures provided at country of arrival is needed. It was reported that children arriving in Chios receive a vaccination, which is then repeated once arriving in Germany. In general, opportunities to exchange information and training with other reception centres, at least within the same country, should be improved. At the moment the information exchange between Member States and between reception centres is lacking, whilst the children are much more connected and frequently know more about reception centres in other Member States due to their connectivity on social media and with other refugees.

Children need to be listened to and having an interpreter is essential, as well as moving from a notion of cultural competence to a notion of cultural sensitivity. "Link workers"/cultural mediators could be useful to provide the link between the child and the service provider, thus lessening the cultural distance.

Getting support from NGOs and the local community is important, in the context of host society acceptance of migrants, participation and awareness.
4.3. Session III – Access to asylum procedures and procedural safeguards

The Session was chaired by Stephen Ryan, Deputy Head of the Asylum unit in DG Migration and Home Affairs and co-chaired by Rebecca O'Donnell, co-founding Director of Child Circle, who also reported on the side event on guardianship for unaccompanied children. In this session on access to asylum procedures and procedural safeguards four panellists shared their views on specific topics, followed by discussion with participants.

The chair introduced the discussion by presenting the existing EU legal framework in the area of the protection of children in migration. In particular, he talked about new CEAS package presented in May and July 2016. The new proposal aims to strengthened child specific provisions, such as:

- on guardianship: a guardian has to be appointed no later than five days after the application for asylum has been filed; guardians must be properly trained and qualified. The new proposal limits the number of children per guardian and puts provisions in place to ensure the continuity of guardianship through different stages of the procedure and places where the child stays,

- on age assessment: medical examination is allowed, but informed consent of the child or a guardian is required. The benefit of doubt should lead to a presumption of childhood.

- on family reunification: the new package provides a better definition of the best interests of the child principle and a broader definition of the family. The responsibility for the child lies with the first country in which the child applies for asylum, unless it is not in the child’s best interests. Before a Dublin transfer is made, the receiving country must provide evidence that it is able to properly receive and take care of the child (including immediate availability of a guardian).

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• On accelerated procedures: restrictions were made as to situations when a Member State can apply special (e.g. accelerated) procedures to children.
• Detention can be used as a measure of last resort.

Rebecca O'Donnell reported on the side event on guardianship for unaccompanied and separated children. The side event took place on 28 and 29 November and brought together more than 100 practitioners, law-makers, ombudspersons, NGOs, judges and prosecutors.14

Ms O'Donnell underlined that the lack of effective guardianship has been and remains a European-wide challenge and progress is urgently needed. (See more detailed report on the side event below.)

Anja De Wilde, coordinator for unaccompanied and separated children in the Belgian Office of the Commissioner General for Refugees and Stateless Persons (CGRS), presented a project on the best interests of the child (BIC) assessment in asylum proceedings implemented by the CGRS. The project started in 2014 and the final results will be available by summer 2017. The project concerns unaccompanied and separated children, as well as children with families. It was highlighted that accompanied children are too often considered only as asylum applicants or dependents of (adult) applicants, and not as children having their own rights and interests. Dependent children may be under pressure (intentional or unintentional) from family members which makes it difficult to explain all the options (including the option of lodging a separate claim) to the child.

Ms de Wilde gave an overview of the best interests of the child principle. She underlined that the BIC must be given primary consideration in any asylum procedures and cannot be perceived as a favour15. One of the project's conclusions is that the BIC has not been always included as an obvious evaluation criterion in asylum procedures and even if it was included, it was not always evaluated sufficiently or adequately.

The following proposals for changes in legislation result from the project:
• Every child has the right to be heard and to receive adequate information (concerns both unaccompanied and accompanied children)

14 For more on the guardianship event, please see section 5 of this report and watch the side event sessions online: [http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456)
15 Art 3 of the Convention on the Rights of the Child (UNCRC) says that the best interests of the child principle should be given a primary consideration in all actions concerning children. Article 24 of the European Charter of the Fundamental Rights refers to the bests interests of the child principle. The European Court of Human Rights has been referring to BIC in its judgements, including in migration cases. The EASO [practical guidance tool on best interests assessment for the purpose of relocation](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456) is an important resource in this regard.
• The interview with accompanied children will be conducted without the presence of parents. The lawyer may be present.
• The presence of the child’s guardian during the interview with an unaccompanied child is already required by law.
• The statement of the child cannot be used against her/his parents.
• The Commissioner General can decide to open an application for international protection for a dependent child if it is considered that the child has a separate claim.

Elena Rozzi, a social researcher and legal adviser in an Italian association - Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), provided an overview of the rights of unaccompanied children in Italy, presenting both the challenges and good practices. She recalled that around 23 000 unaccompanied children arrived in Italy in 2016. She underlined that children must be protected from abuse, violence and trafficking risks in frontline Member States, where the situation is particularly challenging, including in hotspots.

Ms Rozzi presented the main challenges observed in four hotspots located in southern Italy:

• Reception and registration conditions: Children have been kept in detention without any formal detention order, and excessive force has been used to obtain their fingerprints. In some cases, children as young as 12 have stayed for months in overcrowded facilities, with non-related adults, exposed to the risk of sexual violence. Children were not properly informed about their rights.
• Identification and age assessment: Children have been wrongly identified as adults (the benefit of the doubt was not applied and only x-ray checks used in some cases), some were treated as economic migrants and as a result received a return order.
• Relocation and family reunification: No unaccompanied child has been relocated from Italy and pledges for relocations from Member States are urgently needed for unaccompanied and separated children. Due to lengthy procedures, few children have benefited from family reunion. The appointment of a guardian, who must confirm the application for family reunification lodged by a child, can take up to one year.

ASGI's activities focuses on addressing gaps and challenges including among others, monitoring situations at border crossings, providing training opportunities for social workers and legal advisors on how to inform unaccompanied children about their rights and advising children to request a second age assessment based on the multidisciplinary approach. ASGI will also launch an information campaign in social media targeting unaccompanied children.

Ms Rozzi presented two promising changes in Italian legislation:

17 During one month in 2016, Switzerland issued more than 300 rejection decisions for unaccompanied children crossing the border from Italy.
• National law implementing anti-Trafficking Directive (Decree No 24/2014) and regulations on age assessment will enter into force soon and will be aligned with European and international standards. Although specifically addressing victims of trafficking, they will hopefully be applied for unaccompanied children as well.

• Unaccompanied children in Italy cannot be deported. They can return to their country of origin only after a thorough assessment, including the BIC assessment and with the child’s consent. A non-asylum seeking child is granted a residence permit and after turning 18 children can, under certain conditions, remain in Italy.

Maria Dapena-Vilario, from the European Asylum Support Office (EASO) presented the EASO tools which support the EU Member States in implementation of the CEAS. She focused on procedural safeguards in age assessment procedures and in interviewing children. The EASO training curriculum is composed of 17 modules including modules on age assessment, interviewing children, best interests of the child assessment, trafficking of children and family-tracing. A tool for identification of persons with special needs and a practical guide on family tracing are available as well. EASO has also published country of origin child-specific reports.

The EASO module on interviewing children is based on the Dialogical Communication Model (DCM) with principles of mutual trust, free narrative and the best interests of the child at its core. All that must be respected during three stages of the interview:

• Preparation for the interview includes gathering information about the child and about the country of origin. The training module provides information on the development of the child, the way the memory works and practical tips, e.g. on how to arrange the room in a child friendly manner.

• The interview should start with a neutral topic followed by an explanation of the aim of the meeting and roles of different persons participating in the interview. It is strongly suggested to use simple language and be ready to receive contradictory information which should be immediately clarified with a child.

• The interview should finish with a neutral topic as well. The child should receive information about next steps in the procedure and institutions which will be involved. The training materials provide information on how to assess information received during the interview.

The EASO publication on age assessment practice in Europe was issued in 2013. A second edition should be available in the first half of 2017. It will include a best interests assessment checklist and explore recent developments in age assessment methodology (such as multidisciplinary approach and MRI exams).

It was strongly emphasised that age assessment cannot be treated as a routine practice but needs to be duly justified. Only a combination of various methods can narrow the margin of doubt, respect the rights of the child and medical ethics, particularly with regard to the use of x-rays. Ms Dapena-Vilaro reminded that during the age assessment procedure, the child has to be listened to, needs to be informed why the procedure takes place, what will
happen, what the consequences of the age assessment can be and, finally, the child has the right to object and challenge the results of the examination. A child sensitive and gender sensitive approach must be applied. Benefit of the doubt needs to be considered throughout the whole age assessment process. When the results are inconclusive, the lowest age of the margin must be taken into account. Ms Dapena-Vilaro concluded by underlining that practitioners performing the age assessment should be properly trained and be up to date with latest developments. She stressed that the BIC must be a primary consideration in the whole process.

Charlotte Kilroy, public law practitioner (Doughty Streets Chambers) from the United Kingdom, presented court cases that resulted in the speeding up of family reunion cases between the UK and France (Calais).18 Ms Kilroy began by recalling that all children arriving in Europe have fundamental rights which must be protected. The rights derive from the European Charter of Fundamental Rights, and other binding treaties to which the EU Member States are parties ([UNCRC, the 1951 Refugee Convention, the European Convention on Human Rights]). She added that all EU regulations must comply with fundamental rights and in case of system gaps, fundamental rights should be adhered to. Calais cases showed that the Dublin system and asylum procedures have been failing and children were staying in the “Calais jungle” in deplorable and dangerous conditions. These children - independently of the Dublin Regulation - had fundamental rights under the European Convention on Human Rights to be reunited with their relatives.

She then reported that children in Calais were at constant risk of violence from traffickers, smugglers and local police. They were risking their lives to get across the channel and get to the UK, where many of them had relatives. Children were not informed about their rights and especially about the Dublin Regulation allowing for family reunion. Moreover, children did not believe it was worth going through the procedures, since there were no successful examples of family reunion and no transfers from Calais had taken place. Additionally, within the French system, it would take more than a year to execute the transfer (three months just to make an asylum claim and another 11 months to finalise the process). Children were left in a procedural vacuum: the UK authorities even after being confronted with evidence of the situation of children in Calais and proof of family links refused to coordinate with French authorities. Children were told to file asylum claims in France, where it was not even possible to appoint a guardian in a timely manner. Finally, the UK Upper Tribunal after receiving all the arguments stating that the asylum system and Dublin procedures were failing and that the UK had all information necessary to admit children to the UK, ordered immediate admission of children under Article 8 of the European Convention on Human Rights.

18 For more detailed information on the cases please see the judgments: UK Royal Courts of Justice, Court of Appeal, Judgment on the Appeal by the Upper Tribunal Immigration and Asylum Chamber, Secretary of State for the Home Department (Appellant) vs ZAT et al. (Respondents), 2 August 2016; Upper Tribunal Immigration and Asylum Chamber, Judicial Review Decision Notice, ZAT et al. vs Secretary of State for the Home Department, 21 January 2016; Upper Tribunal Immigration and Asylum Chamber, Judicial Review Decision Notice, MK et al vs Secretary of State for the Home Department, 21 April 2016.
As a result of this case, children became aware of their right to family reunion and both the UK and France sped up the process of family reunion. In eight months, both countries processed 70 cases. In 2016, 250 children arrived in the UK. Ms Kilroy concluded by giving a set of recommendations for speeding up the family reunion processes:

- Children must be taken out of a situation of danger and reunited with their families.
- There must be a well-functioning system for gathering evidence of family links based on an effective cooperation and coordination between the Member States.
- New measures proposed in the latest CEAS package cannot undermine what has been achieved.
- The authorities must gain the trust of children to engage in the procedures, otherwise they will rely on smugglers and continue to go missing. Children have to know that they are safe, that they have a choice and that they will not be arbitrarily sent back.
- Pressure on governments can deliver results. Member States can apply the same process (invoking Article 8 of the ECHR) if the legislation provided at the central level is failing.

Session discussions were lively and involved a broad range of participants. The main underlying message was the importance of putting the child's best interest at the centre of all efforts regarding children and ensuring effective access to international protection.

A summary of further key messages emerged from the discussion with participants:

1. **Existing legal framework**: participants recognised many differences in application of EU law and standards among the EU Member States. There was no consensus as to the possible results of the first country of asylum application principle as well as on the changes in EURODAC, which is included in the revised CEAS. It was suggested that this leaves the door open to sending a child back to the country which has failed to properly establish family links. Ms Kilroy added that the prospect of potential sending back may impact the relation and trust between the child and relevant authorities. Participants expressed concern about restricted possibilities of reporting on the Member State breaching EU law.

2. **Guardianship**: although there are significant differences in functioning of the guardianship systems, participants agreed that guardians should be appointed immediately and be properly trained. Procedures for filing an asylum application were discussed, as this is related in many Member States with the appointment of a guardian. In France, the asylum application can be lodged only by a guardian. In the UK, the statement of a child is taken as an application for asylum and it triggers all child protection provisions. In Belgium, children first apply for asylum and only then is a guardian appointed. In Germany, a family court appoints a guardian to take care of the child and international protection issues are only discussed later on. In Austria, children need to get into the asylum system in order to receive protection and a guardian appointed by a civil court.

3. **Best interests of the child**: the right to be heard, also in the case of accompanied children, needs to be reinforced as it is an integral element of the BIC assessment. Many questions were raised on conducting interviews without the parents, in particular with references to possible separate asylum claims, outcomes for the whole family and the way the information received from the child during the interview is processed. In response, Ms De Wilde said that the primary aim is to give the child an opportunity to speak. The CGRS then decides if it is the same claim as the parents or a separate claim which will be opened by the office. This
does not determine any outcome for the parents. It was recommended that officers conducting interviews are aware of child-specific forms of persecution and of the cultural background of the child in order to be able to ask relevant questions and inform the child in a child friendly and gender sensitive manner.

4. **Adequacy of information**: Many interventions emphasised that the trust and adequacy of information received by children is of pivotal importance. The trust must be based on good communication, well trained and vetted staff and reliable procedures. Child-friendly information should be provided to children on their rights, including on their right to apply for international protection.

5. **Family reunion**: In response to Ms Kilroy's presentation, it was noted that litigation based on Article 8 of the ECHR might be difficult in some jurisdictions. Participants linked the long procedures for family reunion (on average twelve months) to children absconding from reception and being at risk of violence when continuing their journey alone. Participants underlined that the family reunion procedures underline the need for more cooperation between Member States and greater political will.

The chair closed the session by thanking the panellists and participants. He noted that unfortunately there was not enough time to discuss all of the issues raised during the session and encouraged participants to discuss them in other formal and informal settings.
4.4. Session IV – Durable solutions, including integration

The session was chaired by Michael Teutsch, Head of the Country Analysis Unit, Directorate-General for Education and Culture, European Commission and Verena Knaus, Senior Policy Advisor, UNICEF (EU Office), who acted as co-chair. The focus of the session was on durable solutions, including integration, with six panellists' presentations and further discussion with participants.

The chair introduced the session by stressing that education is important to give children a place in society, to prepare them to stay and participate or provide a basis for what they want to do afterwards. The principles and priorities are known and it is time to put them in practice. The co-chair raised a number of questions to inspire the discussions; how can integration happen if children are kept in long legal insecurity regarding their asylum procedures? How can the various actors (asylum/migration authorities, child protection authorities, teachers, local communities) be brought together to foster integration? How can a negative narrative on migration be changed to highlight the (economic) advantages of integration?

Andrea Vonkeman, Senior Policy Officer at UNHCR (Brussels Office) spoke about durable solutions for unaccompanied children and presented the outcomes of the "Safe and Sound" project. There are many good local initiatives that look beyond the emergency stage and have a long term approach, which should be better shared. Solutions have to come quickly for children, otherwise expectations are not fulfilled, children lose trust, do not wait, with a consequent risk of trafficking or children going missing. This is also the result of the often narrow focus on asylum procedures, while decisions on durable solutions should not depend only on these. All options in a best interests assessment have to be kept open. A holistic approach must be taken, looking at the child's background, experiences, education, gender, and also considering whether children could safely return to their parents, etc. Many services work in parallel silos and do not communicate, sometimes hiding behind data protection rules. Before
children are transferred, information on their case has to be transferred too. Guardians are often left alone without adequate support: a European network of guardianship would be very helpful, as well as a transnational case management mechanism. Children’s case information should include information on their asylum procedures, but also medical reports, psychological reports and family-tracing results.

**Fanny Bertrand**,Mission Lead for Unaccompanied Foreign Minors, Pas-de-Calais County Council (France), spoke about policies and practices for integration of unaccompanied children in France, based on the experience of the local authorities in Pas-de-Calais. Children are allowed to freely remain in France until they turn 18. After that, they can apply for refugee status or for a work permit. The aim is to help them become autonomous (e.g. have autonomous accommodation) as soon as possible so that they feel integrated in France. The Pas-de-Calais County Council has attempted to create specialised services for welcoming unaccompanied children, which are otherwise often lacking in France. Specialised teams conduct training for caregivers, for example about what it means being a child in their country of origin, on religious and food matters, on the importance of allowing unaccompanied children to speak about their families. The approach should be to listen and understand a child’s life project and to link it to legal procedures. The aim is to give children the power to act by letting them speak about themselves. For example, they are encouraged to intervene in training sessions to talk about their countries and their experience in migration. Unaccompanied children in Pas-de-Calais have been encouraged to join football clubs and a group of Afghan children was helped in setting up a cricket club (in a country where no one plays cricket!).

**Luisa Malhó**, Director of the Choices Programme, Office of the High Commissioner for Migration (Portugal), presented the Choices Programme (*Programa Escolhas*), a programme for the social inclusion of children and young people from the most disadvantaged socio-economic backgrounds, which also targets migrant children. Intervention focuses on children of different ages and is undertaken by consortia involving local communities, schools and other social workers, often in neighbourhoods with a high number of migrant and Roma people. The Choices Programme aims to empower children to promote knowledge, identity and resilience. Rates of success at school after participation are quite high, and the project has received important awards as an effective example of public policy.

**Christiane Timmerman**, Professor at Centre for migration and intercultural studies at the University of Antwerp (Belgium) presented main findings of some research projects in the area of education for migrant children. There are various models and approaches to the education of migrant children: the presentation highlighted in particular the advantages of a "comprehensive support" model as developed in Denmark and Sweden. This model gives children continuous teaching support, assistance in transferring to higher levels of education, mainstreaming of intercultural learning and outreach to parents and local communities. The findings of a case study conducted in two urban schools in Flanders (for
children aged 2-12) show that a big challenge for migrant children in school was the transition to mainstream secondary education, which caused high drop-out and linguistic disparities. One key recommendation to address these issues was to allow migrant children to undertake flexible school curricula. From another study in 52 schools in seven EU Member States, it emerged that the schools that were successful at reducing drop-outs had addressed the basic needs of students (e.g. financial problems, health problems) and invested in a caring teacher-student relationship as well as in the recognition and appreciation of students’ voices.

**Stefania Congia**, Division for Policies of Social Inclusion and Employment of Migrants and Protection of Foreign Children, Directorate-General for Immigration and Integration Policies, Ministry of Labour (Italy), presented key figures on unaccompanied children in Italy including recent trends, and introduced policies undertaken by the Italian authorities. She stressed that education is key for integration and later on to prepare unaccompanied children for the labour market. Integration is often seen as a two-way process (a sort of social contract between the child and the state), but actually there is a third dimension which involves the country of origin of the children, their family links and their identity. She also highlighted the importance of having data about unaccompanied children to be able to better target policies and support. The Ministry has also established a partnership with IOM to support unaccompanied children in family tracing and this has proven to be effective. To establish a durable solution, it is important to take into account who the children are (in particular tailoring the approach to their age), what they know, what they want to do and what they can do (where the needs are). Two moments are critical in the journey of unaccompanied migrant children: when they arrive to a country and when they reach the majority age and this is where public policies have to dedicate special attention. She finally referred to projects in vocational training which she hopes can receive structural financial support through, for example, AMIF funding.

**Mónica García**, Director of Red Acoge (Spain) presented key challenges for migrant children in Spain, focusing in particular on the kind of support they need, especially when they are close to reaching majority age. Red Acoge runs a number of programmes on access to employment, protection for unaccompanied children, access to housing, and programmes to foster migrants’ participation in society. The presentation gave an overview on the rights and protection migrant children are entitled to in Spain. The main difficulties identified however are on access to healthcare and access to education for undocumented children. Unaccompanied children who arrive in Spain, especially those around the age of 16, may not have any educational background and while they need special support in schools, they tend to be enrolled in regular schools and in mainstream curricula. In addition, the persistence of poverty, some forms of school segregation, and social exclusion affect access to basic education. The intervention highlighted that education and support cannot stop when children are 16 or 18; at that age they are "too young to be adults". Age assessments (often not sufficiently accurate, difficulties in appealing), administrative blockages and legal limbos are key challenges in the protection of unaccompanied migrant children in Spain (in particular in some regions with a high presence of migrant children, such as Ceuta/Melilla or Andalusia).
During the session discussions, involving a broad range of participants, several points were discussed. The main underlying message was the importance of taking a holistic approach to durable solutions, overcoming silos, and of making sure that durable solutions are conceived and implemented at all stages of migration, always in the child’s best interests. Investments in durable solutions for migrating children are durable investments for the public good. A European network for guardianship is needed to ensure coordination also with respect to durable solutions.

A summary of further key messages from the discussion with participants:

- Durable solutions based on best interests determination imply open-ended options, asylum procedures offer narrow answers. If choices are narrow how can we speak about durable solutions?
- The scope of durable solutions should not be limited to unaccompanied children: all children need protection and psychosocial support to face the traumas suffered in migration.
- It is urgent to deal with the flaws in national child protection systems (not only for migrant children), across Europe: there is a need to scale up foster care, family-based options; child protection systems need to be adapted to individual needs. The needs of children might differ, but the skills needed by the services in charge of protection and integration are the same and can be harmonised.
- Legal limbos, uncertainty and lack of trust are key challenges which need to be addressed to avoid risks that children are trafficked and go missing. A recent study demonstrated the traumatic psychological effects of long term legal limbos ending with return of children. Return decisions for children have to be made strictly and only after a robust multi-disciplinary best interests determination - they cannot depend solely on the outcomes of asylum or migration procedures without primary consideration of the child’s best interests.
- "Where" and "when" should education and in general integration start? Should this be at country of final destination or upon arrival of children to Europe? There was broad consensus by participants on the urgency and immediacy of integration. There should be a focus on inclusion, and inclusion is and should always be the opposite of segregation.
- Integration is the responsibility of a wide spectrum of sectors, not only education. It should include psychosocial services, the health sector, etc. A key challenge is how to create firewalls when needed (e.g. child experts should be able to independently assess the best interests of children) as well as synergies and dialogue among services (e.g. guardians cannot be left alone to cope with everything). It is important to equip national services, social workers, and all involved actors with the right capacities and tools to support the integration and inclusion of children in migration.
- It is important to assess mental health and disability of migrant children and to have a cross-border approach in this regard. For instance, information about chronic diseases should be shared, so children do not have to go through same checks if they move from one country to another in the EU.
- Sustainable solutions for the child’s wellbeing and safety should do not have an "end-date" when children arrive at the age of 18. A study by University College London on unaccompanied children close to the age of 18 highlighted the need to consider and plan for ageing-out processes, including the need to reduce administratively burdensome procedures.
- The importance of respecting the specific social environment children come from, with their specific languages, religions and cultural traditions was stressed by many participants. It is important that children feel respected in their basic identity, which is linked to the first years of socialisation.
- It is important to work on narratives about migration, in particular on how integration of children in European society represents an investment, in order to create the conditions for better acceptance and address fears by local communities.
- It could be useful to create systems with peers/mentors to support integration: this seems to be a practice used in some contexts, and examples were cited from Portugal and Flanders.
- There is a need to stop looking at nationalities when targeting the interventions and the funding, but look instead at where vulnerabilities persist. Children's rights have to be protected because they are children, and irrespective of their legal status (asylum seekers or not, documented or not).
5. **SIDE-EVENT ON GUARDIANSHIP, 28-29 NOVEMBER 2016**

The side event on guardianship was chaired by **Margaret Tuite**, Commission Coordinator for the rights of the child, Fundamental Rights Policy, DG Justice and Consumers, and co-chaired by **Tin Verstegen**, Director of NIDOS, and **Georgia Dimitropoulou**, Seconded National Expert, Rights of the Child Sector, EU Fundamental Rights Agency.

### 5.1. Session 1: Guardianship for unaccompanied children

See and hear the discussions on Day 1 [here].

In her opening remarks, **chair Margaret Tuite**, Commission Coordinator for the rights of the child, said that the side event was organised due to the many challenges in effective guardianship systems in many EU Member States. The guardian plays a key role in safeguarding the child’s best interests and wellbeing. An effective guardianship system benefits not only children but also anyone working in asylum, migration, and child protection. Proposals to reform the CEAS include strengthened provisions on guardianship, age assessment and best interests of the child. But children cannot wait for these rules to enter into force. The immediate implementation of these new provisions is encouraged, and follow-up actions need to be identified. She cautioned, however, that whilst the guardian plays a key role in safeguarding rights of the child, they alone cannot be held accountable for failures in reception, gaps in procedural safeguards or in access to procedures. An integrated child protection system is needed.

**Isabela Atanasiu, Legal Officer, Asylum Unit, DG Migration and Home Affairs**, gave an overview of EU law in the area of asylum and migration relevant to guardianship, including new provisions of the proposals in the reform of the CEAS that are currently being negotiated. Ms Atanasiu provided an overview of the definition of the term "guardian" in the current and future EU legal instruments. The current Asylum Procedures Directive refers to the term representative instead of guardian, referring to the person/organisation appointed to assist and represent the unaccompanied child in procedures under this Directive (Article 2(n) APD). In the proposed Regulation, there is a reference to the term "guardian", denoting his or her mandate in safeguarding the best interests and wellbeing of the child in the context of asylum procedures, while exercising legal capacity where necessary (Article 4(2)(f) of the APR proposal). "Guardians" appointed under the Asylum Procedures Regulation proposal may also exert the tasks of guardian under the Recast Reception Condition Directive. According to the Asylum Procedures Directive, the main tasks of

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19 https://www.youtube.com/watch?v=BEHufExePew
a guardian throughout the asylum procedure are to represent and assist the child, *inter alia*, by explaining what an asylum application is and helping the child to lodge it. As the personal interview is a key element in the determination of the application by the authorities, the guardian needs to provide the child with information regarding the meaning and consequences of a personal interview, prepare the child for the interview and provide assistance when this is conducted. The guardian does not need to have legal qualifications, and legal assistance can be provided in parallel. The Asylum Procedures Regulation proposes that free legal assistance shall be guaranteed throughout the whole stage of the procedures, from the beginning until the end. When the child needs to undergo an age assessment through medical examination, the guardian needs to inform the child, helping him or her decide whether to accept to undergo the medical examination or not. Apart from these specific tasks related to the asylum application procedures, the guardian has the general obligation to perform his or her duties in accordance with the best interests of the child (Article 3 UNCRC) – *inter alia* by holding the authorities responsible for acts where the best interests of the child are not safeguarded.

The guardian is also obliged to help find a durable solution for the child that is in his/her best interests. No uniform criteria exist for a best interests of the child assessment. Nonetheless, the Reception Conditions Directive and Dublin (Article 23 RCD and Article 6(1) Dublin III) refer to at least four factors that could be taken into account: (1) *family reunification possibilities* need to be examined (the guardian does not have the right to initiate family-tracing procedures because it is a Member State's obligation but he or she has the right to complain if there are delays); (2) *the child's well-being and social development*; (3) *safety and security considerations*, particularly for victims of trafficking; and (4) *the views of the child*, in accordance with his or her age and maturity. Moreover, the guardian needs to assess whether the child has been the victim of any kind of abuse, ensure that the individual needs of the child are assessed, ensure that the child is provided with an adequate standard of living (incl. housing and materials assistance), ensure that the child's healthcare needs are met, and safeguard the child’s right to education and training.

An *Asylum Procedures Regulation* has been proposed to replace the existing Asylum Procedures Directive. The proposed regulation includes the following proposed strengthened safeguards for guardians: (1) *prompt appointment of a guardian* (authorities are under the obligation to appoint a guardian no later than five working days from the moment when the unaccompanied child expresses the wish to apply for asylum); (2) *continuity* (a guardian cannot be changed unless having failed on his or her duties); (3) *child safeguarding* (no person shall be appointed as a guardian if he or she has a record of child-related crimes and offences); (4) *manageable case load* (a guardian cannot be made responsible for a disproportionate number of unaccompanied children such that his or her tasks cannot be exerted effectively) and (5) *monitoring* (the Member State will be obliged to set up systems for the regular monitoring and control of how guardians perform). In the *recast Reception Conditions* Directive, it is proposed that Member States will be obliged to provide education activities to unaccompanied children pending a Dublin transfer to another Member State (Article 17(a)(3)) and the reception conditions must be adapted to the specific needs of children, whether unaccompanied or within families (Recital 30). The new provisions on guardianship outlined in the Asylum Procedure Regulation are also repeated in the recast Reception Conditions Directive. The *recast Dublin Regulation* covers the criteria for determining which Member State is responsible for processing an
asylum application for an unaccompanied child. With the proposed amendments, the definition of ‘family members’ will be expanded to include (1) siblings and (2) family relations that were formed after leaving the country of origin but before arrival to the Member State. The Member State responsible for the application of an unaccompanied child shall be the one where the child has lodged the first application, unless this would be contrary to his or her best interests (Recital 20). The proposal also stipulates that the right to an effective remedy shall also cover cases where an unaccompanied child claims that another Member States is responsible because he/she has family members there (Recital 24). The Eurodac Regulation is particularly relevant for the identification and proper registration of the child at the very beginning of the procedure. The recast Eurodac Regulation proposed the lowering of the age for taking fingerprints and facial image from 14 to 6 years old (Article 13(1)) and includes the identification of unaccompanied children who do not seek asylum, and of separated children (Recital 25 and Article 14(1)). The Commission’s proposals are based on the joint Commission-Fundamental Rights Agency Handbook of June 2014 on "Guardianship for children deprived of parental care" and the Report of October 2015 on "Guardianship systems for children deprived of parental care in the European Union - With a particular focus on their role in responding to child trafficking". The conclusions resulting from a Contact Committee meeting organised on issues related to unaccompanied children and guardianship in the framework of the Asylum Procedures Directive (7 April 2016) have also been taken into account.

There are still many gaps in effective guardianship, including long delays in the appointment of guardians, sometimes because authorities do not have qualified guardians available. When appointed, guardians are frequently overloaded with cases, resulting in a lack of sufficient direct contact with the child. Issues related to insufficient qualifications of guardians have also been detected. There have been cases of conflict of interest challenges, particularly where for instance temporary guardianship is given to personnel working in reception centres where they might be a conflict between the performance of the task of safeguarding the best interests of child and other social tasks provided in the facilities.

**Georgia Dimitropoulou**, Seconded national Expert, Rights of the Child Sector, EU Fundamental Rights Agency gave an overview of the results of research on guardianship in EU Member States that the Fundamental Rights Agency undertook in 2013 and 2014, and which resulted in a report in 2015. The report explores the key features of guardianship systems put in place to cater for the needs of all children in need of protection, including child victims and those at risk of becoming victims of trafficking in human beings or of other forms of exploitation. The research covers four specific areas, namely the type of guardianship systems in place, the profile of appointed guardians, the appointment procedures, and the tasks of the guardians.

It was found that all Member States have legislation on guardianship of foreign children. In most Member States this is organised at local level as responsibilities of child protection agencies. In principle there is a designated guardianship authority, sometimes the same as the child protection authority. Appointment procedures vary (e.g. by law, or by

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appointment of a judge), and this has an impact on the timeline of appointment. In all Member States there are laws that say that guardians should be appointed "as soon as possible" but in most Member States there is no specific time line in law. Frequently a temporary guardian is appointed first.

The duties and tasks of guardians are often defined in a general manner in legislation. In principle guardians have to (1) represent the child in legal transactions or other proceeding; (2) administrate the child's finances; (3) ensure adequate care; and (4) promote the child's wellbeing. National laws often define the role in relation to parental rights and duties, and in a few Member States it is stated that guardians are not responsible for the upbringing of the child. In practice it depends on the legal basis of appointment, whether this is under asylum and migration law (unaccompanied children), often then it is only legal representation duties. How guardians perform these duties varies, in some Member States the guardians never meet the child, whereas in others the guardians accompany the child throughout the procedure. In the context of asylum the role of the guardian is not always clear, but they have a role to play: safeguarding the best interests of the child in finding a durable solution, as well as in the context of the right of appeal in return decisions or in age assessments, but this does not really work because often the guardians are appointed only after the age assessment takes place.

On the difference between legal representatives and guardians, Ms Dimitropoulou stressed that whilst terminology is important one should look rather at the functions of the appointed persons. Generally, legal representatives will have a more restricted mandate and a role only in particular procedures, whereas the guardians have a more extended mandate and a broader role in promoting the child's wellbeing and safeguarding the best interests of the child. National guardianship provisions normally apply equally to unaccompanied children. Sometimes when children have no legal status, they will get a legal representative and no guardian, until they have a status. Some Member States have set up separate systems (e.g. NL, BE) for unaccompanied children (a centralised system). In practice, even though the same provisions apply, Member States have come up with separate arrangements to meet the needs of unaccompanied and separated children, for instance where local authorities have specific registries for guardians for unaccompanied children who receive specific training.

Profiles of who carries out guardianship differ greatly; they can be professionals or volunteers or both. It is important that the guardianship authority is responsible for tasks of recruitment, training, vetting, monitoring, case-load, etc. Usually the qualifications or pre-conditions in law to become a guardian are very general, and there are often no systematic checks. Training for guardians is important, but not always available. Only in a few Member States is it mandatory, and the duration, frequency and content of the training differs greatly across Europe. Usually it is not explicitly regulated in a national framework. Often specialised training not offered, on e.g. identification of vulnerabilities or prevention of absconding, and often any training provided is solely by NGOs. Frequently, there is a lack of supervision and support, including access to legal advice for guardians themselves. Often guardians have no knowledge of migration and asylum law, but they need to be familiar with these laws in order to effectively support the children they are responsible for. Independence and impartiality is recognised in all frameworks, but what this means varies. Some Member States prohibit reception and care workers from acting as guardians, in other Member States there is no such prohibition. Sometimes migration authorities are the ones recruiting the guardians.
In summary, key challenges are the (1) prompt appointment of guardians and (2) the lack of availability of independent and qualified guardians (a pre-existing problem, exacerbated by the crisis). One must also look at this in light of reception and housing policies. In many Member States guardianship is organised at local level, whereas reception may be organised centrally. So even when guardians are in place, if there is no effective reception system, they cannot respond.

**Maria-Emmanouella Ioannou**, Greek public prosecutor at the Court of First Instance in Lesbos, gave a brief overview of Greek legal provisions on guardianship for unaccompanied children. She explained that in all cases first a temporary guardian (prosecutor at the Court of First Instance) will be appointed. A prosecutor who has territorial jurisdiction will temporarily be appointed and will take all necessary measures to carry out the duties of the guardians. The law specifies that unaccompanied children will be placed with adult relatives, foster families with special provisions, or in other centres suitable for children. As a rule siblings should be kept together and changes to residence should be kept to a minimum. The family of the child should be contacted as soon as possible, and guardians should receive appropriate training and are bound to confidentiality principle.

On the competence of the public prosecutor acting as a temporary guardian, she explained that when a child arrives on Lesbos and applies for asylum, he/she will be registered at the reception and identification service in Moria, and the temporary guardian will take all immediate and necessary measures, until appointment of a permanent guardian, including ensuring that a child stays in appropriate reception for unaccompanied children, in cooperation with EKKA. When a child needs to be transferred to another place, the prosecutor will make sure that the child is accompanied by someone who is competent, trained, and vetted to do so. After the relocation of the child to an appropriate reception facility only then is the public prosecutor in that territory mandated to take over and appoint a permanent guardian.

**Tin Verstegen**, Director, Nidos, underlined the messages and guidelines of the Commission and FRA Handbook on guardianship, as they provide the tools for good guardians. He proposed a simple working definition for guardians: they are responsible and accountable for the wellbeing of an entrusted child. It should be just like parental power and parental obligations. But you need this power as well. Guardianship has to be: (1) independent, with a lawful assignment that gives the guardian power also to do necessary things that may go against the asylum/migration policy, to intervene when the development of a child is in danger; (2) supervised, by a youth care inspectorate or a certification institute; and (3) embedded in a wider institutional process: the guardian acts as a case manager, taking the decisions regarding a child and cooperating in a wider network, acting with one focus (the best interests of a child). The benefits for the child will be that he or she gets the same message from every actor (safety) and will lead to better exchange of information, better quality of decisions and creative solutions in changing circumstances. Furthermore, it will be clear for every actor what his or her role and tasks are (the police for safety, the guardian for best interests of the child and the immigration officer for the procedure). Every person acts within their own mandate, not for example that the lawyer takes a child home because a child has nowhere else to go. Lastly, guardianship must be (4) professionally organised,
where someone monitors the guardian, provides training, develops performance indicators (e.g. number of times the guardian has met with the child) and learns together as an organisation etc. You learn as an organisation, about children's eating habits and potentially harmful messages (e.g. different foods in a different country do not mean that your mother did not take good care of you). We also tell children to make their own decisions and think together with them. This is what you learn as an organisation, and much less if you are a guardian on your own. You cannot live in your own bubble, you will be corrected. If you make certain conclusions as an organisation it is expertise, rather than one guardian's opinion.

Mr Verstegen outlined that there are similarities and differences between guardianship for indigenous children versus guardianship for unaccompanied children. The similarity is that under the UNCRC all children have the same rights, and the national law does not and should not make a difference. The difference is that in guardianship for the latter, immigration policy has a great influence and the guardian needs to specialise and familiarise him or herself with these laws and policies. Children look to the guardian to help and often it is rather the lawyer who takes care of these things, but not all lawyers are good, and guardians need to be well-informed. Furthermore, guardians for unaccompanied children need to acquire inter-cultural knowledge and special communication skills. Also the reason for guardianship is different: for indigenous children it is rather a forced intervention of the government (the child is in danger so the government must intervene) versus for unaccompanied children it is to prevent a vacuum because there are no parents. Unaccompanied children are particularly vulnerable to trafficking, sexual abuse, but also radicalisation. These risks require special training for guardians, as well as knowledge on protection measures after a child turns 18.

Mr Verstegen said that he is strongly in favour of a specialised system for unaccompanied children. Here the guardianship and specialised reception is cheaper than regular youth care, at least in the Netherlands, because children do not need special treatment with psychologists and so on. They just need a little bit of care and stimulation of development in their new country. They often do not want to talk about their traumas, their solution is to take the chance, be there for their family. Placing them in youth care is more costly, again because often this entails treatment with psychologists and so on.

In recent years the awareness of guardianship has really increased. We know much better now what is needed and have learnt a lot of about the need of for instance involving families, and communicating with them. Mr Verstegen shared an anecdote of a conversation he had with a boy and his father. The boy did not agree with something that Nidos proposed, and Nidos organised a skype call with his father. The father told the boy that a guardian is a like a camel, it is a great gift you can get (like in a marriage), so the boy must listen to the guardian. Looking ahead, better use should be made of the existing standards, such as in the FRA Handbook and the work of Unicef and UNHCR on the best interests determination, as well as the results of the Summit and Connect projects.22 The

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22 See Forum background paper reading list - The CONNECT Project: Identifying good practices in, and improving the connections between actors involved in reception, protection and integration of
reception of children needs to be improved. NIDOS was involved in two EU-funded projects on this, namely the Reception and Living in Families (RLF) and ALFACA projects, and results should be shared more widely.  

He said that we are past the stage of listening and studying, we have to commit ourselves to standards, and we need one European standard for guardianship. He called for action, now that a certain level of awareness has been reached, in particular because these children really need some support. Some Member States argue that children do not want to stay in their country, they want to go to Northern Europe. But still, also in those situations we must act. If children know they have a chance to follow an education or get a job, they will stay. You need guardians to communicate this information and help find a future with the child.

In the subsequent questions and answer session, particular attention was paid to the issue of durable solutions. Karin Fagerholm of the Office of the Ombudsperson for Children in Sweden raised the issue of durable solutions in light of the newly proposed Qualifications Directive that provides for the possibility of a temporary residency permit. Ms Atanasiu of DG HOME responded that the rationale behind the proposal is to have a temporary solution to give way to the opportunity to have a more detailed assessment later. Mr Verstegen of Nidos responded that this is a real concern, as children need to be at ease regarding their future. Ms Dimitropoulou of the FRA said that an integrated protection approach, bringing asylum and migration law and child protection law together, is a real challenge. In practice unaccompanied children often age out and become subject to migration law. We have procedures and deadlines for family reunion/reunifications, but have no timelines for durable solutions, so it is quite abstract. Anne-Claire Gayet of McGill University asked for information on the European Network of Guardianship Institutions (ENGI), and Mr Verstegen responded (as Nidos led this group), highlighting that ENGI has been a network, and that it continues to have its members and website. Anything useful is published here. But ideally we would find a solution where ENGI could exist for longer than a project period (1.5 years), and focus on standards and perhaps certification on guardianship. Kostas Simitopoulos of the Reception and Identification Centre of Moria (Lesvos Island, Greece) asked how many children a guardian should be responsible for. Mr Verstegen responded that this depends on the situation, but maximum 25 children. There are variables to be taken into account, such as when a child is close to 18 and needs a lot of attention, or if the child was a victim of trafficking. If many of the children are younger, and their situation is quite straightforward, it can be 1:25. If a child's future is very unsure, or if there are specific protection risks such as trafficking, then the guardian has a lot of work. Ms Dimitropoulou also added that actors involved often focus on the younger children, rather than those nearing 18, resulting in neglecting a whole group of children.

unaccompanied children in Europe, 2014 - Best practices and key challenges on interagency cooperation to safeguard unaccompanied children from going missing, Missing Children Europe, 2016

5.2. Session 2: Appointment of the guardian, support and monitoring

Marieke van Hövell, Guardian, Nidos gave an overview of the guidance policy in the Netherlands in case of child marriages. In brief, the policy demonstrates the need for a guardian to be appointed immediately, and is based on the child's right to participate and the best interests of the child. She explained that with the recent migration situation, Nidos was faced with many Syrian girls (mostly 16-17 years-old) declaring that they were married upon their entry into the Netherlands. There were also child brides coming to the Netherlands based on legal marriage and family reunification. Because of this, Dutch legislation was adapted in 2015: it used to be possible to marry between 16 and 18 with permission of the parents or in certain exceptions (e.g. pregnancy). Now it is no longer legal to marry under the age of 18, and foreign marriages that violate this will no longer be recognised. She outlined two different case studies to illustrate the policy of Nidos with regard to child marriage.

“A”, a 15-year-old girl, declared that she was married to a 20-year-old man, with whom she travelled. The relationship seemed to be based on equality and their behaviour posed no reason to separate them. The couple also told Nidos that if they would be separated then the A’s "honour" would no longer be protected. Her parents were in Sweden and asked Nidos to recognise the relationship. This was difficult, as there was no legal basis available to get legally married in the Netherlands. Living together was not allowed (under Dutch law, sexual intercourse between an adult and a child under 16 years of age is a criminal offence). Nidos therefore organised a Skype meeting with the couple and A’s parents to explain the situation and to ask the family to come up with a solution. It was found that the man’s brother was also in the Netherlands, with his wife and two children. It was suggested that A could live with them, and her honour would be protected. Nidos agreed and the organisation responsible for reception for the man arranged that he could be relocated to this village and A lived in the house of the man’s brother. When she turned 16, she moved to live with her partner. When she turns 18 she can legally marry under Dutch law.

The second example concerns “M”, a 16 year-old girl, who came to the Netherlands with her husband. Nidos was appointed as guardian and during the intake interview at the application centre she asked Nidos for help. She explained that her parents had organised this marriage, and that she was angry with her father for marrying her off to a much older man. M was subsequently placed in a protective reception facility. Her "husband" was informed and reacted angrily. M expressed fear that her brothers would avenge her decision. Nidos consulted with a special police department on honour-related violence, and was advised not to contact the family. M remained in the shelter and started going to school. At first the man was looking for her for a long time, but eventually gave up, so that M can now live a safe life.

The policy that Nidos has developed is therefore as follows. In all cases, if the girl is under 18, she will be put under the guardianship of Nidos. If she does not agree to this, Nidos will ask the Dutch Child Care and Protection Board to investigate the situation and seek a court order of guardianship. If the girl is under 16, but she wants to live with the man, and there are no signs of force, then Nidos will search for a way to bridge the period until the girl turns 16. This will be done in a way that is acceptable to the girl and her family and in
accordance with their honour culture. If the girl is above 16 years of age, the couple can be accommodated together, unless there are signs of force. A targeted risk assessment will be undertaken. If needed, the special police department on honour-related violence will be consulted. If the girl does not want to live with the man, Nidos will seek a solution in which risk of violation of the honour and the risk on honour crimes will be as low as possible. The specialist police department on honour-related violence will always be involved in such situations. In her closing, Ms Van Hövell stressed that aside from the two cases described, child marriage can actually also be used by the parents as a way to protect their daughters, sharing the story of “Y”, a 17-year-old girl from Syria. She was married to her 20-year-old cousin. They claimed to have an Islamic marriage, but this was only arranged to protect the girl during the flight. The marriage was not consummated, and in consultation with the girl they were hosted separately.

Kristina Lundin, Swedish guardian, described her duties and motivation to be a volunteer guardian. As a retired social worker, she now is a guardian for a number of unaccompanied children. It is her mission to be a voice for the children in meetings with authorities, school, housing, healthcare, etc. She is also responsible for the children's finances. This will depend on the kind of reception the children are in. Either they can be in shared housing (30 children), where food is included, and housing staff is present. From 16-years-of-age children can move to a training flat, where they are expected to buy and cook their own food. Children can also be hosted in family homes where the parents receive compensation and are obliged to take care of the child. On her different tasks, Ms Lundin elaborated that she always meets the child with an interpreter, and that the first necessity is that the child trusts her. The children decide how often they meet with her, and she also keeps contact with housing staff and foster parents. All children get a social secretary that is responsible for housing. The guardian is present at every meeting, and tries to guide the children through the Swedish bureaucratic mazes. In meetings with the migration authorities, the interviews are frequently more like an inquest. Most children do not have identity documents and have to tell a very detailed story of their childhood. Often children are forced to re-experience their life, but this is difficult, with a flight to Europe from horrible situations back home. Ms Lundin stressed that it is her most urgent wish to get a safe and secure place fitted to children's needs to do these interviews. All children are offered access to schooling from day one in reception. When a child is entrusted to her guardianship, she arranges also an entry test for Swedish language. Children will also receive free healthcare, and the nurse will also ask them about how they sleep and eat. In her city of Örebro, Ms Lundin has started a network for guardians for unaccompanied children. This network meets once a month, mostly to discuss issues related to guardianship, and at times external speakers are invited. They also cooperate with the Swedish Red Cross, for family tracing and reunion. In conclusion, Ms Lundin stated that in her experience what children want from guardians is that they are available, good listeners, honest, trustworthy and that they do not give false hope.

Bernard Georis, Guardianship Office for Unaccompanied Minors, Federal Public Services Justice, Belgium, describes the Belgian guardianship system and illustrated the challenges and opportunities through the story of “M”, a young unaccompanied child of Roma origin. In Belgium, there is guardianship in place since May 2004 for national children, and since December 2014 for unaccompanied migrant children. It is organised in
10th European Forum on the rights of the child. The protection of children in migration

the context of a multidisciplinary team (up to 35 officials), including legal officers, graduates of social sciences, social workers, administrative support, drivers, etc. The mission of the Guardianship Office for Unaccompanied Minors is to accredit, appoint, pay for, support, train and monitor guardians. They also are responsible for basic training before first appointment, supervision, coaching, and assistance through staff and a helpdesk. There are 3200 active guardianships in Belgium at the moment, and 75% of these are carried out by professionals, the remaining are volunteer guardians. In cases of emergency they can also organise shelter. A guardian's mandate is the same as prescribed in the FRA Handbook, namely to represent the unaccompanied child, to ensure general welfare and to work towards a durable solution in the best interests of the child. A Belgian guardian can also appoint a lawyer. Mr Georis stressed that guardians have a crucial role to support the resilience of children. It is important to create a network and alliances to ensure the involvement of all relevant actors.

He then proceeded to tell the story of “M”. She is a 14-year-old girl of Roma origin (i.e. she was 14 when she first appeared on the radar of the guardianship system. According to a court judgment she was exploited by a network of professional traffickers and forced to commit robberies. This network told her that her parents died in a car accident, and a so-called grandmother and uncle were in charge of her care. She was subjected to psychological and physical violence; she had never attended school and as a result was illiterate. M was arrested 20 times by the police between 2012 and 2014 but only seven times was a referral made to the child protection authorities. M was so exhausted and wanted to leave the network that she actually waited for the police to show up in the last house they robbed. M nevertheless refused to initiate judicial proceedings against the network. She decided to apply for asylum, and her guardian visited her often in the closed protection centre where she stayed. M afterwards chose to go to an open centre, specifically created for trafficking victims. In the meantime the contacts undertaken with embassies and neighbouring countries to get a sense of her past proved unusable and seven months later she was kidnapped by the trafficking network (in January 2015). Fortunately, it was thought at first, she was found in a neighbouring country one month later. But the court from this neighbouring country decided that M was safe in her so-called family and released her, only for M to end up in a shelter again a month later. This story highlights the main elements of a guardian’s role, including building and maintaining a relationship of trust as well as legal representation to protect and secure the child. Looking at the 10 Principles for integrated child protection systems, we can ask ourselves, did M benefit from all principles in an active way in the protection she received? For 4-5 years M was mistreated as a slave and received no education. Whilst she was arrested 20 times, she was only referred to protection services roughly 30% of those times. What about international cooperation between countries? Clearly a decision in Belgium had no effect in the neighbouring country. The procedures for protection imposed a high threshold, making it almost impossible for her to go against her "family". And when she turns 18, guardianship will stop. Nevertheless, there are also opportunities for improvement. This includes the creation of specialised reception and identification centres for vulnerable persons. It should be mandatory to refer to these when identifying a vulnerable person. One could also argue that the creation of an international cooperation
office at EU level for mutual recognition of courts and protection acts would assist in simplifying the procedures. Lastly, harmonisation of identification needs to take place at EU level, and a data base with identity details including age would be helpful here.

**Lorenz Paumgartten, Guardian, Child and Youth Welfare Department of Tirol, Austria,** described the guardianship system in Austria, underlining that there is not one system, but rather nine separate guardianship systems – one for each province - in Austria. He considered that there was a need to work further on harmonisation. In Tirol there is a multidisciplinary team comprising of social workers who act as guardians, legal representatives, and mobile assistance advisers (working with children from age 17 to support them to become independent). Most unaccompanied children live in special housing (14-30 children), supported by social workers. Some children live with family members or foster-carers whilst others live in child welfare institutions. Mr Paumgartten stated that he himself, as a deputy head of the multidisciplinary team and legal representative, is responsible for 120 children. He gets support from the guardian, but the aim would be to have a ratio of 80 children per guardian or legal representative. The advantage of one team is the pooling of information and expertise. If there is an issue with guardianship and rights of the child are endangered the local district court can step into action.

The first challenge is that the child must be identified as a child. Since the migration situation in 2015, sometimes it has taken longer to identify children as they sometimes travel with a non-parent relative such as an aunt or a brother. The question of guardianship is then only discussed later, as it is often discovered only after several months that the accompanying adult is an uncle rather than the father. If child is under 14 years of age, he/she will be taken into custody by local child welfare authorities and provided with accommodation by them. Subsequently they will have an interview during which a legal representative (from an NGO) is appointed, but solely just for this first interview. If a child is older than 14, the child can go directly to the police and apply for asylum him or herself, there is no need for a legal representative to be appointed and the first interview will be conducted alone. Afterwards the child will go to the reception centre and will be appointed a legal representative. There are two NGOs which work as representatives, taking care of children but also adults. Afterwards the admission process will take place in one of the reception centres. This in turns depends on the age assessment which will take place. It will be assessed whether a Dublin III procedure is in order. If child is under 18, he or she can stay in Austria. Age assessment is medical, using x-rays and a clinical examination. If there is doubt as to the person’s age, there will be a presumption of childhood. After the admission, the child will be brought to one of Austria's nine provinces. The challenge is that there is a lack of capacity in the central reception centre and that rather than looking at where relevant family members of a child are living, it is simply assessed where there is free space and where the child can be transferred as soon as possible. Once a child is living in Tirol, Mr Paumgartten's office tries to visit him or her as quick as possible, or the child comes to their office so that he or she knows where they can find the service. The child and youth welfare department then carries out, insofar as possible, a family situation analysis, after which full guardianship is applied for through the court. Often guardianship will be assigned to the child welfare service, but if there is another suitable person then this will be
looked at. In Austria, there is no assignment of guardianship upon arrival of the child; it only starts when the child is in one of the nine provinces. This in practice can take a long time, resulting in children staying in central reception without a real guardian. It is a challenge to get the children to trust the service, to make it clear that they are not the authorities. This is complicated by a conflict of interests that arises at times. The Child and Youth Welfare Department of Tirol is part of the local government, and at times they may note that reception is not up to standards, which is also a responsibility of the local government. So this makes it difficult to change things.

During the questions and answers session that followed a number of issues were discussed. Firstly, Pippo Costella of Defence for Children Italy raised the issue of the best interests of the child and the potential conflict of interests, by the very nature of the migration and asylum system, as it harms the guardian's need to have legitimacy, power and be credible, but also to be independent.

Karin Fagerholm of the Office of the Ombudsperson for Children in Sweden asked the panel to weigh in on the pros and cons of confidentiality, also in light of a reporting duty to social services when a child is ill-treated. Mr Paumgartten responded that this is a difficult issue. He is a legal representative of the child, but also has an obligation to the court and must cooperate with them. The child himself or herself must also cooperate in the asylum procedures. From a legal point of view it is therefore easier for social workers as they are under child welfare protection laws that have strict regulations for confidentiality and reporting. Mr Verstegen of Nidos responded that in the Netherlands there are privacy laws and youth care laws, but nevertheless the situation in practice is not easy. Guardians always hear things, and for this reason Nidos always tell children to tell the truth in their interview. For this reason it is important that they are not interviewed in the first days after arrival, as they are likely to tell whatever story the smugglers told them to say. If Nidos has confidential information and it is in the best interests of the child to share this, then they will do so, even in return policies (citing, for example, radicalisation concerns). Ms Dimitropoulou added that clear laws are also important to protect the guardian, as without it is difficult to decide on the best interests of the child, when you are obliged to cooperate with asylum and migration authorities.

Several participants expressed their disbelief regarding the Austrian policy of not immediately appointing a guardian and allowing children to apply for asylum themselves. Mr Verstegen underlined the need for immediate appointment - otherwise children may be at risk. This had previously been the case in the Netherlands with Nigerian girls who ended up in forced prostitution in Belgium – by the time the guardians were assigned, the traffickers had already moved the children on to be exploited elsewhere. For this reason, Nidos is present immediately at the arrival centre. Ms Dimitropoulou lauded the Commission's proposal of introducing deadlines for the appointment of guardians, as it will prevent such issues. She also cautioned against a system that allows temporary guardians as a work around for this issue, as temporary guardians should be used as an exception, not as a rule, and some children are never assigned a real guardian. Mr Paumgartten explained that the legal framework is missing, it is first the legal representative who decides, not the guardian. Heads of Child and Youth Welfare in Austria have for this reason asked the Ministry of Justice to develop a new law, to close this gap
between arrival and appointment. Several participants also discussed the situation in Germany, where some argued that at least a guardian is appointed immediately, but other argues that some of these guardians are not familiar with the asylum and migration system and that there are still huge delays in court appointments of guardians, sometimes up to 12 months. Mr Verstegen said that Nidos has taken a pragmatic and practical approach: they act as the guardian immediately from the moment the child arrives, and after approximately six week the formal appointment of the court formalises it.

Marc Klaasen of Leiden University in the Netherlands asked Nidos about their policy on child marriage, arguing that he was informed that all requests for family reunification with girls under 18 are immediately rejected. Mr Verstegen clarified that once a married girl below 18 comes to the Netherlands, she is no longer entitled to family reunification. Guardianship is a protective measure and they try to provide tailored help in all situations, but cannot change the wider system around it.

Independent expert Kevin Byrne stated that in the discussions we frequently demonise the asylum and migration system, but in fact that there are also many blockages in child protection as well, and expressed his hope that at the end of this process we should be able to identify the minimum essential context for guardians and solutions to apply guardianship in broader situations of a child protection system (i.e. not only for children in migration).

Charlotte Kilroy of Doughty Street Chambers described the catch 22 situation in which children find themselves and stated that the immediate appointment of the guardian does not happen in reality, resulting in a loss for the child but not a loss for the Member State, which often takes the view that if no asylum application is made the child does not have the right to safeguards set out in EU law, even though it is often the case that the child cannot apply for asylum without protection. She wondered how the Commission planned to address this gap. Ms Atanasiu of DG HOME responded that the new proposals propose a rule for the guardian to be appointed as quickly as possible. It was reasoned that it was better to have the requirement of a guardian to apply for asylum, rather than giving the child power to apply for asylum him or herself. Andrea Simon of ECPAT UK stressed the need for guardians to be appointed promptly as otherwise children run the risk of going missing or being trafficked. She testified that over 600 children went missing in the UK within a year, often very soon after contact with child protection authorities. Helen Stalford of the University of Liverpool asked the panel what a guardian can practically do at these early stages to prevent children going missing. Mr Bernard suggested that the building of trust is very important. Ms Van Hövell of Nidos illustrated the case of a number of Vietnamese boys going missing and being trafficked, and their desperation (e.g. jumping off the second floor of the reception facility) to go back to the networks. It took a long time for them to realise they were being exploited. Mr Verstegen added that the guardian therefore also plays an important role in providing information, for instance warning girls of the reality of prostitution (which they believed to be a good life). Ms Dimitropoulou concluded that guardians are a key element of a child protection system, but also actors working in reception, health, and education, have a role to play to share information, build trust and minimise the risk of children going missing.
5.3. Day two opening speech by a former unaccompanied child on her experience of guardianship

See and hear Day 2 discussions here. 

Zaïna Karekezi, fled Rwanda in 1999 and arrived in the Netherlands unaccompanied. She requested asylum which she was granted within a year. At the time the processing time was quicker than now. She went on to study law and now works at Nidos as a lawyer. After a first night in an arrival centre she was sent to a reception centre in the Dutch city of Haarlem, where she met her first guardian, an older woman called Ellen. Ellen explained to Ms Karekezi who she was and where she worked, but Ms Karekezi did not understand why she was there. She had travelled all by herself to the Netherlands, why would she need somebody to take care of her now? Ms Karekezi explained that all she cared about was the asylum procedure, thinking that if Ellen did not work for the migration services, she had no reason to engage with her. During her first meeting with Ellen, she was told about school and the asylum procedure, and it was explained to her that she would stay in this centre for three months, and then be transferred, and have an interview with a migration officer for the asylum procedure. Ellen also asked Ms Karekezi about her hobbies, and she was very interested in getting to know her. Ellen spoke French which made it easier to communicate with her. Ms Karekezi explained that she immediately knew that Ellen was one of the people she could trust, even though she knew she was working for the government, and that somehow she could tell Ellen more about her situation. She never felt like Ellen did not have enough time for her, and she felt understood, even though she did not really understand what a guardian was. Ms Karekezi said that the best descriptions of the role of a guardian she heard were from other children: “a guardian is a kind of fixer”, “someone who has power and who arranges everything”. “But the guardian can make or destroy you, so you must behave well, and show respect”. “You may be punished otherwise, for instance by being transferred to a smaller city or village”. This power was confirmed when Ellen managed to get Ms Karekezi new glasses.
within two days of an appointment where she had noticed that Ms Karekezi was no longer wearing her glasses.

After two months Ms Karekezi was transferred to the north of the Netherlands, to Groningen, which was a disappointment to her. Ellen explained that she was sent to Groningen because there she could go to school within one week, rather than the longer waiting period of bigger cities. Her first image of a guardian was very positive, a fixer but also her friend. Ellen was not her mother, and they had discussed this, and Ellen had explained that nobody could replace her mother, which relieved Ms Karekezi.

In Groningen, Ms Karekezi met her new guardian and house mentor. The relationship with her second guardian was different. She was more professional, and their relationship was more professional. Nevertheless, this guardian also maintained her role as a fixer, and she arranged a lot of things. At that moment she had received her residency permit and had different needs and could start to think about her future. At this moment she also started thinking of her family at home. When she left she did not have contact with her father but she explained to her guardian that she would like to try to have contact with him again. Within a week the guardian had made an appointment for Ms Karekezi to see someone from the Red Cross and they started tracing her father. The moment this happened, their relationship changed also, in a positive way. It took some months, but then she brought a letter from Ms Karekezi’s father. This was a really important moment for her. From that moment she was in contact with her father and could more easily focus on the other issues. Her father did not use the word "camel" but explained to Ms Karekezi that she had a new home now and that she should cherish the opportunities. When Ms Karekezi was 17, almost 18 years old and started to better understand the guardian's role, she considered that the guardian’s approach made their relationship a bit difficult. Now Ms Karekezi understood it was just her approach and she was actually very good at her job, but the day she turned 18 was a party. With the first guardian she felt respected, and the second guardian was much younger, much more formal, with a professional manner. She wrote down everything that Ms Karekezi said that with hindsight Ms Karekezi now understands that the guardian had to keep records and make reports. In conclusion, Ms Karekezi stated she had a very positive experience with both guardians, despite the differences between the two, because they were central figures. She knew that if she needed anything, she had this central figure. She concluded with an appeal to Member States who do not have a structured system on guardianship to create one, as children need it.

In the subsequent questions and answers, Kostas Simitopoulos of the Reception and Identification Centre of Moria (Lesvos Island, Greece) asked what Ms Karekezi would do when she received answers she disagreed with and how trust was built with her guardians. Ms Karekezi responded that this depends on the person and the way information was delivered. When she just arrived she thought every white person worked for migration, but later on she understood better what everybody's role was and would say something if she did not agree. On trust, Ms Karekezi stated that there is no one way. With her first guardian she immediately felt comfortable, because of the way she approached her and talked to her. With the second guardian this connection was not there. Many children she spoke with, and her friends at the time, were happy when they turned 18 as many felt the guardians were not
good for them. But now when they are older they understand that they have been key figures in their lives. A Swedish guardian from Örebro Municipality commented that they have a mentorship programme (whereby an experienced guardian acts as a mentor for newer guardians) which improves their skills to gain the trust of children as they are confident in what they can do, questioning whether Ms Karekezi would agree that this may help. Ms Karekezi responded that training is very important but that it is mostly how a guardian carries out his or her duties. You are working with a child, who comes from a different country, who has experienced different things, the child has been and is on their own and they cannot trust anybody. Often the guardian may not be somebody who looks like you or has the same culture. The first moment is very important, the guardian needs to show interest in the child and listening to the child is very important. As an icebreaker, her guardian asked her something about her hair; something personal. It is not what you do, but how you do it.

Maiken Bejerholm of the Danish Red Cross asked whether it would have been possible to keep the first guardian, even though she lived further away and asked how it felt to change guardians. Ms Karekezi explained that first you are appointed a guardian in the first reception and then you are appointed a long-term guardian, so you could not keep the first one. For her the entire process was new, and she would have accepted it. Both guardians were fixers, but the difference in approach made the relationship different. It could have been related to the fact that one guardian was older, somebody who could have been her mother, the second one was younger, and it seemed that she was just doing her job.

Mr Paumgartten also asked Ms Karekezi whether she thinks it is useful if guardians explain the legal asylum procedure or whether they should not bother the children with this. Ms Karekezi stressed that information on the asylum procedure was actually the most important thing to her. In her first meeting, her guardian explained about Dutch culture and reception, but all Ms Karekezi wanted to know was when she would have her asylum interview. Her guardian did not know this, which disappointed her. Helen Stalford of the University of Liverpool commented that in the UK the guardianship system is very patchy and that many NGOs say that they can provide guardianship but they have no power, no power or influence over the Home Office decision to deny asylum status or to give temporary permission to stay and then deport the child once he or she turns 18. Ms Karekezi explained that she realised only after a while after talking to lawyers, that the guardian could not help her with this procedure (but she did help with school, healthcare, reception, etc.). Her guardian did explain that it was organised like this, and that she could link her to the lawyers for support in the procedure.

One participant also questioned how a potential temporary permit would have affected Ms Karekezi. Ms Karekezi in turn responded that in fact she very quickly received a permanent residency permit, which allowed her to think about her future. Based on her friends’ experience, she said that if you would only get a permit for one year, it is more difficult to invest in school and education, if you risk being returned. The status granted has therefore a huge influence on how children engage and plan and invest in their future.
5.4. Session 3: Roles and responsibilities (guardians and those with whom guardians interact)

Pippo Costella, Defence for Children Italy, stressed the need for quality and continuity of care, referring to the results of the SAFEGUARD project (analysis of guardianship in Europe), as well as RESILAND (consultation of unaccompanied children all over Europe trying to understand what they perceive as quality, protection and risk). So what do we mean by quality and continuity? Sometimes we have an unaccompanied child, sometimes a category very disconnected to the notion that this individual is a person, we have a child, but do we consider him as a “migrant”? We have to decide that this child is a person, and a child, and as such entitled to a certain kind of attention and rights. This child has to be central in our action. We have to understand that this child has a story. The "UAM" acronym (unaccompanied minor) does not help in this regard, nor does framing children under a logic of migration control. A child's background must be considered. We have to relate to this in our provision of care, understand that this story is composed of many elements. We must understand the implications of a child’s journey, and make them a part of our narratives as guardians.

Mr Costella cautioned against an ambiguous approach where it is not known which framework will prevail to determine his or her rights: the framework on migration status OR the requirement to treat a child as a child. He recalled that all Member States have ratified the UNCRC and the responsibilities should therefore not be confusing. When you have to explain procedures, guardians cannot do anything about the procedures, but they should have the power to do something about it. Mr Costella stressed that the best interests of the child should determine the procedures. This actually requires a certain degree of power for the guardian and a context that recognises this power. The child should be protected from any conflict of interests. The best interests of the child must be connected to the other three guiding principles of the UNCRC. The Convention provides guidance on a how a guardian should work and how the system should support the guardian. And in principle the guardian is not just safeguarding the child, but also these principles to which all EU Member States have subscribed. The guardian also safeguards the child from a system that does not apply this system. The quality of care should take these elements into account.

Nadine Finch, Honorary Research Fellow, School of Policy Studies, University of Bristol, drew on the results of the REACT and CONNECT projects that she was a part of. Research shows that there is a huge lack of awareness among guardians to recognise trafficked children, as their focus is often on the asylum process. The ability to identify trafficking risks is important, and many guardians are not able to define different kinds of trafficking: sexual exploitation is often easier, but labour exploitation or criminal activity was much more difficult. It is also important to understand why children stay in or return to trafficking situations, as the control by traffickers varies (i.e. debt bondage, harmful rituals, etc.). Ms Finch shared a number of barriers to identification: (1) invisibility of children, they are literally hidden in the shadows; (2) referral mechanisms are delegated to the police and or immigration services that are not trained on child protection; (3) children

27 http://www.resiland.org/
29 http://www.connectproject.eu/
may be arrested and convicted even though they were subjected to criminal exploitation; (4) lack of hearing children, or due to complications arising out of cultural differences; and (5) overwhelmed guardianship services, with many Member States not having a well-developed system.

This brings a lot of risks, for instance children going missing (60% of trafficked children in the UK went missing because traffickers tell them they will be imprisoned for criminal activity or be deported due to lack of identity documents, which often happens).

Guardians have to play a proactive role if a child goes missing; this may of itself be an indication that the child has been trafficked. Research has shown that some nationalities are more prone to going missing, e.g. Vietnamese or Chinese. It is essential that guardians are appointed promptly, as most children go missing within 48 hours of arrival. Ms Finch also supports the multi-agency safeguarding hub (MASH) model where professionals work together and adopt a triage system, as a way of ensuring child protection. More training is needed on the specific situations a child may be in, e.g. having no immigration status, being a witness in a trial, seeking asylum, subject to the Brussels IIa Regulation because a parent may try to get the child back. This is a huge task for guardians, and they need the backup of social workers and lawyers to help the child go through this process.

She explained that for Vietnamese child trafficking victims it is difficult, as they frequently drift back into this community and get exploited again, and for Roma child victims of trafficking their loyalty to their family prevents them often from getting out of the harmful situation and disclosing information. Most traffickers give the child a cover story, to protect themselves from prosecution and the child finds it difficult to move away from this cover story. This can result in huge problems later on, as most asylum systems depend on credibility. But there are certain things that could help, such as cultural mediators that can support and explain why the child is behaving in a certain way, or peer support groups, as it was found that children with similar experiences often find it easier to talk to each other.

During the questions and answers on Mr Costella’s point of paying attention to the story of the child, Mechtild Hoffmann of the German Soziale Dienst in Saarland shared an anecdote of Eritrean children aged 6–8 years old who had come to Germany to support their family and work, and were disappointed to find out they had to go to school, highlighting the importance of explaining to children why certain things are important. Andrea Simon of ECPAT UK also warned that trafficked children may not always be unaccompanied, and sometimes actually be accompanied by their trafficker, stressing the need for early identification. Mr Paumgartten added that reception is also very important; if guardianship is perfect but children are not protected in big reception centres then there is no point. Ms Finch underlined this aspect, stating that this is why in the UK they now have
highly trained foster carers because Nigerian girls were previously abducted from special reception centres for trafficking victims. Karin Fagerholm of the Office of the Ombudsperson for Children in Sweden announced that they will publish a report in December 2017 on missing children, where trafficking and guardianship will be addressed. Several participants highlighted the importance of cooperation, also with police forces, particularly as trafficking is also a crime, and to have cross-border cooperation between intelligence services, as well as the importance of an integrated child protection system. It was also discussed that guardians are important for the state, as a spider in the web, to ensure that all of their obligations are complied with. A question was also raised on whether non-relative family members could be appointed guardian (e.g. a Syrian man in a German village who requested guardianship for a number of children), and it was stressed that an individual assessment is key. It was also queried whether DNA testing regarding assessment would be advised. Mr Verstegen relayed that this may be a practical solution. It is already used in family reunification and it can be very useful. Mr Dimitropoulou added that it may be useful, but does not work for instance on adopted children. The EASO family-tracing guidance was mentioned as particularly useful in this regard. Helen Stalford of the University of Liverpool stressed that the best interests of the child runs through the EU asylum acquis but is not very well-defined, and this runs through national legislation also, but that other UNCRC principles are sometimes invisible. Mr Costella highlighted that you need to give words to something difficult to formulate appropriate action, stressing the need for integration both conceptually and theoretically of the other principles. You need a theoretical and practical framework to train guardians.

Kevin Byrne highlighted that guardianship is a key element of a system, but much of their work seems to be negotiating the child's well-being within hostile systems, in immigration, education, health, etc. There has to be a two-pronged approach, we also have a responsibility to address the system as a whole, rather than leaving it to guardians to negotiate on a case-by-case basis. Potential is there if we can get the right people together, and follow the roadmap of EU law, and available standards. Ms Dimitropoulou stressed that what people should bring back to their ministries should not be that everyone should have a Nidos system, but rather to have an inclusive system for all children, also EU nationals. In many countries guardianship systems do not address these children neither. What needs to be in place is a system where a person will be appointed and the principles of the Commission/FRA Handbook are applied. The Chair also stated that the Commission recognises the need and value of a guardianship network and is exploring how to bring this forward.

5.5. **Session 4: Crossborder aspects of guardianship for unaccompanied children**

**Germa Lourens,** **Legal Department, Nidos** shared her expertise working in cross-border cooperation, particularly in the context of the Dublin Regulation. In principle Nidos is always a guardian and has a lot of responsibilities. If a child applies for family reunification, and parents also come to the Netherlands, then NIDOS has to formally ask a judge to end guardianship. When a child leaves the Netherlands, Nidos will need to find a
person in the country of origin or return to take over guardianship, and a Dutch judge must decide that this is in the best interests of the child. Therefore, information on the situation in countries of origin and in other Member States is of huge value. Ms Lourens explained that a network was built within Europe and they have now a questionnaire on the situation in other Member States in important areas such as reception, education, and healthcare for nearly all Member States. For instance, when a child has to go to Italy as a result of the Dublin Regulation, then Ms Lourens will contact the Italian authorities and ascertain what will happen once the child is transferred. This is subsequently discussed within Nidos, and this is a so-called "key decision", that has a great impact on a child's development. This decision is therefore not taken by a guardian alone, but always with Ms Lourens and a behavioural scientist.

Ms Lourens illustrated her work by way of two cases. The first example concerned “R”, a 6-year-old girl from Afghanistan. Her uncle and aunt lived in the Netherlands, and R was placed with them. Later on, Nidos found out that her father lived in France. The Dutch immigration authorities requested that R be sent to live with him, and sent France a “take charge” request. But Nidos needed to assess whether this was in her best interests. This investigation stagnated because they did not know the whereabouts of the father and France invoked their privacy laws to refuse to turn over this information. Normally this should be covered under inter-state mutual trust, but in the particular situation Nidos understood from the aunt that the father was an alcoholic with debts and without a stable residence. Nidos contacted R's mother in Afghanistan (who was separated from the father) who confirmed it was not in the R’s best interests, as the father was abusive. Nidos could not find an organisation to visit the father. As a result France accepted responsibility, but Nidos asked the Dutch immigration authority to keep her in the Netherlands in light of the information received. This is a big decision, as Nidos decided not to send R to the father.

The second example concerned “R”, a 16-year-old boy from Eritrea. He was initially in Sweden with his father but then left for the Netherlands and applied for asylum there. Dutch immigration authorities found out so sent a take charge request to Sweden. Sweden rejected the request arguing that the Netherlands had not done a thorough best interests assessment. The authorities asked Nidos to investigate further, and they contacted the father who testified to loving R very much. R explained that he did not want to go to Sweden as they had rejected a previous family reunification request. Nidos called the mother in Eritrea and she confirmed the father was a good man. Nidos told R that it would be in his best interests to go to Sweden, but he disagreed so Nidos organised a lawyer for him so that he could appeal the decision. In court it was argued that Nidos was an expert on the best interests of the child, which the court accepted for the first time, meaning that in the future the authorities must contest Nidos’ opinion with that of another expert if they do not agree. In the end the judge ordered R to go to Sweden. R agreed and was transferred. Nidos is still in contact with him, and he is now quite happy with the decision.
The last example concerned “E”, a 4-year-old boy from Syria. He lived with his father in Turkey. His sibling was under the guardianship of Nidos and applied for family reunification with E and their mother (who was also in Turkey). The Dutch authorities accepted the request for the mother but rejected for E, because he was living with his father and the parents were separated. The mother came to Netherlands and was supervised by Nidos for three months. One day she called Nidos, very emotional, as she had heard that E's father had taken him to another Member State and dropped him off at a police station and had left. That night Ms Lourens sent an e-mail to her network and the next morning they had already found E, but understood he was put in detention with a Syrian man, who was not a guardian, and that this man had applied for asylum for E. So they were quite shocked, but had contact with other organisations in that Member State, and tried to explain that there was a legal basis for him to come to the Netherlands. He was taken out of detention 1-2 days later and put in a children's home. Nidos was constantly pushing the other Member State to send a take charge request to the Netherlands, and warning the Dutch Dublin unit that this request was coming, so they accepted it in the same day. Then it still took still three weeks before E was transferred. Nidos was quite happy with this, as this was quite fast, but not for the mother, who was very worried and who threatened to travel to the Member State herself to pick him up as this was faster.

Andrea Schulz, Seconded National Expert, Civil Justice, DG Justice and Consumers provided an overview of the legal framework of the Brussels IIa Regulation and the role it can play in cross-border cooperation. The Brussels IIa Regulation provides rules on which court has jurisdiction to take a protective measure over the child, such as guardianship. It has a child-centred approach: jurisdiction is where child is habitually resident, the judge in this Member State is the one to decide, as he or she is closest to the child. Of course children in migration are not habitually resident anywhere, which is why Article 13 specifies that the Regulation also applies to them, and that where habitual residence cannot be established then it is simply the court where the child is present.

She then discussed what would happen if the child moves to another Member State and what happens with the guardian. In the perhaps exceptional case where the guardian travels with the child (e.g. where a family member has been appointed guardian) then the Regulation provides that the decision taken in one Member State should be recognised in
another, so that guardianship continues. If possible, the court ordering the guardianship should inform the court in the district where the guardian and child move. Sometimes the court will ask social workers or child welfare authorities to check, or sometimes the guardian must report to the court every few months. As the court in the new Member State will supervise the guardian, it is essential that the courts communicate with each other. The Commission is working hard to make this happen, through various network such as a network of judges on the 1996 Hague Convention and the European Judicial Network in Civil Matters which involves all Central Authorities under the Brussels IIa Regulation. So there are mechanisms and networks in place to support the courts; to inform them that somebody under guardianship is coming, but they are underutilised.

In a situation where the guardian does not move with the child, a new guardian will have to be appointed. But this is a complicated issue, as who should appoint a guardian and when? Most people will say the new state has this duty because this is where child will live. But if you look at the Brussels IIa Regulation, as long as the child has not arrived in the new state, those courts have no power to decide as there is not yet a legal and factual link with the child. Proximity to the child has not been created, as long as child has not yet arrived. And then there is the question of timing. Guardians do not let the child travel into a vacuum, so often they suggest that a new guardian should be appointed before the child arrives. The system caters for this if it is really necessary: the Member State that appointed the first guardian can make contact with the court in another Member State and explain the situation, and ask whether the court in the receiving Member State (Member State B) would accept jurisdiction. If it appears that the child could live with relatives found in Member State B, one possibility would be that the court in the first Member State (Member State A) regulates this, which would effectively be a “cross-border placement”. Lot of steps would need to be done, Member State A would ask for social report on family envisaged, then would need to ask Member State B for permission, as normally it would mean that the child would be “placed” in another state, where the child might have previously been in the care system in Member State A. Member State A will need to keep a watching brief to ensure that everything is OK. This is used very little, as Member State B must agree to take over care, and when it does, the issue of cost must be settled. Frequently the rule of “the one who asks, pays” is used, meaning that the first Member State would continue to be financially liable, even though the child is in another Member State.

Ms Schulz also highlighted that, in reference to the case of “R” as mentioned by Ms Lourens, the new proposal for the recast Brussels IIa will hopefully help, as it will make it possible for a Member State in proceedings concerning the protection of a child to ask for any other information relevant for the child (thus broadening the scope). Ms Schulz concluded by stating that if you are creative, the existing system really offers a lot, but the human factor is the most important as everyone has to interact in a cross-border way.

In the subsequent discussion, Charlotte Kilroy of Doughty Street Chambers stated that Member States often fail their obligations under Dublin to investigate and gather evidence to support take charge requests so that reunifications actually happen, and queried whether Nidos was given the resources to perform this role by the Dutch government. Mr Verstegen replied that they are the guardians, so it is part of their job. The new Dublin proposal was also discussed and its possible implications for determination of which Member State is responsible. The proposal to limit procedural safeguards such as the provision of guardianship if a child moves on her or his own, was also discussed. There was also a further theoretical discussion on the relative separate worlds of private and public law, but where actually opportunities in private law could be further explored, e.g. relocation requests under Brussels IIa instead of under migration and asylum law. Many
questions remain unanswered still, particularly as to the powers of a guardian if he/she theoretically travels with the child to a new Member State and whether this means whether he/she then also has power to decide about reception in another Member State.

In concluding the side event, Mr Verstegen expressed his hope for guardians, and guardianship authorities, to continue meeting each other and to continuing these discussions, as they can learn a lot. He said that Europe has come a long way, and now needs to ensure that the next urgent steps in cross-border cooperation are taken. He invited participants to reflect on how this can best be done. The Chair invited all participants to use the opportunities and potential available and to continue these discussions and reflections in the Forum.

*DG Justice, Forum organisers*
6. **ANNEX 1 – GRAPHIC RECORDING OF THE FORUM AND THE SIDE EVENT**

29.11.2016 – Plenary session I and II
30.11.2016 – Plenary session III and IV
30.11.2016 – Parallel session 1
30.11.2016 – Parallel session 2
30.11.2016 – Parallel session 3
30.11.2016 – Parallel session 4

10th European Forum on the rights of the child. The protection of children in migration
28.11.2016 – Side event on guardianship for unaccompanied children – Day 1
29.11.2016 – Side event on guardianship for unaccompanied children – Day 2
7. **Annex 2 - Overview of Participants and Applications**

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Status of applications based on organisation type

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* this includes EU institutions based in Brussels, 8 MS permanent representations to the EU as well as 35 Brussels based international organisations and international NGOs.
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