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FINAL REPORT

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(including results of the November 2011 Final Conference)

The European Council on Refugees and Exiles
in strategic partnership with
Save the Children (EU Office)

Disclaimer: This research has been conducted within the terms of reference of the Commission tender “Comparative study on best practices in the field of return of minors” (HOME/2009/RFXX/PR/1002).

The outcomes of the research, and in particular the inventory of practices in Member States and countries of return, do not represent the positions of the respective organisations involved in the research on what good practice concerning the return of children must entail.

The opinions expressed in this study do not necessarily reflect the view of the European Commission.

TABLE OF CONTENTS

ACKNOWLEDGMENTS 8

SECTION 1. EXECUTIVE SUMMARY 10

SECTION 2. INTRODUCTION 17

2.1 PROJECT DESCRIPTION 17

Background to the study 17
Aims of the study 17
Outputs of the project 17

2.2 THE RETURN DIRECTIVE AND HOW IT AFFECTS CHILDREN 18

General provisions 18
Provisions with specific relevance for children 18

2.3 OTHER RELEVANT INSTRUMENTS AND POLICIES THAT CONSIDER CHILDREN IN THE PROCESS OF RETURN 20

2.4 METHODOLOGY 22

Project Coordination Team 23
The team of researchers 23
Advisory Panel 23
The team of experts 23
Appointment of national contact points and national stakeholders 24
Consultation with regional stakeholders 24

2.5 PARAMETERS OF THE RESEARCH AND STUDY OUTPUT AND POTENTIAL FUTURE STEPS 24

Breadth and depth of the study 24
Issues addressed 25
Definition of best interests and processes to establish best interests 25
Criteria for identifying good practices 25
Evolving national practice 26

SECTION 3. STATISTICS 27

Children returned 27
Unaccompanied children returned through IOM's Assisted Voluntary Return and Reintegration Programme 29
Children present on the Member States' territory 30
Asylum applications 31
Children in detention 34
Children returned to third countries from the EU 34

SECTION 4. DETAILED OVERVIEW OF THE CURRENT LEGISLATION AND ADMINISTRATIVE PRACTICE IN EACH MEMBER STATE CONCERNING THE RIGHTS AND THE TREATMENT OF CHILDREN IN THE RETURN PROCESS 35

4.1 CONTEXT AND GENERAL OVERVIEW 35

The Return Directive 35
General overview 37
Austria 38
Belgium 39
Bulgaria 39
Cyprus 39
Czech Republic 40
Denmark 40
Estonia 40

Finland 40
France 41
Germany 41
Greece 41
Hungary 42
Iceland 42
Ireland 42
Italy 43
Latvia 43
Liechtenstein 43
Lithuania 44
Luxembourg 44
Malta 44
Netherlands 45
Norway 45
Poland 45
Portugal 46
Romania 46
Slovakia 46
Slovenia 46
Spain 47
Sweden 47
Switzerland 47
United Kingdom 48

4.2 DETAILED FINDINGS 49

4.2.1 Considerations surrounding the extension of the voluntary departure period 49

General 51
Extension for education needs 51
Extension for health and medical reasons 53

4.2.2 Provision of independent assistance to unaccompanied children 54

Assistance – who takes on the role? 56
Assistance in practice 56
Assistance – further considerations 59
Family tracing 60

4.2.3 Safeguarding of children during the pre-return phase 63

Family unity 65
Accommodation 65
Access to education 67
Access to health care 68
Preparation to return 69

4.2.4 Promotion of the rights of children in detention 70

Family unity in detention 73
Detention of unaccompanied children 73
Alternative to detention of families 74
Length of the period of detention 74
Provision of health services in detention 74
Provision of education 75
Conditions within detention centres 76

4.2.5 Return and post return phase 79

Oversight of return processes and how returns are carried out in practice 80
Escorting children on their return journey 81
Transfer of custody and care for unaccompanied children 81
Reintegration 84
Monitoring post return 86
Return to institutional care for unaccompanied children 86

4.3 JURISPRUDENCE 90

National jurisprudence 90

Right to be heard....90
Expulsion violating right to family life and children's best interests....91

European jurisprudence....91

Detention as inhuman treatment and breach of family life....91
Detention unlawful and conditions inappropriate for children....92
Detention of unaccompanied child and lack of care as degrading treatment....93
Parent's removal violating best interests and rights of children....93

SECTION 5. A GENERAL OVERVIEW OF THE ADMINISTRATIVE PRACTICE IN THE SELECTED COUNTRIES OF RETURN CONCERNING THE RECEPTION OF CHILDREN....95

5.1 AFGHANISTAN....96

Context of returnees to the country....96
Data....96
Legal framework applying to children....97
Contacts between returning countries and receiving countries prior to return....97
Procedures on return....100
Reintegration support post return....102
Training of staff involved in return....102

5.2 ANGOLA....103

Context of returnees to the country....103
Data....103
Legal framework applying to children....103
Contacts between returning countries and receiving countries prior to return....104
Procedures on return....105
Reintegration support post return....106
Training of staff involved in return....107
Monitoring Mechanisms....107

5.3 KOSOVO....108

Context of returnees to the country....108
Data....109
Legal framework applying to children....110
Contacts between returning countries and receiving countries prior to return....111
Procedures on return....112
Reintegration support post return....114
Monitoring mechanisms....115
General ramifications of returns....116

5.4 MOROCCO....117

Context of returnees to the country....117
Data....118
Legal framework applying to children....118
Contacts between returning countries and receiving countries prior to return....119
Procedures on return....121
Reintegration support on return....121
Monitoring mechanisms....122

5.5 NIGERIA....123

Context of returnees to the country:....123
Data....123
Legal framework applying to children....123
Contacts between returning countries and receiving countries prior to return....124
Procedures on return....124
Reintegration support post return....125
Training of staff involved in return....125
Monitoring Mechanisms....125

5.6 SRI LANKA....126

Context of returnees to the country....126

Data 126
Legal framework applying to children 126
Procedures on return 127
Reintegration support post return 128
Monitoring Mechanisms 128

5.7 UKRAINE 129

Context of returnees to the country 129
Data 129
Legal framework applying to children 129
Contacts between returning countries and receiving countries prior to return 130
Procedures on return 130
Reintegration support post return 133
Monitoring Mechanisms 134

SECTION 6. CRITERIA FOR IDENTIFYING GOOD AND NOTEWORTHY PRACTICES 135

SECTION 7. AN INVENTORY OF NOTEWORTHY PRACTICES CONCERNING THE RETURN OF CHILDREN BOTH IN MEMBER STATES AND COUNTRIES OF RETURN 136

7.1 DESIGNING THE RETURN PROCEDURE: GENERAL CHILD RIGHTS AND CHILD PROTECTION 137

Training of actors 137

7.2 ASSISTANCE TO UNACCOMPANIED AND SEPARATED CHILDREN PRIOR TO A RETURN DECISION 138

Provision of Information 138
Guardianship 138
Helping Children Consider their Future 141
Tracing and Assessing Family and Restoring Family Links 142
Noteworthy regional practices in providing assistance to unaccompanied children 145

7.3 DECISION MAKING PROCEDURES 146

7.4 POST DECISION AND PRE-RETURN PHASE 147

Support for children with failed asylum applications 147

7.5 DETENTION 148

Alternatives to detention 148
Unaccompanied children are not subject to immigration detention 150
Children are provided with education whilst subject to immigration detention 150

7.6 THE RETURN PROCESS 151

Assisted voluntary return and reintegration projects (AVRR) 151
Practices for the removal of children are appropriate and proportionate 154

7.7 ARRIVAL IN COUNTRY OF RETURN AND POST RETURN REINTEGRATION ACTIVITIES AND MONITORING 155

Accompanying unaccompanied children on their return journey 155
Reintegration support for children 155

SECTION 8. A CHECKLIST FOR SUPPORTING MEMBER STATES WHEN CONSIDERING THE RETURN OF CHILDREN TO THIRD COUNTRIES 160

A. INTRODUCTION TO THE CHECKLIST 161

B. THE CHECKLIST 166

SECTION 9. CONCLUSIONS 190

ANNEX 1: REGIONAL STAKEHOLDERS INTERVIEWED **191**
ANNEX 2: NATIONAL STAKEHOLDERS INTERVIEWED **192**
ANNEX 3**:** CLOSING CONFERENCE REPORT **197**
ANNEX 4: MEMBER STATESCOUNTRY FICHES **219**
AUSTRIA 220
BELGIUM 224
BULGARIA 227
CYPRUS 230
CZECH REPUBLIC 232
DENMARK 236
ESTONIA 240
FINLAND 243
FRANCE 245
GERMANY 248
GREECE 252
HUNGARY 255
IRELAND 258
ICELAND 261
ITALY 263
LATVIA 265
LIECHTENSTEIN 269
LITHUANIA 272
LUXEMBOURG 275
MALTA 278
NETHERLANDS 281
NORWAY 285
POLAND 289
PORTUGAL 292
ROMANIA 295
SLOVAKIA 298
SLOVENIA 302
SPAIN 306
SWEDEN 309
SWITZERLAND 313
UNITED KINGDOM 317
ANNEX 5. BIBLIOGRAPHY 320

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SECTION 1.
EXECUTIVE SUMMARY

A study on "best practices in the field of the return of minors" was carried out by ECRE, in strategic partnership with Save the Children, on behalf of the European Commission. The study looked at legislation and practice regarding the return of children, either unaccompanied or within families, who return voluntarily or are forced to return because of their status as illegally staying third country nationals. The study covered the 27 EU Member States and the 4 Schengen Associated States (Iceland, Norway, Liechtenstein and Switzerland). Further research was also conducted in seven selected countries of return: Afghanistan, Angola, Kosovo, Morocco, Nigeria, Sri Lanka and Ukraine. Information was gathered through research and interviews with relevant stakeholders involved in the return of children in all the countries covered as well as at the regional and supranational level.

The aim of the study is to help Member States develop an effective system for how to consider the return of children to countries outside of the EU. The final report is composed of:

- An introduction to the study (section 2),
- Statistics (section 3),
- An overview of the current legislation and administrative practices in the Member States (section 4)
- An overview of administrative practices in the selected countries of return (section 5)
- Criteria identified to define best practices (section 6)
- An inventory of noteworthy practices (section 7)
- A checklist (section 8)
- Conclusions (section 9)

The study does not aim to cover all dimensions of the return of children but focuses on key requirements as provided in the Return Directive[1]. As indicated in the EU Action Plan for Unaccompanied Minors and the newly adopted EU Trafficking Directive[2], it places return as one option to be considered when Member States undertake to find durable solutions for unaccompanied children, based on an assessment of their individual circumstances and taking their best interests as a primary consideration.

[1] Directive 2008/115/ EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals

[2] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

It should also be emphasised that, although the Return Directive was the key reference when carrying out the research, the study is not an evaluation of its implementation. Indeed, it should be acknowledged that the study was carried out at a time when most Member States were still in the process of transposing or implementing the Return Directive and therefore legislation and practices will change or are likely to change in the near future. Expected changes in legislation are mentioned but the study can only capture national legislation and practices at the time of the research (first semester 2011).

Given the broad scope of the study, and the limited time and resources involved, the study covers central elements of the return process as stated in the national legislation or as perceived practice by involved actors. Whilst the findings are not comprehensive, they allow for some comparisons and conclusions to be drawn on a regional level and they provide a basis for further analysis of each country's situation or focussed assessment of particular features of those practices.

The study aimed to generate a checklist, which would assist Member States in developing their processes for considering the return of children informed by national good practices. Practices identified in this regard are those which stakeholders considered to be good or noteworthy but this study did not aim to evaluate their objectives, processes and effects. Moreover many recent or developing practices have not yet had any demonstrable effects. The inventory of noteworthy practices stands as a reference point which might inspire or be further improved by other stakeholders. Equally, the checklist is designed as a quality-planning tool and provides a common framework for the myriad actors to work together to achieve better practices and outcomes when considering returns. To this end, in addition to references to international legal obligations and authoritative guidance, it provides a number of indicators to be considered. In future, the Commission might consider the revision of the checklist and inventory of noteworthy practices on a periodic basis to reflect evolving practice.

To summarise briefly some of the key findings:

Applicable Legislation

- Most of the Member States have transposed the Return Directive, though nine States are still undertaking this process. Transposition is however relatively recent in all Member States and practice is still evolving.

- Generally, national child protection laws are also applicable to migrant children as are relevant international law instruments, including the UN Convention on the Rights of the Child.

Different levels of experience across Member States

- Experience in relation to return varies greatly between Member States, with a noticeable difference between States perceived primarily as countries of transit and those seen as destination countries. The former reported less experience of returns in general, whether regarding unaccompanied children or children within family groups. Stakeholders from the former were also guarded about defining particular practices as good or otherwise, referring to their limited experience as the reason for this.

Available Data

- It is difficult to measure the numbers of children returned because most States do not have complete data on this, nor do they generally record a breakdown of returns by age of returnees (voluntary or forced). What emerges broadly from the data provided is that most Member States do not forcefully return unaccompanied children but do return children as part of a family unit. However, many Member States do offer assisted voluntary return programmes to unaccompanied children and families before forced return is undertaken.

- It would appear that very few Member States return unaccompanied children to countries other than to their country of origin, one exception in a few States being reunification with their family residing in a third country.

Preference for Voluntary Returns

- Most Member States have schemes to allow families with children, and in some cases unaccompanied children, to engage in voluntary return, typically by providing some assistance for travel and information and/or assistance on reintegration possibilities. The definition of voluntary return in these schemes is not always clear; sometimes the scheme relates only to return before any return decision is taken; but sometimes voluntary return schemes also offer assistance to persons with a return decision.

General Approach to Children within Families

- When looking at children in families, a number of Member States first look at the legal situation of the family and if the decision is made to return the adults it is generally assumed that the children's best interests are to remain with their parents and be returned, without further assessment of the child's individual circumstances. However there is emerging jurisprudence which may lead to more specific steps being undertaken to assess the child's best interests when within a family.

- Opportunities for children to participate in the return decision or to input into how the return would happen in practice are relatively rare. Children within families are largely seen as passive participants in the process.

General Approach to Unaccompanied Children

- Some countries have elements of a best interests' determination to inform outcomes on durable solutions. However the Study also shows that countries largely struggle with practical ways to gather information on the situation of the child, in particular in relation to tracing family, restoring family links and assessing family situation for the purposes of reunification. Unaccompanied children are sometimes afforded opportunities to state their views, sometimes with support from a guardian.

- Some Member States do not return unaccompanied children unless it is part of a voluntary return scheme. In other Member States, unaccompanied children are not returned until after they reach 18.

- A small number of Member States ascribe legal capacity to unaccompanied children aged 16 and over. On the one hand this enables them to seek out or engage in their own representation rather than be represented by a guardian, social worker or other actor. However, on the other hand, it may mean that where a young person is not equipped with the skills and knowledge to act independently throughout the immigration procedure, their representation is not satisfactory.

- The Return Directive also requires independent assistance to be provided to unaccompanied children. Almost all Member States have procedures to provide assistance, whether this is a guardian or other representative. In practice guardianship can be undertaken by a variety of actors (lawyers or social workers, paid professionals or volunteers, individual or institutions, from governments or NGOs), who undertake differing roles, particularly regarding engagement in decisions to return and return procedures. There is no single model of guardianship across the Member States and standards as to mandate, qualifications and skills vary considerably. Unaccompanied children also generally have the right to legal assistance, but not necessarily automatically or free of charge. Family tracing practices and purposes vary considerably, although many States rely on the International Committee of the Red Cross (ICRC), International Social Service (ISS) or the International Organisation for Migration (IOM).

Voluntary Departure Period

- The Return Directive provides for a voluntary departure period. All Member States that have transposed the Directive have included provisions in their legislation to allow for such a period. Though it is still too early to draw conclusions from the practice around the extension of this period,

most States provide the possibility for an extension based on individual circumstances, such as the length of stay, school attendance or health issues. There are rarely any detailed criteria against which extensions will be considered and decisions are typically are made on a case-by-case basis.

Pre Return Phase

- After a return decision has been taken, and when the children are not placed in detention, in most Member States, they still have access to school, health care or social activities. However when costs have to be borne by the third country national, particularly for unaccompanied children, it may serve as a barrier to participation. In addition, in the case of voluntary return, or compliance with a return decision, most Member States allow unaccompanied children and families to remain in their previous place of accommodation.

- When it comes to detention, a number of Member States do not detain unaccompanied children, or only those above a certain age. However difficulties with assessing age remains a significant issue concerning responses to unaccompanied children in Member States and in consequence a significant number of individuals who claim to be children are subject to detention. On the contrary, many Member States have provisions to detain children with their parents. In many countries, one of the parents may be detained while the rest of the family is not. The majority of Member States provide for alternatives to detention, such as restriction of residence or reporting duties, though they are not systematically applied in practice. Generally conditions in detention facilities are not suitable for children, particularly when detention is for a considerable period.

Reintegration Planning and Counselling Prior to Return

- There is some emerging practice of reintegration planning and counselling for both families and unaccompanied children prior to return.

Limited contacts between relevant actors in sending and receiving countries

- Perhaps one of the most striking findings of the Study is that, unless specific programmes are in place, there appears to be very few contacts between sending and receiving countries in relation to the circumstances of returning children or families.

Transfer Procedures

- During the return journey, unaccompanied children are almost always escorted in the framework of assisted voluntary return, but not in other types of returns. In some cases, there are specific processes for handling the transfer of families but these are limited. There are not always formal procedures for the transfer of care and custodial arrangements of unaccompanied children in place.

Return of Unaccompanied Children

- Consistent with the Return Directive Member State's preferred option is to return unaccompanied children to a family member. Where this is not possible a nominated guardian is considered and then the option of return to residential facilities. However, no specific criteria have been identified in any country for return to a nominated guardian. Some Member States are seeking to support facilities in countries of origin specifically for the purpose of creating possibilities for return, including via the ERPUM project (The Netherlands, Norway Sweden and United Kingdom). However, there is only limited experience to date in terms of the use of such facilities, with one child from the Netherlands being returned to a centre in Angola.

Reintegration Assistance

- Within the remit of assist voluntary return and reintegration programmes, some reintegration assistance may be provided, though it is in most cases more targeted to adults than children. Many of these projects are run by IOM, which typically seeks to establish processes that may address the specific situation of unaccompanied children. However IOM acknowledges a number of challenges in terms of operating in countries with sometimes only nascent child protection systems.

Post Return Monitoring

- After return, monitoring is usually only carried out in the framework of assisted voluntary return programmes and for a limited duration (typically for 6 months).

Re-entry Bans

- There is mixed practice between Member States regarding the issuing of re-entry bans in respect of children. Roughly half the Member States do not issue them at all whilst those that do issue bans do so for varying lengths of time ranging from 18 months to 10 years. A number of variable factors also influence the length of the ban, including, for example, the age of the child, whether a criminal offence has been committed or whether the child failed to comply with a return decision etc. Practice regarding the issuing of re-entry bans is broadly consistent regardless of whether the child is unaccompanied or is part of a family unit.

Situation in Countries of Return

- As regards the countries of return researched, it is difficult to draw common conclusions though it appears that in the majority of cases there is no clear or solid infrastructure for assessing the situation of families or for providing effective reintegration support for families with children or unaccompanied children. This is particularly the case outside of voluntary return and reintegration

schemes receiving funding from returning countries. Moreover, in the case of the latter, it is clear that reintegration support may be limited and there tends to be little proper monitoring of outcomes. There are clear differences in the degree to which national child protection systems exist and function to address the situation of returning children. Obstacles in carrying out the research, including the limited knowledge or experience from stakeholders, make it difficult to get a full view of the practices and most findings reflect legislation or policy framework. A few Member States are supporting or considering supporting dedicated reception facilities for returning unaccompanied children in countries of origin, though to date there is little evidence concerning the suitability of such centres for their purpose, whether they fulfil essential child protection standards, or whether they achieve sustainable returns. Other projects otherwise dedicate resources and presence in countries of origin with a view to facilitating voluntary return by providing training and job opportunities in countries of origin for returning children. Some projects in countries of origin are concerned with providing opportunities for children to mitigate the need for unsafe migration.

SECTION 2.
INTRODUCTION

2.1 PROJECT DESCRIPTION

Background to the study

This project was developed in response to a European Commission call for tenders concerning a comparative study on “best practices in the field of return of minors.” The study is part of the Annual Work Programme within the 2009 Community Actions for the EU Return Fund. The study covers the 27 Member States of the European Union and the four Schengen Associated States – Switzerland, Iceland, Norway and Liechtenstein hereafter referred to as “the Member States”. It also covers seven countries of return as identified and selected by the project co-ordination team and the Commission.

Aims of the study

The call for tender specified that the study should aim to support Member States in their efforts to develop an effective system of return in relation to children. The main activity of the study is to gather information about current practices regarding the return from Europe to countries of origin or transit of third country national children within families or children travelling separated from their families.

Outputs of the project

A key output of the study is a checklist for considering return processes, which reflects identified good and noteworthy practice and which refers to the requirements of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, hereafter “the Return Directive”. The Study also led to this final report to the Commission, including the checklist and an inventory of noteworthy practices. A conference was organised in Brussels in November 2011, inviting representatives from all States involved in the study, including involved and relevant stakeholders. Participants learned about the outcomes of the study and contributed by sharing experiences and best practice and defining possible ways forward. A series of country fiches, one for each of the 31 Member States was also prepared.

2.2 THE RETURN DIRECTIVE AND HOW IT AFFECTS CHILDREN

The purpose of the Return Directive is to set out an effective removal and repatriation system for "illegally staying third country nationals" based on common standards across Europe. The main provisions are:

General provisions

- The Return Directive requires Member States to issue illegally staying third country nationals with return decisions.
- Illegally staying is defined as such by national law criteria, although asylum applicants are not defined as illegally staying third country nationals unless they have received a negative decision on their application or a decision has entered into force ending their right of stay (Return Directive, preamble Paragraph 9).
- Member States can decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons.
- Voluntary departure (as in voluntary compliance with a return decision) is preferred under the Return Directive to removal (as in forced compliance with a return decision) and a reasonable period within which to arrange voluntary departure (up to thirty days) should be allowed. In certain circumstances, for example, if there is a risk of absconding, Member States may refrain from granting a period of voluntary departure.
- Return may be to the applicant's country of origin, a transit country or a third country if the applicant is in agreement and the stated country will accept them.
- The Return Directive allows for the imposition of entry bans in certain circumstances.
- Pre-removal detention is justified in certain circumstances and for a maximum period of 6 months with a possible extension up to a total period not exceeding 18 months in certain circumstances.

Provisions with specific relevance for children

- When implementing the Return Directive, Member States shall take due account of the best interests of the child and family life.
- The length of the period of voluntary departure may be extended to take account of the existence of children attending school and the existence of other family and social links.
- During the period of voluntary departure or during a period where removal has been postponed, children are allowed access to education and all applicants are entitled to emergency health care and essential treatment if they are ill.
- Unaccompanied children should only be detained for the shortest possible period of time and as a measure of last resort.
- Certain conditions must be observed during any detention, including families being provided with separate accommodation guaranteeing adequate privacy; detained children having the

possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and, depending on the length of their stay, having access to education.

- Unaccompanied children shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

Article 10 of the Return Directive relates specifically to unaccompanied children and states:

1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

It should be noted that the Return Directive does not define certain of the terms which it uses. Moreover, many of the provisions in the Return Directive are general in nature. Nor does the Return Directive establish specific procedures to ensure that the principles it enunciates are respected. However the Return Directive must be implemented into national law in accordance with international human rights obligations.

In thinking about the impact of the Return Directive from a child's point of view and in seeking to minimise risk and harm to children, it may be useful to consider the following points from the European Commission Contact Committee workshops on the implementation of the Return Directive, inspired by the United Nations Convention on the Rights of the Child and General Comment No 6 and national practices:

- A durable solution, taking the child's best interests as a primary consideration and to be examined in relation to the individual circumstances of each case, must be found for each unaccompanied and separated child. Due account must be taken of the children's views in each case.
- Return is only one of a number of options to be considered when assessing the appropriate durable solution; integration into the destination country or transfer to another country (e.g. for family reunification purposes) should also be considered.
- Assistance by "appropriate bodies" should start at the earliest point of time. This implies a timely age assessment based on the benefit of the doubt. Assistance should be a continuous and stable process, including the return and – in an ideal case – also the post-return phase. A transfer of guardianship in the Member State to a guardianship in the country of return in line with Article 10 (2) should be achieved.

- An evaluation of the individual circumstances and needs of each child should be made before a decision is taken (e.g. need to ensure adequate child participation, have a team rather than an individual take the decision, ensure that child protection expertise is covered by the team etc).
- Return of a child should always be accompanied by appropriate reintegration measures. Return and reintegration can best take place where there is sufficient child protection infrastructure in the country of origin.
- Family reunification, where it is in the best interests of the child, is a preferred option. Where this is not possible and return remains in the best interests of the child, secure and concrete care and custodial arrangements are a precondition to return.
- The return to adequate reception facilities should not be seen as a durable solution and preferably be accompanied by flanking reintegration and education measures.

2.3 OTHER RELEVANT INSTRUMENTS AND POLICIES THAT CONSIDER CHILDREN IN THE PROCESS OF RETURN

In addition to the Return Directive, other EU legislation concerning children addresses the situation of third country national children, including the EU Asylum instruments and the EU Trafficking Directive. They generally make references to international and regional human rights instruments such as the United Nations Convention on the Rights of the Child (CRC) and the European Convention on Human Rights and Fundamental Freedoms. More generally it is worth noting that the European Court of Justice has expressly recognised the need to respect children's rights and requires EU law to take due account of the CRC. The EU Charter of Fundamental Rights clearly reaffirms the EU's commitment to human rights and, within that context, expressly to the rights of the child (Article 24). The Lisbon Treaty also provides that protecting the rights of children is an objective of the EU, both internally and in its relations with the wider world.

The EU Asylum instruments[3] include a number of provisions related to the situation of asylum seeking children and the summary of the European Commission Contact Return Workshop noted that although "*the legal basis between the guardianship provided for asylum seekers and the "assistance" required for UAM in the return process differ, close links between the requirements laid down in the asylum acquis and in the Return Directive exist and the need for continuity of assistance in asylum and return procedures was emphasized*".

The recently adopted EU Trafficking Directive[4] contains special provisions concerning children who have been identified as trafficked persons. These children may well fall within the remit of the Return

[3] In particular Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive) and Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Reception Conditions Directive)

[4] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and

Directive in some Member States to the extent that they are viewed as illegally staying third country nationals. These provisions relate to the protection and assistance that should be provided to a trafficked child. In particular, Article 16 of the Trafficking Directive provides in their regard that "*Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child".* The recitals to the Trafficking Directive define durable solutions as including "return and reintegration into country of origin or return, integration into host country, granting of international protection status or granting of some other status under national law." It would appear that Article 16 of the Trafficking Directive and Article 5 and 10 of the Return Directive should be interpreted in a harmonious manner.

As further policy background to the return of unaccompanied children, it should be emphasised that the EU Action Plan on Unaccompanied Minors (2010 – 2014)[5] notes that return is one of the durable solutions for unaccompanied children. The Action Plan further states *"durable solutions should be based on the individual assessment of the best interests of the child [6] and shall consist of either:*

- *Return and reintegration in the country of origin*
- *Granting of international protection status or other legal status allowing minors to successfully integrate in the Member State of residence*
- *Resettlement."[7]*

The EU Agenda for the Rights of the Child[8] outlines that the promotion and protection of the rights of the child is one of the objectives of the EU that has particular emphasis and priority that is well grounded in a range of international commitments. The Agenda refers to the EU Action Plan on Unaccompanied Minors (see above) and draws attention to the rights of children in relation to the EU's external actions. Specific references are made to violence against children, child labour, children in armed conflicts and children affected by sex tourism.

The document also indicates that children in vulnerable situations will be a priority for action, specifically referencing the situation of unaccompanied children. One of the actions put forward is to insert a clear prohibition of the detention of unaccompanied asylum seeking children in the proposals amending EU asylum legislation. Moreover the Agenda also engages the Commission to supporting the improvement of training for guardians, public authorities and other actors who are in close contact with unaccompanied children

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combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

[5]Communication from the Commission to the European Parliament and the Council, *Action Plan on Unaccompanied Minors (2010 – 2014)*, COM (2010)213 final, 6.5.2010

[6]Summary conclusions of a workshop of the Return Directive Contact Committee held on February 2010 notes the same

[7]The Action Plan also notes, "The Stockholm Programme expressly asks the Commission to 'examine practical measures to facilitate the return of the high number of unaccompanied minors that do not require international protection'. But analysis shows that the solution cannot be limited to return — that is only one of the options — because the issue is much more complex and multidimensional and there are clear boundaries to the Member States' freedom of action when dealing with unaccompanied minors."

[8] Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, COM(2011) 60

2.4 METHODOLOGY

In order to draw relevant information from each State covered in the study, a questionnaire was developed addressing the areas of research. This was used as the principal tool with which to gather information in the 31 Member States covered by the study. A similar questionnaire was developed for use in the selected countries of return.

Broadly, in relation to Member States, the questionnaire covers the following areas essentially corresponding to the key chapters of the Return Directive, which the call requested the Study to address:

- General context and overview
- Considerations surrounding the extension of the voluntary departure period
- Provision of independent assistance to unaccompanied children
- Safeguarding of children during the pre-return phase
- Promotion of the rights of children in detention
- The post-return phase.

Five researchers supported by national contact points in each country collected the results of the questionnaire and processed them. These national contact points identified between three and five stakeholders in each Member State who were consulted as part of the study. Across Member States, these stakeholders collectively reflected the make up of the different actors involved in the return of children covering, for example, government agencies involved in both border control and child welfare and the non-governmental sector. In every Member State the state authority holding responsibility for the return of migrants was identified as a stakeholder.

The methodology applied in the countries of return was very similar to the one applied in the Member States. A separate questionnaire was drafted for the countries of return. The questionnaire for the countries of return focused on:

- The reception processes for children
- The support available for returned children (including the development of reception facilities for unaccompanied children)
- Whether unaccompanied children are returned to their family or a guardian and the procedure by which this happens.

The information sought in the questionnaires was gathered through desk-based research, interviews and field visits were necessary. Based on the national practices overview, noteworthy practices in returning children were identified. Each selected national stakeholder was not asked to respond to every question contained within the questionnaire. However, collectively the selected national stakeholders were able to provide information covering the whole of the questionnaire.

Project Coordination Team

ECRE acted as the project coordinator, responsible for the overall running and coordination of the project, as well as the delivery of the final report and organising the final conference. As a strategic partner, Save the Children provided input on the content and the direction of the study, together with ECRE. Save the Children participated in meetings with the Commission, the experts group and the Advisory Panel.

The team of researchers

Five researchers were appointed, including some revisions when initial researchers subsequently withdrew from the project because of competing or other emerging priorities. The team met twice to clarify roles and expectations, to allocate responsibility for coordinating work in each of the selected countries of return and to feedback on their initial findings and their experiences.

Detailed guidance notes were prepared to assist the researchers (and national contact points) with their tasks, including one for research in Member States and a complementary note to aid research in the countries of return. The notes covered policy background, the scope of the study, consideration of the Return Directive in relation to children, the role of the researcher, an annotated copy of the questionnaire, a glossary, the timeline and other key points of guidance.

Advisory Panel

The project Advisory Panel was comprised of representatives from UNICEF, UNHCR, Separated Children in Europe Programme, International Organisation for Migration, NIDOS and State representatives from Belgium and Norway. ECRE and Save the Children were also involved in the Advisory Panel meetings.

The Panel met on two occasions prior to the research commencing and provided input to the methodology, the selection of the countries of return, the development of the questionnaire and guidance note and identifying criteria for good and noteworthy practices. They subsequently met to review the research findings and to input into the drafting of this report. Most of the individuals who comprise the Advisory Panel have also been interviewed in their role of regional stakeholders.

The team of experts

Similarly the expert team met three times contributing significantly into the development of the questionnaire and the selection of national contact points. They also contributed to the final preparation of the research methodology and inputted into this report.

Appointment of national contact points and national stakeholders

National contact points were appointed in all 31 participating Member States and in all the selected countries of return. The national contact points, with input from the expert team, advisory panel and the project coordination team, identified the national stakeholders (See Annex 2).

Consultation with regional stakeholders

Representatives from the project coordination team also met with a number of regional stakeholders (See Annex 1). The aim of these meetings was to learn about relevant regional developments and to discuss the project with stakeholders whose perspective went beyond a particular country.

2.5 PARAMETERS OF THE RESEARCH AND STUDY OUTPUT AND POTENTIAL FUTURE STEPS

Breadth and depth of the study

The scope of the study is broad, covering 38 countries in all and covering all categories of children who might be returned, including those whose asylum application has been withdrawn or rejected, trafficked and other migrant children. The study seeks to examine responses both to unaccompanied children and children within families. Given that there were limits regarding time and other resources that could be dedicated to each individual country, the data gathered was largely based on both desk study and interviews with key stakeholders. This means that the study essentially captures key elements of the return process as stated in law or policy documents and as perceived by key actors. It includes information about what is known about statistics of return, actors involved, framework legislation and basic mechanics of return in each country. As such from a national perspective, it may serve as a useful building block for more in-depth consideration of the situation in each country. Indeed one of the interesting findings that can be drawn from the study is that information on this issue in each country is fairly fragmented and that this would be improved through further exchanges between the different actors involved and better understandings across countries of destination and return. Ultimately to improve the return process, there should be more systematic inter-agency cooperation.

On a regional basis, however, the study allows a range of varied situations and responses to be examined and to establish a general checklist drawn from this experience. Based on the collective experience, the checklist addresses the range of key elements of the return process as linked to this study and refers key elements to national approaches. The checklist thus could also serve as a useful framework and tool for corralling good practice on an ongoing basis in the future.

Issues addressed

The study does not set out to cover every aspect of the return process or to consider in detail all the relevant issues. Areas touched upon but not covered in any depth include:

- Children's access to a fair child focused status determination process
- Responses to instances where an applicant's stated age is disputed
- The quality of information made available to child applicants informing them about the status determination procedure
- Opportunities for children to input into the process and to have their voices heard.

The checklist also takes into consideration that the return process is inevitably embedded in how countries are generally addressing the situation of third country national children under child protection policies and measures. However the more detailed aspects of the checklist focus on the elements of the return process linked to the requirements of the Return Directive.

Definition of best interests and processes to establish best interests

As noted above, the Return Directive refers to the child's best interests as a primary concern when making and implementing return decisions. Indeed the principle of the best interests of the child features in many pieces of national and international legislation, covenants and conventions. However, there is very limited policy guidance about what constitutes best interests or what tools or process exist for establishing best interests. This is an issue with which national actors currently appear to struggle. We note that this position may change in the coming years as a result of efforts to implement the Return Directive and to pursue the EU Action Plan on Unaccompanied Minors. It means however that practice in relation to this central issue was limited at this stage.

Criteria for identifying good practices

The call for tender did not establish the criteria for identifying good and noteworthy practices in return. For example the criteria could be informed by any of the following:

- Children's rights
- Durability of the return or whether the children re-migrate
- Effectiveness and smooth running procedures that work in practice
- Cost effectiveness
- Inter-agency working etc.

What is considered to be good practice is likely to vary from stakeholder to stakeholder though patterns may emerge where actors with the same or similar roles have criteria that converge. The study did not seek to validate traditional advocacy positions of any of the actors involved in the study. As part of the research, national contact points addressed with the national stakeholders the criteria that they have used to assess whether practice is good or otherwise and this is reflected in the findings.

Evolving national practice

It is worth recalling that the study does not seek to provide an evaluation of how the Return Directive has been implemented to date by Member States. Indeed, some Member States are still in the process of implementing the Directive. However, for the purposes of this study, the ongoing implementation of the Return Directive (or indeed change in national practice for other reasons) means that, in some countries, policy and practice is in flux. For this reason, good practice is difficult to identify at this stage.

SECTION 3.
STATISTICS

Data on return is not comprehensive for every Member State, all the more so because they do not have a common definition of the different types of return.

Member States provide Eurostat with overall statistics on forced return, but when it comes to voluntary return there is hardly any State which has a global view on departures. IOM and other organisations implementing assisted voluntary return programmes usually keep records, but each organisation and offices may have different types of data.

In most instances, and especially when it comes to forced returns, the data is not disaggregated. Some States do not make a differentiation between the overall number of exits from the territory and returns and the type of return. In addition, the majority of Member States do not keep disaggregated records based on the age or nationality. It is also still rare that Member States record specific data on children within families. In some Member States, statistics are not made public or not published, as in the case where there are very low numbers of returns. It is therefore extremely difficult to collect statistics on the returns of children, unaccompanied or within families.

Children returned

Table 1 provides an overview of returns (voluntary or forced) of unaccompanied children as well as children within families for the year 2010 (unless otherwise stated), in countries where the data is available. As far as possible, the data only refers to children and to returns outside the EU but in some cases it might include return to another EU Member State (i.e. Bulgaria, Romania) or Dublin transfers, as well as cover the families as a whole.

Note: These statistics include forced returns and assisted voluntary returns. Unassisted voluntary returns are included where these are reliably recorded. Data do not include persons who are transferred from one Member State to another under the mechanism established by the Dublin Regulation.

Table 1. Children returned outside of the EU where it is available (2010)

Country	Unaccompanied Children (UAC)		Main countries of Return	Children in families		Main countries of Return
	Voluntary	Forced		Voluntary	Forced	
AT	672[9] (voluntary)					
BE[10]	9	0	Kosovo	557		-
BG	0[11]		-	N/A		-
CH[12]	N/A		-	69[13]		Kosovo, Bosnia-Herzegovina, Serbia
EE	1		-	3		-
EL	656 (first half of 2009)		Albania	-		-
ES	11 (voluntary)		-	1824 (voluntary)		-
FR	46 (voluntary 2003 -2011) 160 (forced, in 2009 from the border zones)		-	-		-
HU	0[14]		-	57		Kosovo (53)
IE	15 (voluntary)[15]		N/A	N/A		-
IS	1 (departure)		West Sahara	2		
IT	5 (voluntary in 2009)		N/A	23 (at the borders) in 2009		-
LI	0		-	14 (voluntary)		Macedonia (13); Serbia
LT	3 (voluntary)		Belarus	6 (voluntary)		N/A
LU	1 (voluntary)		Morocco	-		-
MT	0		-	0		-
NL[16]	25 (6 forced, 19 voluntary departures)		Iraq, Afghanistan	-		-
NO[17]	158 (forced)		N/A	583 (forced)		N/A
PL	2		Georgia, Russia	N/A		-
	615 (voluntary) with IOM					
PT	0		-	N/A		-
RO	13 (estimate, both 2009 and 2010)		Moldova, Turkey, Congo	-		-
SI	≥3[18]		Albania, Croatia	5 (IOM)		FYROM, Montenegro
SE	20 and 48 with extended family (voluntary)		Iraq, Serbia	N/A		N/A
SK	1 (voluntary)[15]		Moldova,	7 (voluntary)		Georgia, Kosovo
UK	5555[19] (year 2009)					Afghanistan, Brazil, Nigeria, India, Pakistan,

Sources: Interviewed stakeholders (Ministries, IOM, NGOs)

[9] Data provided by IOM and covers both families and separated children
[10] Data only refer to assisted voluntary returns through IOM
[11] Data does not include border zones
[12] Only statistics about (rejected) asylum seekers is available.
[13] Return to a third country or country of origin, outside of the Dublin system.
[14] IOM did not assist with the return of any unaccompanied children in 2010. However stakeholders underlined that other types of return occured, in particular removals from the borders
[15] Data provided by IOM
[16] IOM does not provide a breakdown by age
[17] It includes Dublin transfers
[18] Though no data was provided by the State the Slovene Philanthropy stated that 2 unaccompanied children who were under their guardianship were returned to their country of origin
[19] The UK does not return separated children forcefully. There is no disaggregated data between voluntary and forced for families

Unaccompanied children returned through IOM's Assisted Voluntary Return and Reintegration Programme

IOM is the main implementer of Assisted Voluntary Return and Reintegration Programmes in the EU. **Table 2** provides the number of unaccompanied children who returned with the assistance of IOM in 2010, from Member States where data is available.

Table 2. Unaccompanied children returned through IOM's AVRs (2010)

Countries	2010			
	Age			
	0-5	6-11	12-17	Total
AT	0	0	11	**11**
BE	0	5	23	**28**
CH	1	0	4	**5**
CZ	3	1	2	**6**
DE	21	11	25	**57**
EL	0	0	3	**3**
HU	0	0	1	**1**
IE	0	0	1	**1**
IT	0	1	3	**4**
NL	2	3	12	**17**
NO	0	2	3	**5**
PL	0	0	6	**6**
PT	0	0	3	**3**
SE	0	0	2	**2**
UK	0	1	0	**1**
Total	**27**	**24**	**99**	**150**

Source: IOM

Children present on the Member States' territory

Table 3 gives a summary of available data regarding the presence in Member States of unaccompanied children and children within families. Some numbers correspond to identifications, others to arrivals, referrals to certain services, or estimates.

Table 3. Children present on the Member States' territory (2010, for Member States where this is available)

Country	UAC	Countries of origin	Children in families	Countries of origin
BE	2501 (identified in 2009)	N/A	N/A	-
BG	N/A	-	About 100	N/A
FR	4000-8000 (estimates)	N/A	245.338[20] in 2007	Algeria, Morocco, other African countries and Asian countries.
HU	150	Afghanistan, West Bank, Somalia	N/A	-
IE	95 referrals to the Health Service Executive	Nigeria, DRC, Somalia	2141	N/A
IT	4438	Afghanistan, Morocco, Egypt	N/A	-
LU	19 (arrivals)	Asia, Sub-Saharan Africa, North Africa	N/A	-
NL	868 (arrivals)	N/A	>7000 (in reception centres)	N/A
PL	231	Russia	2399	Russia
RO	34	Afghanistan, Moldova, Pakistan	N/A	-
SK	220	Somalia, Afghanistan, Moldova	N/A	-

Sources: Interviewed stakeholders (Ministries, IOM, NGOs)

[20] This includes regular and irregular third country nationals living with third country nationals parents. *INSEE, 2007*

Asylum applications

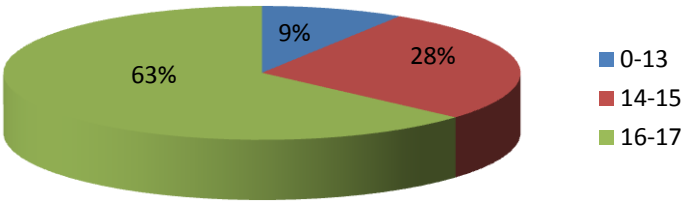
The only systematic information gathered by Member States relate to asylum applications (**tables 4 and 5**) where breakdowns are available through Eurostat for age, gender and nationality.

Table 4. Asylum applicants considered to be unaccompanied children

Country	2009				2010			
	> 14	14 to 15	16 to 17	Total	> 14	14 to 15	16 to 17	Total
AT	55	265	720	**1040**	35	-	-	**600**
BE	55	215	460	**725**	70	240	585	**1080**
BG	0	0	5	**10**	0	5	15	**20**
CH	20	90	255	**415**	25	55	120	**220**
CY	0	0	20	**20**	0	-	-	**35**
CZ	5	0	5	**10**	-	-	-	**-**
DE	100	305	900	**1305**	125	410	1.415	**1950**
DK	25	145	355	**520**	10	-	-	**410**
EE	0	0	0	**0**	0	0	0	**0**
EL	5	10	25	**40**	20	35	95	**145**
ES	0	0	15	**20**	5	5	5	**15**
FI	55	115	310	**535**	55	-	-	**315**
FR	15	15	415	**445**	10	-	-	**610**
HU	10	260	0	**270**	5	145	0	**150**
IE	0	15	40	**55**	0	-	-	**35**
IT	15	50	350	**420**	15	-	-	**305**
IS	0	0	0	**0**	-	-	-	
LI	0	5	10	**15**	0	0	0	**0**
LT	0	0	0	**5**	0	5	5	**10**
LU	0	0	5	**10**	0	5	15	**20**
LV	0	0	0	**0**	0	-	-	**5**
MT	5	20	20	**45**	0	-	-	**5**
NO	55	230	660	**1040**	45	-	-	**700**
NL	125	770	1.565	**2500**	85	245	445	**890**
PL	260	25	75	**360**	170	20	40	**230**
PT	0	0	0	**0**	0	0	5	**5**
RO	0	10	35	**40**	0	-	-	**35**
SK	0	5	20	**25**	0	-	-	**25**
SI	0	0	25	**30**	0	0	5	**5**
SE	260	735	1.255	**2250**	305	730	1.360	**2.395**
UK	340	870	1195	**2990**	155	380	720	**1595**
Total	**1405**	**4155**	**8.740**	**15140**	**760**	**1110**	**2.080**	**5.920**

Source: Eurostat

Age distribution of application by unaccompanied children in the Member States, 2009



Asylum applications by unaccompanied children by gender in the Member States, 2009

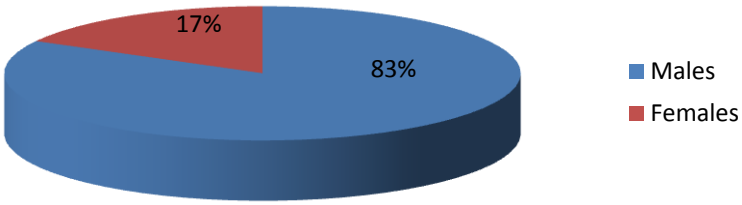


Table 5. Children asylum applicants in families and unaccompanied

Country	2009			2010		
	> 14	14 to 17	Total	> 14	14 to 17	Total
AT	4.120	1.645	**5.765**	2.985	1.110	**4.095**
BE	5.255	1.775	**7.030**	6.455	1.970	**8.425**
BG	70	30	**100**	70	45	**115**
CH	3.355	925	**4.280**	3.565	705	**4.270**
CY	300	95	**395**	180	80	**260**
CZ	265	20	**285**	130	15	**145**
DE	7.945	2.880	**10.825**	12.555	4.505	**17.060**
DK	515	650	**1165**	740	765	**1.505**
EE	0	0	**0**	0	0	**0**
EL	205	595	**800**	170	295	**465**
ES	265	80	**60**	315	75	**390**
FI	815	610	**1425**	615	330	**945**
FR	7.875	1.500	**9.375**	9.675	1.875	**11.550**
HU	1.045	420	**1.465**	300	185	**485**
IE	605	155	**760**	495	75	**570**
IS	0	0	**0**	0	0	**0**
IT	1.250	505	**1.755**	1.655	510	**2.165**
LV	15	5	**20**	0	5	**5**
LI	15	15	**15**	30	5	**35**
LT	85	20	**30**	60	25	**85**
LU	75	30	**105**	160	55	**215**
MT	60	145	**205**	15	0	**15**
NL	3.530	1.765	**5.295**	4.350	1.500	**5.850**
NO	2.485	2.505	**4.990**	1.970	925	**2.895**
PL	3.240	435	**3.675**	2.340	285	**2.625**
PT	15	0	**15**	10	0	**10**
RO	45	45	**20**	50	40	**90**
SI	30	25	**95**	15	30	**45**
SK	45	40	**80**	40	10	**50**
SE	4.310	2.560	**6.870**	7.645	3.245	**10.890**
UK	4.390	3.015	**7.405**	3.140	1.705	**4.845**

Source: Eurostat

Children in detention

As noted above statistics regarding the return of children are not comprehensive. Five Member States provided statistics relating to children in detention.

In **Austria**, in 2010 there were 172 children in detention (including 18 younger than 16 years old) and 146 in 2009 (including 9 younger than 16 years old). Alternatives to detention were applied in 435 cases in 2009. In the **Czech Republic**, there were 31 children in detention in 2010, and 75 in 2009. In **France,** 318 children (in families) were detained pre-removal and 698 unaccompanied children were placed in the border zone detention centres in 2009. In **Slovenia**, there were 41 children in the detention centre in 2010, of which 26 unaccompanied children. In 2009, there were 69 children (26 unaccompanied children) in detention. In the **UK,** 1160 children left detention in 2009.

Children returned to third countries from the EU

Very few third countries record systematically the return of their nationals, and when they do, no breakdown is available by country of origin or by age. In the table below, we note what we have learned about data kept in the seven countries of return, which were reviewed during this project. Once again statistics on this matter are not comprehensive.

Table 6. Children returned to third countries from the EU

Country	Unaccompanied Children	Children in families
Afghanistan	0	N/A
Angola	N/A	N/A
Kosovo	N/A	N/A
Morocco	2 (voluntary through IOM since 2007)	4 (voluntary through IOM, since 2007)
Nigeria	N/A	N/A
Sri Lanka	N/A	N/A
Ukraine	0-11[21]	8 (Afghanistan)

The National Child protection Authority of **Sri Lanka** estimates that about 84,700 unaccompanied children have left Sri Lanka for the EU. In 2010 according to UNHCR a total of 8,468 people were returned to **Kosovo** (both voluntarily and forced).

[21] According to the authorities there were no return of UAC from the EU, but other stakeholders estimate the number to be between 7 and 11. Those returnees were from Afghanistan, Somalia and Vietnam

SECTION 4.
DETAILED OVERVIEW OF THE CURRENT LEGISLATION AND ADMINISTRATIVE PRACTICE IN EACH MEMBER STATE CONCERNING THE RIGHTS AND THE TREATMENT OF CHILDREN IN THE RETURN PROCESS

4.1 CONTEXT AND GENERAL OVERVIEW

This section provides a general overview of key features of the situation concerning the return of children in each Member State. Section 4.2 then sets out in detail the situation in each Member State relating to particular elements of the return procedure. Spreadsheets are used to show a comparative overview of the situation in different countries in relation to the transposition of the Return Directive, whether Member States return children both unaccompanied and within their family unit, the extension of the voluntary departure period, the provision of assistance to unaccompanied children, safeguarding children during the pre-return phase, promotion of the rights of children in detention and the return and post return phase. The information upon which these findings are based was gathered through direct interviews with a number of national stakeholders (see Annex 11). Generally between three and five stakeholders from a range of backgrounds, for example State officials, NGOs and IGOs, were consulted and these findings are representative of their views.
An overview of each national legislation and practices is available in individual country fiches in annex.

The Return Directive

The Return Directive (Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals) is applicable to all EU Member States except Ireland and the United Kingdom who have “opted-out” of its provisions. Liechtenstein, Iceland, Norway and Switzerland are also transposing the Directive following agreements with the EU based on their participation in the Schengen cooperation.

The deadline for transition was 24 December 2010.

Table 7. Return Directive transposed[22]

	Status
AT	Pending
BE	Pending[23]
BG	Transposed
CH	Transposed
CY	Transposed
CZ	Transposed
DE	Pending
DK	Transposed
EE	Transposed
EL	Transposed
ES	Transposed
FI	Transposed
FR	Transposed
HU	Transposed
IE	Not bound by the Directive
IS	Pending
IT	Transposed[24]
LI	Transposed[25]
LT	Pending
LU	Transposed
LV	Transposed
MT	Transposed
NL	Pending
NO	Transposed
PL	Pending
PT	Transposed
RO	Transposed
SE	Pending
SI	Transposed
SK	Transposed
UK	Not bound by the Directive

[22] Information available as of end of November 2011.
[23] The amendments to the Aliens Law have been approved by the Parliament but had not yet been published in the Official Journal at the end of November 2011
[24] On June 16th, the government passed a decree transposing the Directive and making its provisions already applicable. The changes still need to be approved by the Italian Parliament in order to be permanently transposed in the legislation
[25] Liechtenstein is planning to accede to the Schengen agreements at the end of 2011 and has therefore transposed the Directive into national law. The law will however enter into force only after the accession of the country to Schengen

General overview

Table 8. Return of children in practice

	Unaccompanied children returned			Children in families returned			Return to third countries	
	Voluntary Return schemes	Voluntary departure	Forced return	Voluntary Return schemes	Voluntary departure	Forced return	UAC	Children in families
AT	√	√	√	√	√	√	√	√
BE	√	x	x[26]	√[27]	√	√	x[28]	√
BG	x	x	x[29]	√	√	√	x[29]	√
CH	√	√	√	√	√	√	√[30]	√[30]
CY	x	x	x[31]	√	√	√	x[28]	x[32]
CZ	√	√	x	√	√	√	x[33]	√
DE	√	√	√	√	√	√	√	√
DK	√	√	√[34]	√	√	√	x[28]	√
EE	√	√	x[31]	√[35]	√	x[31]	√	√
EL	x	√	√[36]	√	√	√	√	√
ES	√	x	x[31]	√	√[37]	√	x[33]	x
FI	√[38]	√	√	√	√[39]	√	x[28]	√
FR	√	x	x[40]	√	√[41]	√	x[42]	x[43]
HU	√[44]	√	x[40]	√	√	√	√[47]	√[47]
IE	√	x	x	√	√	√	x[33]	√
IS	x	√	x[31]	X	√	x	x	x

[26] UAC are currently not returned even if a return order has been issued. Some removals at the borders occur
[27] Not accessible for families at the border
[28] Unless the child holds residence permit from the country or for the purpose of family reunification
[29] Some lawyers noted that children might be "attached" to any adults they were travelling with, to the purpose of returning them as "accompanied" children
[30] If the child holds a residence permit from the country or if he can ask for protection in a the country that is considered safe by the authorities
[31] Possible according to the legislation but not enforced in practice
[32] This should be taken with caution as the research was unable to confirm whether this happens or not. However there were no known cases
[33] Unless for the purpose of family reunification
[34] Very few in practice
[35] No family has ever be assisted through these schemes as they are only for illegally staying migrants and families have never been issued a return order
[36] In practice, outside border zones, UAC are only returned to countries with which Greece has signed readmission agreements
[37] A law transposing the return Directive was passed in June 2011 and it provides for a voluntary departure period and possible extensions. However, at the time of the research, there were no known cases in practice
[38] Although the scheme is open to unaccompanied children no unaccompanied child has used it
[39] Does not apply to third country nationals apprehended at the borders or deported for criminal reasons.
[40] Except in border and transit zones
[41] Children are not themselves subject to a return decision but "follow" their parents. The voluntary departure period is therefore applied to the parents
[42] Unless for the purpose of family reunification, or for returns from airport transit zones, if the plane came from a third country
[43] Except for returns from airport transit zones, if the plane came from a third country
[44] No child has ever made use of it

IT	√	√	x [40]	√[45]	√	x	√	√
LI	√	√	√	√	√[46]	√	√[47]	√[47]
LT	√	√	√	√	√	√	x[48]	x[48]
LU	√	x	x	√	√	√	x[48]	x[48]
LV	√	x	x	√	√	√[49]	x[48]	x[48]
MT	√[44]	√[34]	x[31]	√	√	x[31]	x[31]	x[31]
NL	√	√	√	√	√	√	x[33]	√
NO	√[50]	√[34]	√[34]	√	√	√	√[47]	x[48]
PL	√	√	x[31]	√	√	√	√	√
PT	√	x	x[40]	√	√	√	x	x
RO	√	√	√	√	√[51]	√	x [33]	x[48]
SE	√	√	√[34]	√	√	√	√[47]	√[47]
SI	x	√	x	√	√	x	√[47]	√[47]
SK	√[52]	x	x	√	√[34]	√	√[53]	√
UK	√	x	x [31]	√	√	√	x [48]	x [48]

Austria

Austria has a long tradition of being a receiving country, with significant numbers of children arriving both with their families and unaccompanied. Austria is still currently transposing the Return Directive. Child rights instruments and national child protection policies are applicable to migrant children, including those in the return procedure. Children over the age of 16 years who are capable of expressing their will and of acting independently have legal capacity to act in procedures related to return. In practice this means that guardians and parents are not entitled to act as legal representatives for children over the age of 16. In procedures and measures falling under the aliens policy act (e.g. deportation orders or pre expulsion custody), children above 16 are regarded as being capable of acting independently. If a return decision is issued shortly before the child's 18th birthday, it is common practice to execute the return only after the child turns 18. Assisted voluntary return schemes exist for both unaccompanied children and children within families. These schemes are run by IOM, Caritas and an NGO - Verein Menschenrechte Österreich. When families are removed, independent human rights observers from Association Human Rights Austria can be present during the removals. Before a forced return by airplane, each child is offered a fitness to fly medical, though if they refuse to undergo this, they still fly.

[45] Since June 2011, illegally staying third country nationals are eligible, though currently the possibility is still very limited
[46] Only for third country nationals who entered the country legally and found themselves in an irregular situation
[47] If the child holds a residence permit from the country or if the country is listed as safe by the authorities
[48] Unless the child (or their family) holds a residence permit from the country
[49] Children themselves are not subject to forced parents, but their parents can be. The parents can then "decide" to return with their children
[50] AVR schemes are not always specifically covering UAC. One scheme has been establish to promote return to Iraq (Kurdistan) for UAC
[51] Not applied to third country nationals whose identity is not established
[52] Only one UAC has voluntarily returned
[53] Only on if it is voluntary

Belgium

Belgium generally receives many children within families and high numbers of unaccompanied children. The Return Directive has not yet been fully transposed into Belgium law. National child protection policies and children's rights instruments are applicable to migrant children, including those in the return procedure. Unaccompanied children are not typically returned before the age of 18, even when a removal order has been issued. Currently the Belgian authorities are struggling to find appropriate accommodation for all unaccompanied children within their territory. Assisted voluntary return schemes, run by IOM, are available for children including both unaccompanied children and children within families. The organisation Caritas is also involved in voluntary return and reintegration arrangements. According to the Foreigner's Office[54] Office, there is currently no distinction between voluntary schemes and voluntary compliance with return decisions, though this will change as the Return Directive is transposed into Belgian law. As part of the removal process, families with children are placed in so-called 'return houses', dedicated open accommodation where they receive counselling from a 'return coach'. Children who have been placed in the return houses are expected to undergo a medical examination to ascertain that they are fit-to fly.

Bulgaria

Relatively low numbers of children arrive in Bulgaria and it is primarily perceived as a country of transit. Disappearances of children, both within families and unaccompanied, are not uncommon and experiences of return are thus limited. Bulgaria has transposed the provisions of the Return Directive. National child protection policies and children's rights instruments are applicable to migrant children, including those in the return procedure. Responsibility for foreign children is split between the State Agency for Refugees, which is responsible for children seeking asylum, the State Agency for Child Protection for those who enter the country legally but who become unaccompanied later and the Migration Directorate at the Ministry of the Interior for undocumented migrant children. Assisted voluntary return schemes run by IOM exist for children within families and unaccompanied children though there are no examples of unaccompanied children taking advantage of these.[55] Bulgaria does not officially return unaccompanied children[56], though some stakeholders report that they might be returned from the border, often by being 'attached' to adults.

Cyprus

Cyprus is perceived as a transit country for most migrants and asylum seekers arriving there, though in practice they do not always manage to continue their planned journey. The Return Directive has not yet been transposed in Cyprus. National child protection policies and children's rights instruments are applicable to migrant children, including those in the return procedure. There is no formal policy specifically addressing the return of children. Unaccompanied children are not returned, while families

[54] Interview for the Foreigner's Office, 11th of March 2011
[55] Interviews with Bulgarian Red Cross and the IOM Bulgaria, March 2011
[56] Interview with the Ministry of Interior, Migration Unit, March 2011

can be returned, especially at the borders. There are no specific voluntary return schemes for unaccompanied children though they exist for children in families.

Czech Republic

Most stakeholders outline that whilst the Czech Republic remains a transit country, it has also become a final destination country for a growing number of migrants. The Return Directive has been transposed. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. There are no major exemptions concerning migrant children with the exception that migrant children over the age of 15 years who are capable of expressing their will and of acting independently have legal capacity to act in procedures related to return but not in the asylum determination process. Unaccompanied children are able to apply for voluntary return under the assisted voluntary return schemes, as can children in families. These schemes are run by IOM.

Denmark

Denmark receives relatively high numbers of migrants including unaccompanied children and children within families because it is a country of destination, rather than transit. Denmark has transposed the Return Directive. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Unaccompanied children and families with children are encouraged to participate in voluntary return and there is an extensive voluntary return programme run by IOM.

Estonia

Estonia is perceived as a country of transit and relatively few families with children and negligible numbers of unaccompanied children arrive there. Estonia has transposed the provisions of the Return Directive. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. In practice, no unaccompanied children and hardly any children in families have been subject to forced return from Estonia in recent years. IOM runs an assisted voluntary return scheme available to both unaccompanied and children within families.

Finland

Finland is perceived as a country of destination. However, there are limited numbers of children arriving in Finland each year. The Return Directive has been transposed into Finnish law. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. There is no formal policy specifically addressing the return of children. An assisted voluntary return scheme accessible for both children within families and unaccompanied children is run by IOM.

France

As a country of destination France receives significant numbers of children, both unaccompanied and within their families. Many children, both unaccompanied and within their families, also transit through France en route to the United Kingdom. The legislation transposing the Return Directive into French Law has been adopted by the Parliament. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Unaccompanied children are not returned, except at the borders. There are two voluntary return schemes run by the French Office for Immigration and Integration (OFII), one for irregular migrants and another scheme for those in a regular situation. Children can access these schemes whether as part of a family group or as unaccompanied children.

Germany

Germany is a final destination country with high numbers of child migrants. Germany is still currently transposing the Return Directive. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. However children above 16 are deemed to hold legal capacity to act in all administrative procedures in relation to residence and asylum though social care legislation outlines that all unaccompanied children should be received into public care and supported within mainstream childcare provisions. In practice, however, immigration legislation is often given precedence.[57] This means that some 16 and 17 year old children may be placed in accommodation with adults and do not receive the support of a guardian to help them handle their asylum claim. Furthermore it is possible that these children only receive benefits according to the Asylum Seekers Benefit Act. However an NGO stakeholder reported that childcare legislation is more and more relevant to separated children.[58] Legislation and polices on return vary between Federal States. Germany lifted its reservation relating to aspects of the Convention on the Rights of the Child in relation to immigration law in 2010. The majority of assisted voluntary returns are implemented by IOM under two schemes neither of which have a special focus on children. Although State authorities prefer voluntary return to forced removals, there is no definition of 'voluntary' within German law.

Greece

Greece is one of the main entry points for irregular migrants and asylum seekers in the EU and receives a great number of irregular migrants and asylum seekers, including high numbers of unaccompanied children. Despite being considered a transit country by migrants, numbers remaining in the country are still significant. The law transposing the Return Directive and reforming the country's asylum system was published on 26 January 2011. However, the implementation period is one year. The Greek asylum and reception systems are still under pressure: the new asylum procedures aim to reduce an enormous backlog in applications while reception facilities are insufficient and detention

[57] http://www.iss-ger.de/fields-of-activity/migration
[58] Federal Association for Unaccompanied Minor Refugees (B-UMF)

centres overcrowded. Even though Greece has ratified the Convention on the Rights of the Child, the legal framework regarding the protection of migrant children differs between nationals and foreigners. According to UNHCR, proper identification of unaccompanied children is lacking and they can be registered as adults or as accompanied by a responsible adult. In addition, the legislation on removals of irregular migrants does not distinguish between children and adults. An NGO stakeholder commented that before returning children Greece currently fails to provide adequate safeguards to children regarding both their protection and treatment and their access to fair and appropriate determination procedures. IOM runs an assisted voluntary return scheme available to both unaccompanied and children within families.

Hungary

Hungary is perceived as a transit country by stakeholders and disappearances of families and children arriving into Hungary are frequent. Hungary thus has little experience of the return of children although stakeholders report that there are examples of children being returned by the police at the border under readmission agreements. The Return Directive has been transposed into Hungarian law. New legislation will impact on unaccompanied children who will fall under the provisions of the Children Act and who will no longer be cared for in the voluntary sector but will be looked after by the local government authorities. Although an assisted voluntary departure scheme is accessible for unaccompanied children, none have ever used it. An assisted voluntary departure scheme is also available for children within families. Both of these schemes are run by IOM.

Iceland

Due to its geographical location, there are very few migrant children in Iceland and there is a lenient approach to their return. Iceland is covered by the Return Directive and the process of transposition is underway. Experience of returning children is not extensive and there are no clear policies for how this would be done. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Whilst children, whether unaccompanied or within families, are assisted to return there is no formal assisted voluntary return scheme.

Ireland

Ireland is a destination country and as such the number of children arriving there, both within families or unaccompanied, is significant. Ireland is not party to the provisions of the Return Directive. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. In practice, however, stakeholders report that there are differences. Unaccompanied children tend to be taken into care under provisions of legislation which do not provide the same protection and safeguards as would be provided to Irish children. In practice unaccompanied children are not subject to forced removal.[59] IOM implements the assisted voluntary

[59] Repatriation Arrangements, the Irish Naturalisation and Immigration Service, April 2011

return programme, which is accessible both for children within families and unaccompanied children.[60] IOM implements the assisted voluntary return programme, which is accessible both for children within families and unaccompanied children.

Italy

Many migrants transit through Italy although it is also a destination country and recent upheavals in North Africa mean that there is a growing number of unaccompanied children and families with children arriving in Italy. In August 2011, a law transposing the Return Directive was approved by the Italian Parliament. Unaccompanied children are covered by the child protection laws and system, which applies to all children within Italy and partially by asylum and immigration laws. Children cannot be removed from Italy unless the removal takes place at the border as the child attempts to enter the country. This is applicable to children within families too, though they have a right to follow their adult family members if they are removed. This can lead to inconsistencies which impact on the child. Assisted return for unaccompanied children is expressly envisaged as a protection measure to guarantee the child's best interests and their right to family unity. These packages are also available for children within families. In both instances they are run by IOM. The law does not explicitly protect children from removal at the border. Children without necessary entry documents follow the same procedures as adults and can be denied access, removed to the country of origin or detained in centres for irregular migrants pending return. In many cases removal at the border happens automatically, within a very short time without being supported by a written decision.

Latvia

Latvia is a country of transit and the numbers of children arriving there are small. Legislation within Latvia has transposed the Return Directive. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Assisted voluntary return schemes exist for both unaccompanied children and children within families run by IOM. Two unaccompanied children have returned to their countries of origin on a voluntary basis, with support from the assisted voluntary return scheme.

Liechtenstein

Due to its location in central Europe and the very small size of the country, Liechtenstein receives only limited numbers of migrants, which leads to limited experience regarding the return of children. Liechtenstein has recently transposed the Return Directive in view of joining the Schengen area at the end of 2011. The legislation transposing the Directive will come into force only after Liechtenstein adheres to the Schengen agreements. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. The same legal provisions on return apply both to adults and children. In most cases, the authorities wait until an

[60] Operations Assistant, the International Organization for Migration Ireland, March 2011

unaccompanied child turns 18 and then issue a negative decision on the asylum application.[61] Assisted voluntary return schemes run by IOM are available for all children whether as part of a family unit or unaccompanied.

Lithuania

Lithuania is a transit country rather than a destination country for migrants and as such has limited experience of returning children. The Return Directive is currently being transposed into national law. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. There is no formal policy specifically addressing the return of children. Voluntary assisted return schemes exist for both unaccompanied children and children within families which are run by IOM.

Luxembourg

Luxembourg is perceived as a final destination for migrants and as such receives some children within families and unaccompanied children. Luxembourg has transposed the Return Directive into national legislation. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Unaccompanied children are not subject to forced return from Luxembourg. Assisted voluntary return schemes, run by IOM, exist for both unaccompanied children and children within families.

Malta

Malta's geographical position as an entry point into the EU from the African continent means that the numbers of children, both as part of a family unit and as unaccompanied children, arriving there is extremely high. The Parliament adopted Regulations transposing the Returns Directive in March 2011. It is noted that the CRC, although ratified by the Maltese government, has not been wholly incorporated into national legislation, leading to a number of gaps in the general child protection system. Nonetheless most of the current child protection procedures and policies are equally applicable to migrant children with little or no distinction at all. Once a care order has been issued regarding an unaccompanied child they are protected by the same terms and conditions applicable in the case of a Maltese child.[62] IOM implements an assisted voluntary return programme. Although open to all children, very few children, whether unaccompanied or part of a family group, are recorded as having been returned from Malta. This includes both voluntary and forced removals.[63] Upon arrival all migrants who crossed the borders illegally are initially held in detention in conditions which stakeholders describe as extremely unsatisfactory.[64] Because of their vulnerability children are usually transferred within a few days of arrival.

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[61] Interview with Swiss Organisation for Help to Refugees
[62] Interview with the Children & Young Persons Advisory Board, June 2011
[63] Interview with IOM, March 2011; and with the Malta Police Force, May 2011
[64] JRS, *Becoming Vulnerable in Detention : Malta national report*, July 2010; *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Malta from 23 to 25 March 2011*;

Netherlands

The Netherlands is a final destination country for many migrants and historically the numbers of children arriving there are extremely high, though decreasing in recent years. The Netherlands is still transposing the Return Directive. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Voluntary assisted return schemes, run by IOM, are accessible both for children within families and unaccompanied children. The Netherlands has facilities in Angola and Congo intended primarily to facilitate the return of unaccompanied children to these two countries. The Netherlands participates in the European Return Platform for Unaccompanied Minors project - ERPUM, described below in relation to Swedish activities.

Norway

Norway has a long tradition as a receiving country with significant numbers of children arriving there primarily to seek asylum. Norway is covered by the Return Directive and has completed the work necessary to transpose it into domestic legislation. The Norwegian Immigration Directorate (UDI) has allocated care of unaccompanied children under 15 years old to the Child Protection Agency and they are cared for in residential childcare settings established by the Child Protection Agency or, in rare instances, placed in foster care. Children from 15 to 17 years are cared for by the UDI, a practice that has been criticised by the Committee on the Rights of the Child. IOM implements the assisted voluntary return programme accessible for children within families. Norway also participates in the ERPUM project described below in relation to Swedish activities.

Poland

Poland is a transit country though a growing number of migrants perceive the country as a final destination point. There have been several cases of disappearances of families and unaccompanied children and this limits the experience in relation to the return of children. The Return Directive is currently being transposed in Poland. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Legislation refers explicitly to the CRC in relation to the return of children outlining that unaccompanied children can only be returned when the care provided in the receiving country, whether from carers or institutions, would not violate the rights of children as set out in the CRC. Assisted voluntary departure schemes are available both for unaccompanied children and children within families which are run by IOM.

'*Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 26 May 2008*', 2011

Portugal

Even though it is at the external border of Europe, very small numbers of migrants and asylum seekers arrive in Portugal. Most stakeholders perceive Portugal as primarily a transit country. The Return Directive has been transposed in Portugal. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. In theory children who do not meet the necessary entry requirements can be refused entry and should be required to return to their country of origin in the minimum time possible. However, this can only happen if there are real guarantees that when the child arrives in their country of origin they will receive appropriate assistance. Decisions concerning the entry of children, whether unaccompanied or within families, are prioritized and decisions are usually made within a matter of hours. In any event all unaccompanied children that make an asylum claim are allowed to enter and remain whilst their application is considered. An assisted voluntary return scheme available for unaccompanied children and children within families is implemented by IOM.

Romania

Romania transposed the Return Directive in July 2011. Romania is primarily perceived as a country of transit and so disappearances of children, both within families and unaccompanied are not uncommon and experiences of return are thus limited. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Assisted voluntary return programmes run by IOM are available for unaccompanied children and children within families.

Slovakia

Most stakeholders outline that whilst Slovakia remains a transit country it has also become a final destination country for a growing number of migrants. The Return Directive has been transposed into Slovak legislation. Unaccompanied children are not subject to forced return from Slovakia. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. An assisted voluntary return scheme for both children within families and those who are unaccompanied is implemented by IOM.

Slovenia

Most stakeholders outline that whilst Slovenia remains a transit country it has also become a final destination country for a growing number of migrants. Slovenia has transposed the Return Directive. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Under existing legislation return decisions are not issued to third country nationals. An assisted voluntary return scheme is implemented by IOM. As reported by a stakeholder unaccompanied children are systematically detained in the returns procedure, albeit for a relatively short time upon arrival but not as a last resort.

Spain

Spain is a country of destination for many migrants and as such significant numbers of children, both within a family unit and unaccompanied, arrive there. Spain has transposed the provisions of the Return Directive. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Unaccompanied children aged 16 and over can appoint a lawyer to represent them in judicial proceedings. Consideration is being given to extending this provision to younger children if it is deemed that they have sufficient capacity to appoint a lawyer. Unaccompanied children can only be returned when it is in their best interests and in recent years very few unaccompanied children have been returned. Spain has signed bilateral agreements with Morocco and Senegal, which specifically cover return and reintegration of children. Assisted voluntary return is possible from Spain for unaccompanied children and children within families through programmes run by IOM and various NGOs. The Catalonian region has been active in a project in Morocco, which has the aim of preventing migration and facilitating return through training and job opportunities.

Sweden

The country has a long tradition as a receiving country of migrants and numbers of children arriving in Sweden whether unaccompanied or as part of a family unit are high. Children primarily migrate to Sweden to seek asylum. Sweden is currently transposing the Return Directive. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. Assisted voluntary return schemes are available for children within a family group and those who are unaccompanied. These are run by the Swedish Migration Board. The Swedish Migration Board is reported to have developed a closer cooperation to facilitate tracing of the family in particular with Iraq and Afghanistan. The Swedish Migration Board leads "the European Return Platform for Unaccompanied Minors" (ERPUM), an EU project funded by the Return Fund – Community Actions. The Project partners are Sweden, the Netherlands, Norway and the UK (see further description in the section on reception centres and Afghanistan: p86 and p97).

Switzerland

Switzerland has a long tradition as a country which receives migrants, with significant numbers of children arriving both as unaccompanied and with their families. The Return Directive covers Switzerland and it was transposed into Swiss law in January 2011. Children's rights instruments and national child protection policies are applicable to migrant children, including children in the return procedure. The CRC plays a key role. It is applied by the courts and governmental authorities when interpreting Swiss national law and the child's best interests have to be taken into account and assessed in any decision-making procedure. Voluntary return assistance programmes are offered by the Federal Office for Migration in cooperation with IOM to children within families and unaccompanied children. Unaccompanied children are not, in the main, returned until they turn 18.

United Kingdom

The United Kingdom has a long tradition as a country which receives migrants with significant numbers of children arriving both as unaccompanied and with their families. The United Kingdom is not subject to the provisions of the Return Directive. In terms of children's rights instruments and safeguarding policies and procedures, specific duties are placed on the United Kingdom Border Agency (UKBA) and national child protection policies and children's rights instruments are applicable to migrant children, including those in the return procedure. The UK is currently undergoing a change in the way that return is being carried out. In the procedures that have been piloted and rolled out from 1st March 2011, a distinction is made between a voluntary return scheme, for which financial assistance will be available and voluntary compliance with return directions (referred to as 'required return' in the Home Office documents relating to the new procedure). The new procedures for return outline that, in the case of families with children, the decision on the method of removal in the case of enforced returns will be informed by an independent Family Returns Panel who will take full account of the welfare of the children. The UK has also recently adopted processes to consider the best interests of a child when considering the return of an unaccompanied child. It should be noted that these are not yet operational and may be the subject of further refinement and guidance on becoming operational. The UK also participates in the ERPUM project described above in relation to Swedish activities. Assisted voluntary departure schemes are available both for children who are unaccompanied and those within families implemented by an NGO.

4.2 DETAILED FINDINGS

This section will consider findings under the following headings:

- Considerations surrounding the voluntary departure period
- Provision of independent assistance to unaccompanied children
- Safeguarding children during the pre-return phase
- Promotion of the rights of children in detention
- Return and post-return phase

4.2.1 Considerations surrounding the extension of the voluntary departure period

Table 9. Voluntary departure period

	Voluntary departure period length	Extension of the voluntary departure period	
		Unaccompanied Children	Children in families
AT	Not standard	√ (up to 3 months) Missing travel documents, health issues, school attendance	
BE	Not standard	-	√ School attendance
BG	7 to 30 days	√ (up to 1 year) Length of stay, health conditions, needs of vulnerable groups, school attendance, family and social links[65]	
CH	7 to 30 days	√ For specific circumstances: length of stay, school attendance, health issues, preparation of return	
CY	Non standard[66]	Unaccompanied children are not returned	None applied in practice
CZ	7 to 60 days	Unaccompanied children are not returned	√ Max 60 days For specific circumstances (e.g. health issues)
DE	7 to 30 days	√ (up to 6 months[67]) For specific circumstances (e.g. education)	
DK	7 days[68]	√ (up to 100 days for trafficking victims[69]) For specific circumstances: length of stay, school attendance, family and social links	
EE	7 to 30 days	√ (up to 1 month at a time) For specific circumstances: length of stay, health conditions, school attendance, family and social links	
EL	7 to 30 days	√ (up to 1 year) For specific circumstances: length of stay, school attendance, family and social links	

[65] As no UAC returned, no extension granted in practice
[66] Usually depends on the availability of travel documents
[67] In case of particular hardship the 6 months period can be further extended
[68] In practice return preparation takes more time
[69] A "reflection" period of 30 days is granted to victim of trafficking, it can be extended for another 70 days if the person cooperates with the police

ES	7 to 30 days [70]	-	Length of stay, school attendance[70]
FI	7 to 30 days	√ For specific circumstances: length of stay, school attendance, family and social links	
FR	Not provided for in legislation		
HU	7 to 30 days	√ (up to 1 month) For specific circumstances: length of stay, school attendance	
IE	14 days	√	√ For specific circumstances (e.g. for school attendance)
IS	30 days	√ School attendance and exams	√ For specific circumstances: length of stay, school attendance, family and social links, missing travel documents
IT	7 to 30 days	√ For specific circumstances: length of stay, school attendance, family and social links	
LI	7 to 30 days	√ For specific circumstances: family situation, length of stay, school attendance, health issues	
LT	Up to 15 days	√ (suspension) For specific circumstances (e.g. health issues)	
LU	Min 30 days	No forced return of unaccompanied children in practice	√ School attendance
LV	7 to 30 days[71]	-	x[72]
MT	7 to 30 days	√ For specific circumstances	
NL	4 weeks	√ For specific circumstances: health issues, school attendance	√ Health issues
NO	7 to 30 days	√ For specific circumstances (e.g. health issues)	
PL	7 to 30 days	x[73]	
PT	20 days	√	√ School attendance, health issues
RO	15 to 90 days	x	x
SE	2 to 3 weeks	√ For specific circumstances: length of stay, school attendance, family and social links	
SI	Up to 3 months	√ For specific circumstances: length of stay, health issues	
SK	7 to 30 days	-	√ For specific circumstances: length of stay, health issues and family and private affairs
UK	Non standard[74]	No forced return of unaccompanied children in practice	√ School exams, health issues

[70] A law transposing the Return Directive was passed in June 2011. It provides a voluntary departure period of 7 to 30 days and possible extensions based on the length of stay or school attendance. At the time of the research, this new provision had not yet been applied to families

[71] For children in families only. UAC were not issued return decisions until recently (the Return Directive has been transposed in June, there is no practice for the moment)

[72] The return can be suspended for health reasons or other extraordinary circumstances

[73] The return can be suspended for health reasons or other extraordinary circumstances

[74] Home Office documents refer to a "few weeks"

General

Most Member States have recently transposed the Return Directive and the new national dispositions usually follow the wording of the Directive. Extension of the voluntary departure period is always assessed on a case-by-case basis. Generally, there are no written criteria or specific procedures by which decisions to determine extensions of the voluntary departure period are made though most Member States use the criteria set out in the Return Directive. Applications to extend the voluntary departure period are considered on a case-by-case basis, depending upon the individual circumstances of the applicant. Similarly, extension periods, on whatever grounds, typically are not fixed and are variable in length. Stakeholders in some Member States, for example **Hungary** and **Romania**, outline that the provision of voluntary departure periods is still a new and developing area and thus in practice there are no examples of the granting of extensions.

Extension for education needs

Responding to the educational needs of children is a factor that many Member States consider when deciding whether or not to grant an extension to the voluntary departure period. Examples include:

- In **Estonia and Germany**[75] an inter-governmental agency stated that the voluntary departure period is generally extended if there are issues relating to the child's education. The granting of extensions in **Liechtenstein** is assessed individually in each case and can be granted for reasons related to schooling[76] and in **Portugal** the removal of families can be delayed because of a child's educational requirements.
- The period for voluntary departure in **Denmark** can be extended to allow children to complete exams and to allow unaccompanied children to take the special courses and training offered by immigration authorities to help unaccompanied children re-establish themselves in their country of origin.[77]
- The **Latvian** Office of Citizenship and Migration stated that there have been cases where extensions have been granted so that the child can finish the school semester. However, the parents themselves must submit a request for such an extension.[78]
- In **Iceland** all children in the care of the Child Protection Services will be allowed to finish the school year and extensions to the voluntary departure period will take into account academic and schooling needs such as sitting exams.
- In **Ireland** the decision about the voluntary departure period is down to the discretion of the immigration authorities.[79] Children are entitled to attend school during the voluntary departure

[75] Interviews with Central Return Counselling Office, Nurnberg and Ministry of Interior, Lower Saxony, March 2011
[76] Interview with the Immigration and Passport Office, April 2011
[77] Interview with the Danish Red Cross, April 2011
[78] Interview, the Ministry of Interior, the Office of Citizenship and Migration Affairs, February 2011
[79] Repatriation Arrangements, the Irish Naturalisation and Immigration Service, April 2011

period.[80] If the family, the social worker or the child requests that they would like to postpone their return to sit exams, IOM will facilitate this.[81]

- In **Luxembourg**, whilst no written guidelines exist on the criteria on which these discretionary decisions are based, stakeholders report that, in the case of families with children, the completion of the school year is definitely among the criteria. The Asylum Law provides that the Minister may grant a delay in the departure of families with school children to allow them to finish the ongoing school period, but only in the case of beneficiaries who have had a form of the temporary protection. In practice, nearly all departures of families with schoolchildren are planned in the summer, outside school periods. In the case of voluntary returns, delays are usually granted to allow children to finish the school year and for young people to complete their ongoing year of apprenticeship, unless the demand to extend the voluntary departure period is introduced at the very beginning of the school year.[82]
- Extensions can be granted in **Slovenia** on a case-by-case basis to enable children to finish the school year. Schooling until the end of the year can also be a reason to prevent removal, but on condition that the child stays in school. In these cases the child is granted permission to stay.[83]
- In some cases in the **Netherlands** the departure can be postponed until after a child's examinations or graduation thus providing an opportunity for the child to receive a certificate or diploma.[84]

However in other Member States the connection between a child's education and the extension of the voluntary departure period was not so clear:

- **Austrian** stakeholders reported that, whilst issues in relation to schooling are not formally taken into account, when the extension to the departure period is granted in practice children are allowed to remain in school until the departure.[85]
- In the **Czech Republic** circumstances surrounding the extension of the voluntary departure period are not defined by law but in practice tend to revolve around health reasons or difficulties in obtaining necessary travel documents. As a rule school terms and impending exams are not taken into account when setting the time constraints on departure periods.[86]
- In **Lithuania** the special list of circumstances under which an extension is possible has not been consolidated and there are no definitive criteria and in consequence every case is assessed individually. Completing a school year is not seen as a sufficient reason for

[80] Principal Social Worker, the Health Service Executive, March 2011
[81] Operations Assistant, the International Organization for Migration Ireland, March 2011
[82] Interviews with Caritas, Luxembourg Red Cross, Ministry of Foreign Affairs, Direction of Immigration, April 2011
[83] Interviews with the Centre for Foreigners, Police, Ministry of the Interior; and with the Slovene Philanthropy, March 2011
[84] Interview with Defence for Children International (Netherlands)
[85] Interviews with the Federal Ministry of the Interior and Association Human Rights Austria, April 2011
[86] Interviews with the Organisation for Aid to Refugees and the Refugee Facilitators Administration of the Interior Ministry, April 2011

extension – on the grounds that children can continue studies in the country of return. However, children are allowed to attend school during the voluntary departure period.[87]

- **Polish** stakeholders were not aware of cases where the voluntary departure period had been extended in order to allow a child to continue at school or reach specific schooling milestones.[88]
- There have been cases in **Norway** were the departure date has been postponed to allow the child to sit for a final exam which is important for their further education/ work and reintegration after return to country of origin.[89]

Extension for health and medical reasons

Health needs and medical conditions were also referred to as factors that were considered when extending the voluntary departure period. For example this was so in the **Czech Republic** and in **Lithuania** where children (both in families and those who are unaccompanied) can be granted an extension only under special circumstances, such as unforeseen circumstances or serious illness, which prevents the practical implementation of the return decision. In the **Netherlands** too there is the possibility to extend the departure period because of the medical conditions of the child (or other individual in the child's family).[90] Extensions have been given for health and medical reasons in **Norway** when a person or child is not able to travel or is advised for medical reasons not to return at the given time[91], and in **Portugal** the removal of families can be delayed because of health needs. **Slovenia** also allows for medical requirements to inform decisions on extensions though a consideration is whether the required treatment is urgent or necessary and what are the possibilities for treatment in the country of return.[92]

[87] Interview with the Migration Department, Aliens' Affairs Division, April 2011
Interview with the State Border Guard Service, Foreigners' Registration Centre, April 2011
[88] Interview with the IOM April 2011
[89] Norwegian Directorate of Immigration, Child Protection Unit, April 2011
[90] Interview with Defence for Children International (Netherlands)
[91] Norwegian Directorate of Immigration, Child Protection Unit, April 2011
[92] Interview with the Centre for Foreigners, Police, Ministry of the Interior, March 2011. Interview with the Slovene Philanthropy, March 2011

4.2.2 Provision of independent assistance to unaccompanied children

Table 10.
Assistance to unaccompanied children by appropriate bodies other than the authorities enforcing return

	Guardians[93]	Right to legal assistance	Others providing assistance
AT	√[94] (individuals)	√	
BE	√[95] (individuals)	√	Social workers
BG	√[96] (individuals)	√	
CH	√[97] (individuals)	√	"Advisor" if no guardian appointed[98]
CY	√ (Director of Welfare Services)	√	
CZ	√[99] (individuals)	√	Social workers, assistants in centres
DE	√[100] (individuals or institutions)	√ [101]	Social workers in reception centres
DK	√[102] (individuals)	√	Social workers in reception centres
EE	√[103] (individuals, public institutions, foster carers, or other body)	√	Social workers
EL	√ (institution or individuals)	x[104]	
ES	√[105] (institution)	√	
FI	√[103] (individuals)	√	Social workers in reception centres
FR	√[97] (institution)	√	
HU	√ (institutions)	√	Social workers in reception centres, psychologists
IC	√[106]	√	

[93] Guardian is the term used in national practice – however this is not defined against any set international criteria
[94] The role of the guardian includes care, education, property administration, legal representation, monitoring of education, development of the child and his protection. Children above 16 are not represented by guardians in the return procedure
[95] Responsible in the return procedure for proposing durable solutions and helping with family tracing
[96] Responsible for all aspects related to child well-being
[97] Responsible for the legal representation of the child
[98] A guardian can only be appointed if it is established that the child's parents are dead or that they are unwilling or unable to perform their legal duties for the child. If not, the child is appointed an "adviser". The adviser is responsible for protecting the interests of the child and for all aspects related to child well-being
[99] Specific guardian is appointed for administrative expulsion procedure
[100] Children above 16 are not appointed a guardian in all Federal States if they have legal capacity to act
[101] Possibility to appoint lawyer or additional guardian for legal representation
[102] Responsible for the child's best interest and support in accessing services. The guardian also attends interviews and support the child in the decision making process
[103] Responsible for the representation and welfare of the child (Interview with the Policy and Border Guard Board Citizenship and Migration Bureau, April 2011)
[104] Children do not have an entitlement to free legal aid but they can consult a lawyer who will represent them
[105] Director of the reception centre has legal responsibility for the child
[106] Responsible for the child's needs and helping them throughout the procedure. Required to be present at all interviews and hearings

IE	x	√	Social workers[107], Guardian ad litem[108]
IT	√	√	
LI	√[109] (individuals)	√	
LT	√[110] (individuals)	√	Social workers in reception centres
LU	√ [111]	√	Social workers
LV	√ [112] (individuals)	√ [113]	Social workers, psychologists, NGOs
MT	√[114]	√	Social workers, Minister for Family and Social Solidarity[115]
NL	√ [116] (individuals)	√	Social workers, mentor, foster family, etc
NO	√ [117] (individuals)	√	
PL	√ [118] (individuals)	x	Psychologist, Tutor in charge of everyday care in reception centre
PT	√ [119]	√	Social workers and 'advisors'
RO	√ [120] (individuals)	√	Social workers, psychologists
SE	√	√	Staff at the residential centres
SI	√ [121] (individuals)	x[122]	Psychologist
SK	√ [123] (individuals)	√	
UK	x	√	Social workers

[107] Social workers are the only actors involved in determining the child 's best interest in the return procedure
[108] If the child doesn't have legal representation, a guardian ad Litem can be appointed by the Court to protect the interests of the child in legal proceedings
[109] Usually a lawyer. They are responsible for providing assistance throughout the immigration and asylum procedures and deciding on legal issues
[110] Responsible for advising and protecting the interests of the child
[111] At borders, by law the child has to be appointed an "ad hoc administrator" who deals with the legal and administrative aspects of the stay in the transit zone of the airport in cases where entry into the territory is refused. The guardian, on the other hand, once the child has entered the territory is responsible not only for supporting the child in the immigration and asylum procedures but and for all aspects of the child's life
[112] Responsible for protecting the interests of the child
[113] Free legal aid is available. If the guardian is a lawyer, no additional legal representation is sought
[114] Not systematic
[115] Children placed under the care and custody of the Minister. The latter is supported by an Advisory Board who provides information on each child, provides general supervision and promote their welfare
[116] Individual guardians are appointed though NIDOS, the guardianship agency, is responsible for the child. The guardian has a supervisory function and is the contact person between all the actors involved in the life of the child. They are responsible for the care, the mental and physical wellbeing, the development, as well as protecting the best interest of the child
[117] Responsible for providing assistance throughout the immigration and asylum procedures
[118] Responsible for providing assistance throughout the immigration and asylum procedures. During the return, Border Guards may act as guardians
[119] Responsible for providing assistance throughout the immigration and asylum procedures and protecting the best interest of the child. They are also in charge of consulting and advising the child, ensure opportunities for the child to be heard, providing a link between different organisations involved, and helping with family tracing
[120] Responsible for protecting the best interest of the child. They are social workers or lawyers.
[121] Responsible for providing assistance throughout the immigration and asylum procedures and protecting the best interest of the child. They are social workers or lawyers
[122] Right to legal assistance is not provided by law. However, in practice, when Slovene Philanthopy conducts role of child's guardian, they always ensure that child is provided legal assistance
[123] Two types of guardians exist: short-term and long-term. The short-term guardians are appointed only for specific purposes (e.g. return procedure). Long-term guardians have broader responsibilities

Assistance – who takes on the role?

Assistance may take a variety of different forms, from providing proper reception, accommodation and access to services, to providing information and specific assistance or legal representation in regard to any processes concerning durable solutions for the individual child, including family tracing. Assistance can include ensuring the child's best interests are pursued and/or the provision of legal representation by a lawyer. The role, qualifications, mandate and even the availability of a guardian can vary as can their level of independence from the state authorities.

Assistance may be provided by specialised authorities within the national administration or by non-governmental organisations. Some Member States engage in a combination of both systems, providing for multidisciplinary cooperation within the government supported by a non-governmental guardian or tutorship system. Across Europe, many different actors take on the role of the assistant ranging from dedicated legal guardians **(Belgium),** directors of residential childcare establishments **(Cyprus),** law students **(Poland)** and many others. Roles are variable with some providing input around welfare considerations **(United Kingdom)** and others playing an active part in establishing a durable solution for the child, of which one option is return **(the Netherlands)**. Indicative, though not exhaustive, examples of those who may take on the role of providing assistance to unaccompanied children include:

- State Youth Welfare Authorities, State Agencies for Child Protection (including social workers) etc – **Austria, Bulgaria, Cyprus, Italy**
- Dedicated guardianship agencies working exclusively with unaccompanied children – **Belgium, the Netherlands**
- Non-governmental organisations – **Czech Republic, Denmark, Luxembourg**[124]

The section below focuses in some detail at some practices across the Member States where guardians have a role to play in the procedures and process connected with family tracing and return decisions about children.

Assistance in practice

In **Belgium** guardians must be appointed to all unaccompanied children. This is supposed to happen immediately following the child's referral to the Guardianship Service, but in practice it can take 2 – 4 weeks, and occasionally longer. The guardian, as part of their role, makes a proposal for a durable solution to the immigration authorities who then make the final decision. Where return is being considered by the unaccompanied child, the guardian will support the tracing of family. There are no fixed criteria for the determination on the durable solution and guardians assist children in considering voluntary return or pursuing an application for asylum or other application for a residence permit. The guardian is expected to ensure that the views of the unaccompanied child are taken into account. In relation to voluntary return, all relevant documents – social report, reintegration application form, etc,

[124] Interviews with Caritas, Luxembourg Red Cross, Ministry of Foreign Affairs, Direction of Immigration, April 2011

have to be drafted by the guardian in close coordination with the child. The guardian can escort the child during the return, though this can also be undertaken by another adult. In any event the child should be supported by their guardian both emotionally and practically during the preparation for return which can take up to several months and during the return itself to the country of origin.

In the **Czech Republic** four types of guardians can be distinguished to assist unaccompanied children with:

- Their stay and to represent their interests regarding their overall wellbeing (appointed by a court, usually municipal officers). Unaccompanied children seeking asylum are always allocated this type of guardian whereas some non asylum seeking unaccompanied children do not receive this support
- The asylum procedure (appointed temporarily by the Ministry of Interior, usually from NGO staff)
- Detention matters (usually from NGOs, appointed by the police) and,
- The return procedure (most likely this function will be performed by NGO lawyers).

In practice, unaccompanied children usually have two guardians, one guardian for the stay (whose assistance is comprehensive) and another one responsible for the respective legal procedure. In practice, the guardian covering the asylum procedure, detention and the return procedure is usually a lawyer. Unaccompanied children enjoy the same assistance standards as Czech children without parents and receive care in a children's home run by the Ministry of Education, Youth and Sport.

The practice in **Luxembourg** is that the Red Cross provides guardianship to children below 16.5 years old and Caritas delivers the service to children between 16.5 and 18 years old. To avoid separating brothers and sisters, the Red Cross will take care of all members of the same family if one of them is below 16.5 years of age. The guardianship will continue with the same organisation until the child reaches the age of 18. The persons providing assistance are independent from national authorities. Those appointed to the role normally have some background training in childcare and additional training is provided. Unaccompanied children are provided with the assistance of a lawyer from the very beginning of the asylum procedure. The guardian applies for voluntary return on behalf of the child, with the child's consent. IOM staff discuss return with the unaccompanied child individually or together with the guardian. Before deciding on voluntary return, a social report is established by an NGO appointed as guardian.[125]

All asylum seeking unaccompanied children in the **Netherlands** are appointed a guardian from the scheme run by NIDOS. The guardian will assess whether or not return is in the best interests of the child. Where unaccompanied children choose voluntary return they need the agreement of their guardian before this can be pursued. No permission from the guardian is required in case of forced return (this is solely a decision made by the Immigration Authorities). If, in the opinion of their guardian

[125] Interviews with Caritas, Luxembourg Red Cross, IOM, April 2011

there is adequate reception in the country of origin or in a third country, the guardian invites the child to consider return. If the guardian decides that there is no adequate reception available in the country of origin, they will not support the return of the child. A stakeholder remarked that, when decisions to return are made, guardians of unaccompanied children appear to have less influence over this decision in comparison with the influence that guardians of Dutch children exercise regarding the decisions made by other Courts. The stakeholder further asserted that the authorities do not seem to give due weight to the judgement of guardians and that current practice seems to be that the interests of the migration authorities prevail over the best interests of the child and the opinion of the guardian.[126] The guardian also takes a role in family tracing building on any information that the Red Cross has identified concerning the child's family through contacts with other organisations, for example, International Social Service to investigate if reception is adequate or durable. In terms of training on children's rights and protection issues the guardian must have graduated from the social academy. Guardians start with this social-pedagogical knowledge and gain knowledge of the immigration and asylum procedures during training programmes provided by NIDOS. To support the guardians, workshops and in-house courses are organised by NIDOS. When they enter into service, a four-day introduction course is organised. The introduction course covers specific elements of the job as a guardian. This is followed up with a 10 day training course tailored to the role of the Guardian at NIDOS. Guardians need to pass this course to secure tenure, as opposed to a one year employment contract.

In **Switzerland** the aim is to provide assistance to unaccompanied children throughout the whole procedure including decisions on the asylum application and the return decision and removal.[127] Once assigned to a Canton an adviser is appointed. The legislation uses the term adviser and this can mean one of three things: legal guardianship, tutelage or an adviser in a narrow sense. Legal guardianship embraces full-scale authority to decide nearly all legal affairs concerning the child. To appoint a legal guardian there needs to be evidence that the child's parents are dead, or unwilling or unable to fulfil their duties as legal guardians. Since most unaccompanied children cannot give information about what happened to their parents, the appointment of a guardian is often not possible. In such a case the authorities have to appoint a tutor. When neither a guardian nor a tutor is appointed, an "adviser" in a narrower sense as defined by jurisprudence has to be mandated. The adviser's obligations are based on those of the tutor and their mandate is terminated with the appointment of a guardian or tutor. The main duty of the adviser is to ensure the child is treated fairly throughout the procedure. The adviser's activities are also supposed to cover issues of everyday life, such as organizing insurance and health care and simply supporting the child's social needs and development. Since 1st January 2011, unaccompanied children outside of the asylum procedure also have an adviser assigned to them to take care of the child's interests during the removal process. A complaints procedure is available where the child is dissatisfied with their "advisory" support.

[126] Interview with Defence for Children International (Netherlands)
[127] Interview with ISS Geneva, April 2011

In the **United Kingdom** there are no designated guardians for unaccompanied children.[128] Their needs for assistance are deemed to be addressed by a range of different provisions; unaccompanied children are entitled to a lawyer free of costs, they are also referred to local authorities and may have an allocated social worker to work with them. They may also be referred to an NGO, The Refugee Council, who are able to provide advice and support in accessing services to some unaccompanied children (although funding issues in the UK make providing this service increasingly challenging).

More generally, **the European Network of Guardianship Institutions** ("ENGI"), a project led by NIDOS, the Dutch guardianship authority and funded by the EU, is noteworthy in that it is engaged in a number of successive projects with the aim of improving guardianship services in the EU Member States through exchange of information on guardianship systems in certain European countries and fostering links between them.

Also worthy of note is an EU funded project on guardianship working towards common standards for guardians led by **Defence for Children International** (DCI) with partners from SCEP (see below).

Finally, Save the Children and the EU fund the network of 30 organisations working on the issue of unaccompanied and separated children in Europe called the **Separated Children in Europe Programme** (SCEP) network. This regional network works together on a range of issues in order to improve the assistance and protection of separated children in Europe.

Assistance – further considerations

Whilst acknowledging that Member States provide independent assistance, stakeholders raised a number of specific concerns in relation to this provision. Examples are:

- Provision was variable in **Austria** depending upon which region the child was placed in due to differences in regional administrative procedures. This was true for other Member States that have systems of federal government, **Germany** and **Switzerland**.
- In **Belgium** the level of independence of the guardian may come under some pressure when the immigration authorities expect the guardians to share all pertinent information with them. The ENGI project's research raised questions about the level of knowledge that guardians hold regarding voluntary return.
- **Bulgarian** stakeholders reported that some children have complained that they never see their guardians even where appointed.
- In **Cyprus** concerns have been voiced that, in practice, some unaccompanied children stay in apartments with other adult asylum seekers who are not legally assigned as their legal guardians.
- In **Greece** there is considerable concern that the pressure on resources means that many children do not have a guardian. Specifically in Greece it is reported that a considerable

[128] Interviews with Immigration Law Practitioners Association, Bail for Immigration Detainees, UK Border Agency, March 2011

number of children remain without proper identification and care and that only a small number of unaccompanied children are effectively referred to the Public Prosecutor for Children and to the appropriate reception centres, the capacity of which is extremely low.[129] A recent report notes that unaccompanied children lack safe accommodation and guardians and are vulnerable to homelessness and labour exploitation. There is monitoring of the reception centres by the Ministry of Health which is ultimately responsible for their operation but the lack of common minimum standards regarding services and policies and procedures renders any monitoring rather subjective.

- In **Poland** there are no specific requirements that a guardian has to meet a child. Guardians for the purpose of the procedure to grant the refugee status are often law students acting as part of the Warsaw University Law Clinic, though other NGO actors also undertake this role. They are not paid for this service and thus availability is seriously limited during holidays and semester breaks. Border Guards may also apply to be guardians during the return procedure and this raises questions about how independent is the service provided.
- The role of guardians in **Romania** is not limited specifically to children within the immigration procedure. However, they are not specifically trained in working with foreign migrant children but only in working with children in general. Their workload is very high, as they also have to deal with Romanian children.[130] According to the Romanian Immigration Office special training has so far not been necessary due to the small number of unaccompanied children.

Family tracing

Across Member States family tracing mechanisms are in place. In some cases family tracing is viewed as assistance to the child and is carried out as in the child's best interests for the broad purpose of restoring family links. In others family tracing efforts appear to be focused more narrowly on the process of returning the child to family. The definition of the family depends on individual situations and who the child considers to be his or her relatives. Where Member States make efforts to obtain information from children reluctant to disclose it for a myriad of reasons, this can lead to the risk of inaccurate information being provided, which, according to the British Red Cross may in turn can cause difficulties, sometimes of a security nature, for organizations engaged in tracing.

The International Committee of the Red Cross (ICRC) undertakes this function on request but feel restricted to do so only when the tracing request is initiated by the child or legal guardian as the ICRC does not undertake third party tracing. When a child has lost contact with their family, they may apply, alone or together with their guardian, for family tracing. This process is carried out in the country of origin, or another third country, by the tracing service of the local Red Cross, or the ICRC if the relevant country is in conflict. The child is supported by their guardian and contributes with all the information that they can provide. Legal safeguards exist to protect the family from possible danger while gathering the information. Family tracing is carried out in order to restore family links. Restoring

[129] Interview with UNHCR, Athens. April 2011
[130] Interview with Immigration office and Jesuit Refugee Service Romania, March 2011

family links is (for the Movement) a generic term for a range of activities aimed at preventing separation and disappearance, restoring and maintaining contact between separated family members and clarifying the fate of persons reported missing.

IOM also endeavours to trace family members prior to a child's return (see Italian example below). The International Social Service (ISS) is also involved in family tracing arrangements for some countries (see Finnish example below). Some countries have established or are developing their own arrangements directly in countries of origin to attempt family tracing. In particular, and as mentioned above, the ERPUM project led by Sweden is involved in developing such arrangements in Afghanistan and Iraq but little information is available on them at this point in time.

Some examples are provided of family tracing:

- In **Ireland** family members are traced either through the Irish Red Cross or contact is established directly by the child, with help from their social worker.[131] Alternatively their social worker may decide to initiate a search with or without the consent of the child. Sometimes these searches involve contacting local schools and neighbours to locate the family.[132] In most cases contact with family members in the country of origin is started by the relevant IOM office.[133] Local government agencies with a remit for social care are consulted if possible.[134] Information from the IOM office is sent to the IOM Dublin office and directly to the referring Health Service Executive.[135]
- The Foreigner's Office first asks **Belgian** Embassies to try and find the child's parents. If this is unsuccessful then attempts are made to trace extended family. The Embassy determines if the family provides good reception conditions for the child and assess if the family can take care of the child. Guardians are also required to pursue the family situation with the children with whom they work, with a view to gathering information that will aid family tracing. Family tracing through the Red Cross is only launched, with the help of the guardian, if the child is in agreement. The Foreigner's Office does not have access to the information obtained through the family tracing undertaken by the Red Cross, unless the child and their guardian agree to share the information. An NGO highlighted that the definition of the family depends on the situation and who the child considers to be his or her relatives.[136]
- When return of a child from **Italy** is being considered family tracing is usually undertaken by IOM. In the context of return, a family member primarily means the child's parents and grandparents. IOM considers a family tracing outcome as one piece in the picture regarding the possible options for return and reintegration, or otherwise. IOM should provide family tracing reports to the Committee for Foreign Minors within 28 days of the request to trace.

[131] Principal Social Worker, the Health Service Executive, March 2011
[132] Principal Social Worker, the Health Service Executive, March 2011
[133] Operations Assistant, the International Organization for Migration Ireland, March 2011
[134] Principal Social Worker, the Health Service Executive, March 2011
[135] Operations Assistant, the International Organization for Migration Ireland, March 2011
[136] Stakeholder Interview , March 2011

Family tracing is never carried out for unaccompanied children seeking international protection. When considering return, IOM interviews the family to assess the socio-economic situation, the risks of exclusion and the family's willingness and ability to accommodate the child. If risks are detected, the procedure is suspended.

- In **Finland**, ISS signed a formal cooperation agreement with the Finnish Immigration Service in 2007 regarding tracing families or legal guardians of unaccompanied asylum seeking children. The Immigration Service is responsible for the overall tracing obligation according to a legislative amendment regarding tracing (this amendment is based on international treaties to which Finland is bound) that entered into force on 1st February 2007. The guardian of a child asylum seeker arriving alone must be traced where possible. The agreement states that the duration of tracing is five months, though this can be adapted on a case-by-case basis. It is also agreed that tracing will not be performed if any danger could occur to the child or their family. ISS provide a detailed report including a description of the conditions that may affect reunification, covering, housing conditions, economic situation of the family, health conditions of family members, willingness of the parents or where appropriate the guardian to re-unite with the child, capability to take care of the child, the relationships between the family members, and possible drug or alcohol abuse etc. [137]
- If a child wants to return from **the Netherlands**, IOM will contact the family in the country of origin, or if the child has lost touch with their family, IOM offers the possibility of family tracing. In some cases IOM cooperates with NGOs in finding the family. Both the guardian in the Netherlands as well as the family in the country of origin are required to give their consent for the voluntary return of the unaccompanied child. Without the consent of either one, IOM will not be able to assist the child. The Red Cross assists in family tracing too. [138]
- The **Romanian** National Council for Refugees runs a voluntary return programme, which relies on the co-operation of children to trace families. Children provide contact details of their families and the Council contacts the families directly to establish if they are happy for their children to be returned.[139]
- In 2008, the **Swedish** Migration Board launched a pilot project to improve family tracing. Whilst this does not need the consent of the child, they are at least involved in a discussion about the tracing. Local Swedish embassies seek to locate family members. The project is implemented in, Iraq, Rwanda and the Democratic Republic of Congo. However this practice is currently not extensive.[140]

[137] Interview with ISS Geneva
[138] Interview with IOM Netherlands, March 2011
[139] Interview with Romanian National Council for Refugees, March 2011
[140] Interview with the Police authority of Skåne, C I D, Border Police Unit, Malmö, April 2011; Migration Board, April 2011

4.2.3 Safeguarding of children during the pre-return phase

Table 11. Access to services pre-return

	Access to school		Access to health care		Access to social, recreational activities		Accommodation maintained	
	UAC[141]	Children in families	UAC	Children in families	UAC	Children in families	UAC	Children in families
AT	√ (until 16)		√[142]		√[143]		x[144]	
BE	√	√	√	√	√	√[145]	√	x[146]
BG	√[147]	√[147]	√ (emergency)	√ (emergency)	x[148]	x	x	x
CH	√	√	√	√	√[149]	√[149]	x[150]	x[150]
CY	No practice	√	No practice	√[151]	No practice	√	No practice	√
CZ	√ (elementary)	√ (elementary)	√	√[152]	√	√[153]	√	√[153]
DE	√[154]	√[154]	√[155]	√ (emergency)	√	√	√	√
DK	√	√	√	√	√	√	x[150]	x
EE	√	√	√	√	√	√	√	√
EL	√	√	√ (emergency)	√ (emergency)	√	√	√	√
ES	√	√	√	√[156]	√	√	√	√
FI	x[157]	x	√	√	√	√	√	√
FR	√	√	√	√	√	√[158]	√	N/A

[141] UAC in this table stands for "unaccompanied children"
[142] Access varies depending on the legal situation and federal provinces
[143] Except in detention
[144] Rejected asylum seekers can be moved to a different centre
[145] Unless there are practical obstacles
[146] Families transferred to the "return houses"
[147] Not free for foreign nationals except, according to the legislation, "children who entered the country legally or those who entered as accompanied but were abandoned later and who did not claim asylum"
[148] Not specific guarantees provided in the legislation
[149] Depends on the province
[150] Transfer to a different centre or accommodation is possible
[151] If the family hold a health card, otherwise access is problematic
[152] Emergency health care, except for rejected asylum seekers subject to a voluntary departure period.
[153] Depend on the legal status
[154] Not guaranteed for children above 16 or children accommodated in centres located in remote areas
[155] Emergency healthcare for UAC above 16 accommodated in asylum reception centres
[156] Some limitations depending on their legal situation
[157] Possible but not guaranteed. Children in detention cannot attend school
[158] Unless the children are detained with their parents

HU	√[159]	√[159]	√ (emergency)	√ (emergency)	√[160]	√[160]	√	√[161]
IC	√	√	√	√	√	√	√	x
IE	√	√	√	√	√	√	√	√
IT	√	√	√	√	√	√	√	√
LI	√	√	√	√	√	√	√	√
LT	√[162]	√[162]	√	√	√	√	√	√
LU	√	√	√	√	√	√	√	√[163]
LV	√[159]	√[159]	√[153]	√[153]	√	√	√	√
MT[164]	√[165]	√[166]	√	√	√	√	√	√
NL[167]	√	√	√ (emergency)	√ (emergency)	√	√	√	x
NO	√[168]	√[168]	√	√	√[169]	√[169]	√	x[150]
PL	√[170]	√[170]	√	√	√	√	√	√[161]
PT	√	√	√	√	√	√	√	√
RO	x[171]	x[171]	√	√	√	√[172]	x	x
SE	√	√	√	√	√	√	√	√
SI	√[173]	√	√ (emergency)	√ (emergency)	√	√	x	x
SK	√	√[174]	√	√ (emergency)	√	√[172]	√[150]	x
UK	√	√	√	√	√	√	√	x[150]

[159] Rare in practice
[160] Depending on what is available in the accommodation centres
[161] Unless they are detained
[162] Not mandatory, not always possible in practice
[163] In practice, there are some cases where families had to move
[164] No children was ever returned from Malta and there is no policy on these elements
[165] Access to education will not be possible in detention
[166] Access to education will not be possible in detention
[167] The access to services depend on the place of stay: reception centre, private housing, detention centre
[168] Not always possible in practice, especially for children older than 15
[169] Can be limited in practice
[170] Access to education is not always possible in practice and not possible for children in detention.
[171] Possible in the legislation, but not applied in practice
[172] Limited in detention
[173] In practice, they rarely attend school, because of quick removal procedure
[174] Not guaranteed for children above 15 in the detention centre. Children under 15 will be allowed to access education if they are detained for more than 3 months

Family unity

Generally the principle of family unity is maintained during the pre-return phase. The exception to this rule tends to revolve around detention. Where it is deemed necessary to use detention to aid removal there are examples where only one family member, usually the children's father will be detained. As examples:

- In **Austria, Finland, Germany, the Netherlands, Romania, Spain and Switzerland** there are instances where the father may be detained whilst mother and children are subject to more lenient measures.
- In **Italy**, **Sweden**[175] and the **United Kingdom**[176] maintenance of family unity may be restricted by the detention of the parents alone.
- Families in **Belgium** have been separated where parents were involved in criminal activities.

In both **Bulgaria**[177] and **France** stakeholders noted that family unity is maintained but often by detaining the whole family. In **France** the child's right not to be separated from their parents (as outlined in Article 9 of the CRC) is relied on in decisions to detain children with their parents. [178] There is a specific reference in **Estonian** legislation that even when family unity cannot be maintained children within a family should stay together.

Detention is addressed more fully below.

Accommodation

It is rare for children to have to move accommodation during this period of the return procedure other than at the very end of the procedure immediately prior to return when they may be moved to a removal centre – this is discussed more fully in the section on detention below. However it is noted that:

- In **Austria** rejected asylum seekers usually stay in accommodation centres but sometimes have to leave and stay with friends, family or NGOs. Homelessness and poverty can thus be a problem in some provinces where assistance is provided by NGOs.[179]
- In **Denmark** families and unaccompanied children who do not cooperate with the authorities regarding return can be made subjects of relocation orders and moved to special departure centres.

Unaccompanied children

- **Poland** has a system for identifying victims of trafficking and although this was predominantly developed with adults in mind, in recent years some work has been initiated which focus on

[175] Interview with the Police authority of Skåne, C I D, Border Police Unit, Malmö, April 2011.
[176] Interview with Bail for Immigration Detainees, March 2011
[177] Legal Clinic for Refugees and Immigrants, April 2011
[178] National Contact Point research
[179] Interview with Human Rights Council, April 2011

children's needs. Currently an NGO, La Strada, commissioned by the Ministry of the Interior and Administration, runs the National Consulting and Intervention Centre for the Victims of Trafficking in cooperation with other actors. La Strada staff are trained to work with victims of trafficking and they identify children who may wish to return voluntarily and organise their return. In two cases La Strada staff were appointed as legal representatives of the child. They endeavoured to place the children in childcare institutions where the staff had experience working with victims of trafficking within Poland. In addition, they provided translation, intercultural mediation, and ensured the best interests of the child while return was organised. They also covered the related medical expenses and, in one case, provided an escort to the country of origin. The centre is currently a pilot project, covering 4 administrative regions but there are plans to extend its coverage to the whole territory of Poland. Participation in the program is conditional on the child's agreement to cooperate with the police – they are allowed up to 3 months in which to consider their decision and if they still do not agree to cooperate they cannot avail themselves of support from the program. Although open to children of all nationalities, to date those participating in the program have exclusively been children from within the EU (Bulgaria and Romania). None of these children returned to childcare institutions. In Bulgaria a local NGO cooperates with La Strada and provides post return assistance.

- From 2003, to May 2011, all unaccompanied children between 14 and 18 were accommodated in a dedicated centre in **Hungary,** run by the Hungarian Interchurch Aid. Since May, unaccompanied children are hosted in a mainstream child care system's institution.[180] The running of this centre was granted to Károlyi István Childrens' Centre, an organisation with approximately 50 years of mainstream childcare experience but a stakeholder outlines that they have no experience of working with unaccompanied children in migration.

Children in families

- In **Luxembourg** some families have been moved to a different home after some time (several months or more) following the return decision possibly to aid compliance with the return decision.[181]

It should also be noted that there are several countries where reception and accommodation for irregularly staying third country nationals, including families with children and unaccompanied children, are insufficient even when the persons are known to the authorities and subject to a return procedure.

[180] Interview with Hungarian Interchurch Aid, March 2011
[181] Caritas, interview April 2011

Access to education

Practice across the Member States is very consistent regarding children accessing education, in that restrictions are minimal. Where children have to change accommodation (see above) it is likely that their education will be disrupted and when placed in a centre immediately prior to removal access to education is not available. Other examples are as follows:

- In **Germany** children can attend school up until the point of departure. However some reception centres are located in remote areas and it is thus not possible for children to attend school when in these placements. Similarly where children are held in special detention facilities to aid their removal there is no access to education.[182]
- In **Greece**[183] and **Malta**[184] many children are held in detention centres where access to schooling is not available.
- For children placed in the family reception centre in Debrecen, **Hungary,** a stakeholder noted that only the local school in the area that covers the reception centre allows children to study and this is for a maximum 2 hours per day and only for those with previous school attendance.
- In **Latvia** if a child has not started school before a return decision is issued they do not attend school during the departure period.[185]
- Children can be held in detention in **Slovakia** (as part of the removal process) for up to 3 months without being provided with education. After this period, children under 15 must be provided with education. However there is currently a project running in which a teacher from an NGO visits the detention centre and provides teaching to the children regardless of how long they have been in detention.

Access to sport and leisure services is typically not specifically impeded by a return decision, though restrictions may apply if children are detained. It was noted in **Belgium**[186]**, Czech Republic, Germany**[187] and **the Netherlands**[188] that there may be problems associated with the distance children need to travel to access facilities – libraries in particular were mentioned and some sports clubs may refuse to enrol children for only a few weeks or months. In **Luxembourg** children (and adults) are only allowed to consult books on library premises[189], but not to borrow them. In some countries, specific services are made available to children who are subject to a return procedure. For example, in **Denmark** children are offered a range of activities at Danish Red Cross centres where they live. Employees of the Danish Red Cross centres aim to establish daily meaningful social activities for children, which typically take place in the afternoon after normal school hours. During holidays, extra staff are on duty at the centres. In addition the Danish Red Cross have projects which aim to

[182] Interview with Lower Saxony Refugee Council, February 2011
[183] Interview with Children's Rights Division of the Ombudsman's Office, April 2011
[184] Interview with Jesuit Refugee Serivce, March 2011
[185] Interview, The Ministry of Interior, The State Border Guard, February 2011
[186] Interviews with the Foreigners Office, Jesuit Refugee Service and CIRE, March 2011
[187] Interview with Lower Saxony Refugee Council, February 2011
[188] Interview with NIDOS, May 2011
[189] Interview with Caritas April 2011

integrate asylum seeking children into activities in the local communities such as sports, dance, music and/or other creative activities.[190]

Access to health care

Access to emergency and essential health care is generally not restricted by Member States during the pre-return phase. A number of particular situations can be noted as follows:

- In **Belgium** all non-essential care is excluded unless it is paid for.[191]
- In **Latvia** everyone who is in a reception or detention centre is entitled to emergency and preventative healthcare.[192] In general those not living in such facilities but who have claimed asylum are entitled to emergency and primary healthcare and can continue to receive this if they apply for voluntary return. Medical assistance is also provided to children at the childcare centres and orphanages.[193]
- After the voluntary departure period has lapsed, rejected asylum seekers or other foreigners staying illegally in **Liechtenstein** are only entitled to emergency heath assistance.[194]
- In **Luxembourg** children are entitled to receive health care and officially, there are no known restrictions, but preventative health care is subjected to conditions of agreement by social security services and non essential treatment such as dental braces are difficult to access. Unaccompanied children are entitled to state care at all times.
- In **the Netherlands** children are entitled to receive basic healthcare. A stakeholder commented that this is quite well arranged in theory but due to huge information gaps in practice it is difficult for children to get health care. Medical facilities are not good for youngsters who are not in reception as they are not readily accessible. Often young people and their carers are not really aware of the possibility of medical care and facilities. Unaccompanied children have the support of their NIDOS guardian to assist them in accessing healthcare services.

Unaccompanied children

- Unaccompanied children in the **Czech Republic** placed in the children's home of the Education Ministry have the same access to health care as Czech citizens. Other children, including children in families prior to return, have access only to emergency health care in case of an accident or a serious illness or injury.[195] Children in detention have access to medical care.[196]
- Unaccompanied children in **Germany** who are under the care of Youth Welfare Offices receive health care equivalent to German children. Children in families subject to a return

[190] Information exchange with the Danish Red Cross
[191] Interview with the Foreigners Office, March 2011
[192] The Ministry of Interior, The State Border Guard, February 2011
[193] The Ministry of Interior, The State Border Guard, February 2011
[194] Interview with Refugee Aid Liechtenstein
[195] Interview with Refugee Facilities Administration of the Interior Ministry
[196] Telephone communication with the Aliens Police

decision as a general rule receive only emergency health care according to the Asylum Seekers' Benefits Act, which includes treatment of acute illnesses and pain. In detention government representatives state that access to health care is unlimited,[197] however NGOs state that only emergency treatment is available.[198]

- In **Slovakia** unaccompanied children placed in the foster home have unlimited access to medical services during their whole stay.[199] More generally the State shall ensure adequate health care to child asylum seekers, who are victims of abuse, neglect, exploitation, torture or a cruel, inhuman and degrading treatment, or who have suffered from the consequences of armed conflict.

Preparation to return

Some Member States have introduced programmes to prepare migrants and asylum seekers to return. It may include training for staff working in reception centre to address the question of a potential return.

- Increasing the numbers of people who return, both voluntarily and through forced return, is a priority for the **Norwegian** government.[200] There are several initiatives available in Norway to motivate individuals and families to return after a rejected application. There is a strong focus in work done in the reception centres towards preparing and motivating people to think of a return process, using the concept of 'homeland'. Every centre is obliged to have one position dedicated to work with return issues. There are different training modules available. The Directorate of Immigration offers courses in "motivational conversation" in each region of Norway. In 2011 there were 8 seminars planned. In addition there is an annual gathering for staff working with return issues. These seminars and courses are not mandatory for all and it is mostly up to the administration at the reception centres to decide how many participants they can send. Various methods of communication, including the development of information films in a range of languages are being prepared to provide relevant information to children. In addition children are encouraged to speak their mother tongue and take part in cultural activities pertaining to their country of origin. This is with the aim of fostering a stronger link with the child's country of origin, which will make it easier for them to adapt and reintegrate upon their return.[201]
- In **Belgium,** families staying within the return houses (see below, alternatives to detention), meet regularly with return coaches, whose role is to prepare them for the return and to provide them information.

[197] Interview with Ministry of Interior, Lower Saxony, March 2011
[198] Interview with Diakonie Mainz-Bingen and Lower Saxony Refugee Council, February 2011
[199] Interview with Office of Labour, Social Affairs and Family in Trencin, March 2011
[200] Interview with Norwegian Ministry of Justice, Immigration Unit, April 2011
[201] Interview with the Norwegian Directorate of Immigration, Child protection Unit, April 2011

4.2.4 Promotion of the rights of children in detention

Table 12. Detention

	Detention		Maximum detention length	Family unity in detention	Special conditions of detention	Alternatives to detention	
	UAC[202]	Children in Families				UAC	Children in Families
AT	√ (>14 y.o.)	√	2 months[203]	Children detained with their parent(s) [204] or only the father is detained	Children under 16 only in appropriate facilities Specific units for families	√[205]	√[206]
BE	x [207]	x [208]	-	-	-	-	√[209]
BG	√[210]	√	3 months for UAC, 18 months for children in families.	Families detained together	UAC and families are held in specific rooms	√[211]	√[211]
CH	√[212] (>15 y.o.)	√[213]	6 months[214]	Children detained with their parent(s) or only the father is detained[215]	No specific facilities for UAC	√[216]	√[216]
CY	x [217]	√	Over 36 months	Father usually detained[218]	UAC sometimes detained with adults	√	x
CZ	√ (> 15 y.o.)	√	3 months	Children detained with their close parent or caregiver	Separated units or facilities	x	√[219]
DE	√[210] (> 16 y.o.)	√ (> 16 y.o.)	18 months[220]	Father can be detained without the rest of the family	Same as adults	√[221]	√[221]

[202] UAC in this table stands for "unaccompanied children"
[203] Maximum 10 months within 2 years. For UACs, maximum 24 hours that can be extended once for 24 hours
[204] The parents can decide whether they want their children under 14 years old to be detained with them or be accommodated by the State Welfare authorities outside the detention centre. A detention centre for families is being established near Vienna
[205] Specialised facilities within the welfare system or reporting duty
[206] Accommodation in specified premises or reporting duty
[207] UAC are not subject to forced return. Except at the borders (maximum 6 working days) and when the age is disputed
[208] Detention of families with children was suspended after a decision from the European Court of Human Rights (Muskhadzhiyeva v Belgium, application no 41442/07) ruling that the conditions of detention were unacceptable. Nevertheless there is no legal prohibition of detention of children in families
[209] Accommodation in specified premises with regulated freedom of movement
[210] Few cases in practice
[211] Reporting obligation
[212] Only in some provinces (cantons)
[213] Children younger than 3 are usually detained with their mother, older children are rarely detained.
[214] The detention length of 6 months can be extended for another 6 months for young people between 16 and 18 and another 12 months for adults
[215] Very few cases of children detained with their parents
[216] Restriction of the freedom of movement
[217] However some cases of detention of UAC have been reported
[218] Stakeholders report two cases of single mothers being detained and their children accommodated elsewhwere
[219] Reporting duty or financial bail
[220] Each Federal state rules can decide on the maximum length of detention of minors. In most states, minors are not detained more than 3 months
[221] Residence restriction to one province (lander)

	Detention		Maximum detention length	Family unity in detention	Special conditions of detention	Alternatives to detention	
	UAC[202]	Children in Families				UAC	Children in Families
DK	√[210] (>14 y.o.)	√	Indefinite[222]	Families detained together or only the father is detained.[223]	Special unit for families	√[224]	√[224]
EE	√	√	18 months	Families detained together	UAC are separated from adults unless it is not in the child's best interests	√[225]	√[226]
EL	√ (>12 y.o.)	√	6 months[227]	Families detained together or separately[228]	Children can be detained with adults	x[229]	x[229]
ES	x	√[229]	60 days	One of the parents can be detained without the rest of the family	Special units for families	√	√[211]
FI	√	√	6 months[230]	Children detained with their parent(s) or only the father is detained	Specific rooms for women and children	√[231]	√
FR	x[232]	√	45 days	Families detained together	Specific family units	√	√ 216
HU	x	√[233]	30 days	Families detained together	Separate rooms	x	√[234]
IC	√	√	Short period	-	Children might be detained with adults	√	x
IE	x	x	8 weeks	-	-	-	-
IT	x	√[210]	18 months	Children detained[235] with their parent(s) or only the parents are detained	Separate rooms	-	√[236]
LI	x[229] (>15 y.o.)	√[237] (>15 y.o.)	9 months[238]	-	-	√	√
LT	√	√	Indefinite	Families not detained together[239].	No separate units	√[240]	√[241]

[222] Up to 4 weeks at a time
[223] Individual assessments are carried out for each families. Generally only the father is detained. In some cases, the mother alone or both parents may be detained.
[224] Confiscation of passport, financial bail, residence restriction, reporting duty, electronic monitoring
[225] Accommodated in childcare facilities
[226] Restriction of residence and reporting duties
[227] The period of detention may be prolonged for a limited amount of time that does not exceed 12 months
[228] Mothers are detained with their daughters and younger sons. Older sons ware detained with their fathers
[229] Possible in the legislation, hardly or not applied in practice.
[230] In practice it rarely exceeds 3 months
[231] A social worker in charge of child protection must give a prior approval for the detention of a child. The alternative to detention is to place the child under state's custody.
[232] Except in transit zones, where children above 13 are systematically detained
[233] If they have crossed the border illegally, or have attempted to do so
[234] Accommodation in a centre specified by the authorities
[235] Parents in detention may "request" to have their children detained with them or it may be decided by a juvenile court
[236] Confiscation of passport, residence restriction or reporting duty
[237] At last resort and with an obligation to take alternatives to detention into consideration
[238] 6 months for children between 15 and 18 years old.

	Detention		Maximum detention length	Family unity in detention	Special conditions of detention	Alternatives to detention	
	UAC[202]	Children in Families				UAC	Children in Families
LU	x[229] (>14 y.o.)	✓	72 hours	Families held together	Separate units	x	x
LV	√ (>14 y.o.)	√	18 months	Parents in detention may request to have their children detained with them	Special units for UAC and families	x[242]	x
MT	x[243]	x[243]	-	-	-	√[234]	√[234]
NL	√ (>12 y.o.)	√	14 days	Children detained with their parent(s) or only the mother is detained	Juvenile justice centres for UACs; special units for families	√[244]	√[234]
NO	√[210] (>15 y.o.)	√	12 weeks	Families detained together[245]	Special units for UAC and families	√	√
PL	√[246]	√	1 year[247]	Families detained together when possible or only the father is detained	UAC separated from adults	√[248]	x[229]
PT	x	√	60 days	Children detained with their mother or with both parents if possible	x	x	√
RO	x	√	6 months	Children detained with their parent(s) or only the father is detained	-	√[248]	x
SE	√[210]	√	6 days	Children detained with their parent(s) or only the parents are detained	Separated rooms if possible	√[236]	√[236]
SI	√	√	12 months[249]	Families detained together	Special units for UAC and families[250]	x[229]	√[226]
SK	x	√	6 months	Families detained together	Separated rooms	x	x[251]
UK	x[210]	√[252]	1 day for UAC, up to a number of weeks for families	Children detained with their parent(s) or only the parents are detained	Separated from adults	x	√[209]

[239] Boys above 14 are held with their father, boys below 14 and girls are held with their mother
[240] Children can be placed under the care of a guardian or care agency
[241] Reporting duties or accommodation in an open reception centre
[242] Children under 14 years old are accommodated in child care centres
[243] Possible during the age assessment and health check
[244] Reporting, freedom of movement restriction
[245] Children under 15 may be held in the same room as their parents or separately
[246] Detention is possible when the child has an irregular status but it is rare
[247] One person may be detained more than once
[248] Placement in a care centre
[249] In practice, most of the UAC were detained for less than one month and exceptionally up to three months
[250] Families are detained in units dedicated to vulnerable groups
[251] Proposed new legislation (January 2011) will introduce reporting alternatives and bail payments as alternatives to detention
[252] A new system is being implemented: families will be held in “pre- departure accommodation” up to 7 days

Family unity in detention

In general, where children are detained as part of a family they remain with their parents. If family groups are split up children remain with at least one parent. This is usually with their mother, although in **Lithuania** boys over 14 years old would be placed with their fathers. This practice is based on the view that it is in the child's best interests to remain with their parent(s) even if this is in a detention setting rather than to be separated from their parents and placed in alternative care away from the detention centre. However Member States typically do not have a formal procedure or criteria by which to make an assessment of the child's best interests in such situations. The starting point generally appears to be that the parents will be detained and thus the best interests' assessment is limited to considering whether to place children in detention with their parents or to separate them from their parents.

In **Finland** before any child can be detained a social worker must approve the decision based on the best interests of the child.[253] Approval is usually given in line with the principle of family unity and the assumption that it is better for a child to remain with their family in a detention setting rather than be separated from them. Where there are grounds to suspect that the child's health or mental health is deteriorating, or the mental health of the child's carers are deteriorating to the extent that this is impacting on the child, a social worker, lawyer or any other professional can submit a child welfare notification with the purpose of removing the child from the detention facility and placing them in alternative accommodation.

Detention of unaccompanied children

Many Member States do not detain unaccompanied children, though some do. In some Member States it is prohibited by law and in some Member States it is possible under law but not done, or rarely done, in practice. See the spreadsheet above for a more detailed list, but for example unaccompanied children can be detained in **Estonia**[254], **Greece, Malta, the Netherlands** (above 12 years old), **Norway, Poland, Slovenia** and **Sweden**[255] (only on exceptional grounds). Some Member States, for example, **Hungary, Italy** and **Ireland,** have provisions in their legislation specifically prohibiting detention of children prior to return. In addition, unaccompanied children are not detained in **Belgium, Czech Republic** (unless they are over 14 years old), **France** (unless at transit zones), **Portugal, Slovakia** and the **United Kingdom**. However it is important to consider the issue of age disputes and assessment when considering the detention of unaccompanied children. Stakeholders suggested that this was a significant issue because unaccompanied children may be detained if the authorities treat them as adults. Specific references on the matter of detention prior to age assessment were made by stakeholders regarding **Belgium, France, Malta** and the **United Kingdom**.

[253] Interview with Refugee Advice Centre
[254] Though stakeholders report that this has happen only in one case in recent years, a 17 years old detained for less than 48h in 2010
[255] Interview with the Police authority of Skåne, CID, Border Police Unit, Malmö, April 2011

Alternative to detention of families

Since October 2008, families with children who are required to leave **Belgium** are no longer held in closed detention centres, but are placed in individual open housing units, called "return-houses". Family members are allowed to exit the house and children are allowed to attend school, even though this is sometimes difficult in practice (due to lack of available places in schools). Families have access to health care in addition to an obligation to a medical check when entering the return-houses and to a "fit-to fly" examination before return. Family unity is maintained even when a child turns 18. Within the return houses, families receive counselling from a return-coach, who works for the Foreigners office. The coach's role is to prepare families for return whilst exploring the possibilities of them receiving a residence permit and supporting them in their current situation. They provide families with information and coordinate the involvement of other actors working with the family. NGOs have regular access to monitor the programme in the houses. In December 2009, 10 NGOs and the Belgian National Committee of UNICEF published a report on the implementation of the return-houses in which they expressed favourable views on this alternative to detention, calling for it to be strengthened and durable.

Length of the period of detention

Most Member States have a maximum period of detention that reflects the Return Directive with a maximum period, including all possible extensions, of 18 months. Some exceptions include **Bulgaria** and the **Czech Republic** where detention of unaccompanied children (over 14 years) is for a maximum of 90 days, **France** where the maximum period is 45 days, and **Germany** where in practice children are not detained beyond a 3 month period (though it can legally be extended to the 18 month maximum). In **the Netherlands** the period of detention for children, both within families and those who are unaccompanied, has recently been restricted to 14 days. In **Norway** the maximum period of detention is 12 weeks according to national legislation. This also applies to unaccompanied children as no separate maximum limit has been set for this group. However the Immigration Police state that they only detain unaccompanied children in exceptional cases. [256] In **Sweden**, the legislation provides that unaccompanied children cannot be detained for more than 3 days, renewable once; in practice they are hardly detained.[257] Although there is no statutory limit regarding the length of detention, in the **United Kingdom** the border agency requires a review to take place as soon as a child has been detained for 24 hours.

Provision of health services in detention

The situation in relation to the provision of health services to children in detention was also relatively consistent among the Member States and access to emergency health care and primary care is

[256] Interview with Norwegian Immgration Police, April 2011
[257] Interview with the Police authority of Skåne, C I D, Border Police Unit, Malmö, April 2011

generally provided to children in detention. For example, a nurse is present at the **Estonian** detention centre and additional health care can be organized as necessary.[258] A new 'guarded shelter' has recently opened in **Hungary**[259] and it is stated that medical assistance, covering emergency and primary healthcare, will be available and provided on-site. Access to other medical services will also be obtained if necessary and prescribed by a doctor. During the return process, children at the Aïda detention centre[260] in **Luxembourg** undergo a medical assessment to check their fitness to fly.[261] If needed, medical treatment is provided, including specialist treatment. There are no limitations on healthcare provisions for children in detention centres in **Poland** and a doctor is available on-site. There is unrestricted access to health care in **Romania,** and children have access to free medical services.[262] In **Slovakia**, families with children in detention are entitled to health care provided by a doctor and nurse in the detention centre. If health care is required that cannot be provided in the centre the police department will secure appropriate care in a medical establishment outside of the facility.[263]

However stakeholders also pointed out some gaps in the provision of healthcare to children in detention. These include:

- In **France** the medical practitioners working in the detention centres are not trained in paediatrics.[264]
- Stakeholders in **Italy** report that many detention centres do not have adequate facilities to guarantee children's rights to appropriate health care.
- In **Lithuania** access to basic medical care is ensured through the detention centre[265] but there are reports that this is inadequate at times.
- Whilst children are in detention in **Switzerland** health care is limited to emergency treatment.[266]

Provision of education

Generally the provision of education to children held in detention centres in the Member States is limited or not available at all. In the **Czech Republic** both children in families and unaccompanied children in detention must be accepted at the nearest primary school and the detention centre has to provide transport to and from the school. In addition, tutoring after classes is provided inside the detention centre by the Refugee Facilities Administration. This is similar to the situation in **Latvia** where education and leisure activities that are linked to education are provided externally and thus

[258] Interview with the Policy and Border Guard Board Citizenship and Migration Bureau, April 2011
[259] Interview with the National Police, Law Enforcement Directorate, Aliens Policing Unit, March 2011
[260] The AIDA centre has been closed since the writing of this report of this report and a new detention centre with a family unit was opened mid September 2011
[261] Interview with Director of the detention centre, April 2011
[262] Interview with Romanian Immigration Office and Jesuit Refugee Service Romania, March 2011
[263] Interview with the Bureau of the Border and Alien Police, Bratislava
[264] Interview with Ordre de Malte, April 2011
[265] Interview with the State Border Guard Service, Foreigners' Registration Centre, April 2011
[266] Interview with Central Office for Unaccompanied Children, Canton Zurich, April 2011

children tend to attend mainstream schools.[267] However, in contrast, and by way of examples, education to children is not provided to children in **French, Romanian** or **Swiss** detention centres and children do not receive this off-site. Italian stakeholders state that there are inadequate facilities for children to be educated within detention centres in **Italy.**[268] **Norwegian** immigration authorities state that children in detention have the right to education, however because children are, in most cases, only detained for a very short period of time, access to education is not often realised.[269]

Conditions within detention centres

Conditions within detention centres for unaccompanied children or families with children are variable. To follow are examples illustrating these different situations:

- In **Bulgarian** detention centres families have to share common rooms, though not bedrooms, with other detainees. The NGO, JRS, reported that many children have complained about the inadequate medical care provided in the detention centre: detainees often complain that they are given painkillers, regardless of their particular problem, which may be due to a lack of interpreters. Doctors in the centre are not there permanently but rotate every month, which makes it difficult to treat long-term illnesses. Families have complained about the lack of food suitable for young children. There is no Internet or library access and only limited opportunities for leisure activities.[270]
- In **Cyprus,** some stakeholders reported that children are regularly held in closed centres and are not separated from adults. Whilst the principle of family unity means that children are detained with their parents there is a lack of separate family accommodation. The personnel are not trained in recognising vulnerable persons and the specific needs of vulnerable persons such as children are not taken into account.
- In the detention centre in **Estonia**, men and women are accommodated in separate rooms and floors. However, if possible, family members are accommodated together in separate family rooms. Children are accommodated separately from adults, unless it is in clear that their rights and interests are better served by being accommodated with their parents. In practice, there have been very few cases of detaining either unaccompanied children or children with families in the country. Nevertheless there are toys for small children and it is planned to make the family room more child-friendly in 2012.[271]
- In **Finland** there is a separate section for women and children, where the rooms are located, but social areas are mixed with other residents which means in practice a mixed group of foreign nationals, which can also include people who are facing removal because they have committed crimes, can be held together with children.[272]

[267] The Ministry of Interior, The State Boarder Guard, February 2011
[268] See also JRS, *Becoming Vulnerable in Detention,* 2010
[269] Interview with Norwegian Immigration Police, April 2011
[270] JRS, *Becoming Vulnerable in Detention,* 2010
[271] Interview with the Policy and Border Guard Board Citizenship and Migration Bureau, April 2011
[272] Interview with Refugee Advice Centre

- Families are detained in specific areas within 12 detention centres in **France**. There are family rooms, a yard with a playground reserved for families. No occupation is scheduled during the day for children. There is no schooling in detention.[273]
- In **Greece**, conditions in detention centres vary between different establishments and locations. A Human Rights Watch report published in 2011 stated that on several occasions, unaccompanied children were found detained along with adults in the Aegean islands in appalling conditions.[274] A common feature of Greek detention centres is that they are overcrowded and understaffed.
- In **Hungary** families were placed in a detention centre where the conditions were reported by stakeholders to be basic though each family has their own room with toilet facilities inside. Since May 2011, families have been moved to a facility, which was previously a closed reception centre. It has been reconstructed and will be a 'guarded shelter' operated by the Police. The conditions should improve: they include separate rooms for families, a common area for dining, space for recreational purposes which are adequate for children's leisure and sufficient space for outdoor activities. An NGO, Menedek provides social, sporting, recreational and leisure activities within the detention facility as well as counselling.[275]
- Stakeholders in **Lithuania** have documented various complaints about the situation in detention including poor conditions, buildings badly in need of renovation, damaged equipment, cold, dampness, poor ventilation, harsh treatment from the wardens and a lack of activities. Access to basic medical care is ensured through the centre but reports have found it to be inadequate at times. Families do not stay together in the Foreigners Reception Centre; boys above 14 are accommodated with their father while boys below 14 and girls stay with their mother. Children are allowed to visit the other parent and can take part in activities taking place in the non-secure section of the centre and attend school.[276]
- **Malta's** detention centres have come under severe criticism from several actors, including UNHCR, Human Rights Commissioner of the Council of Europe, UN Special Rapporteur and local and international NGOs. Criticism is directed at the physical conditions, access to fresh air, quality of food, lack of social welfare staff, possible violence, arbitrariness of the duration of detention and the detention of unaccompanied children with adults.[277]
- Children in detention in **the Netherlands** have limited opportunities to engage in activities and education. There are only English courses and lessons preparing the child for return and these lessons are at the detention centres. They do have access to medical services.[278]

[273] Interview with Ordre de Malte, April 2011
[274] Human Rights Watch, *The EU's Dirty Hands: Frontex Involvement in Ill-Treatment of Migrant Detainees in Greece*, 2011
[275] Interview with the National Police, Law Enforcement Directorate, Aliens Policing Unit, March 2011 and with other stakeholders, March 2011
[276] Interview with the State Border Guard Service, Foreigners' Registration Centre, April 2011
[277] JRS, *Becoming Vulnerable in Detention : Malta national report*, July 2010; *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Malta from 23 to 25 March 2011*; '*Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 26 May 2008*', 2011
[278] Interviews with Defence for Children International (Netherlands) and NIDOS

- In **Portugal** at the Porto detention centre where families are detained, children share accommodation with their mothers though they get to see their fathers during the day. A games room has been set up for these children and activities are organized outside of the centre. Full access to health care, access to education and children's leisure are guaranteed.
- All children with families who are detained in **Slovakia** are detained in the centre in Sečovce. Families are accommodated in a separated sector where children have access to a playground and a special playroom for children. A special nutritional regime is also provided. A teacher, psychologist and social worker located within the NGO sector provide assistance and education.[279]
- In **Sweden** where a family is detained they are placed in special rooms that are bigger and there are toys for the children. These rooms offer more privacy. If an unaccompanied child is detained, staff at the detention unit provide them with accommodation in rooms separate from adults. They do, however, share common rooms with adults.[280]

[279] Interview with the Bureau of the Border and Alien Police, Bratislava, March 2011
[280] Interview with the Police authority of Skåne, CID, Border Police Unit, Malmö, April 2011

4.2.5 Return and post return phase

Table 13. Escort and transfer of care arrangements for unaccompanied children

	Unaccompanied children escorted	Formal arrangements for the transfer of custodial care
AT	√ (police officer)	√
BE	√[281] (IOM, guardian, person of trust or administration staff)	√
BG	-	-
CH	√ (IOM, for AVR)	√
CY	x[282]	-
CZ	-	-
DE	x[283]	x
DK	√ (police officer or guardian)	x
EE	√[281] (border guard or guardian)	x
EL	√ (police officer)	x
ES	√ (social worker or police)[284]	x[285]
FI	√ (police officer)	x
FR	√ (by administration staff in AVR)	x
HU	√ (IOM)	x
IC	-	-
IE	√ (social worker)	x
IT	√ (IOM)	√
LI	x[286]	x
LT	√[287]	x
LU	√[288] (social worker or guardian)	√
LV	√ (IOM)	√
MT	x[289]	x
NL	√ (IOM or guardian)[290]	√
NO	√[281] (IOM, social worker or guardian)	√
PL	√[291] (IOM, guardian or border guard)	√ (for AVR)
PT	√[292] (IOM or guardian)	√ (for AVR)
RO	√ (authorities or NGO representative)	√
SE	√ (police officer or guardian)	√
SI	√ (guardian or NGO)	√
SK	√ (IOM or guardian)	√
UK	√	√

[281] Systematic for children under 16, for older children, upon assessment
[282] This has not happened in practice
[283] Child may be accompanied by a social worker or their guardian, but it is not systematic or required
[284] Children able to travel on their own are not escorted
[285] Children have to be received by competent authorities but no other formal safeguards are in place
[286] Possible if required
[287] In practice, they are only escorted by a border guard to the border
[288] Systematic for children under 15
[289] There is no guidance or practice but escorts have not been provided
[290] It is rare for a guardian to escort a child. IOM may escort depending on the age or other circumstances of the child
[291] IOM escorts children younger than 17.5, together with an NGO representative
[292] Systematic for young children

In most cases, it is difficult to assess how "formal" the process for the transfer of care is. Authorities from the sending and return countries usually liaise with each other to make the arrangements for transfer. Generally a handover paper is signed transferring responsibility but it does not seem very rigid in practice. In most cases it is not specified if unaccompanied children are systematically escorted or if this is an option that is not always used in practice. So the information below is to be taken with a degree of caution.

Oversight of return processes and how returns are carried out in practice

The processes for returning children are rarely regulated or subject to judicial oversight.

- This was noted in **France** where there is no judicial oversight or review of the operational aspects of removal, for example, pre dawn forced removals and the impact these operations may have on children.[293]
- In **Germany** it is noted that forced returns are meant to be undertaken in a manner that is sensitive to the needs of children.[294] If children offer resistance policemen would carry them up into the airplane, but children are not handcuffed. Deportation observers are present at the airports in Frankfurt, Hamburg and Düsseldorf.
- There is no judicial oversight or review of operational aspects of removal in **Luxembourg.** The staff who perform these tasks are specifically trained to execute forced returns, but are not specialised in dealing with children. The authorities have a policy not to collect children from school when they are to be returned but they are usually taken from their lodgings at early hours and without warning. The police are in charge of removal and the execution of the forced return while the Red Cross acts as an independent observer in the case of returns by charter plane. Guidelines for the personnel involved in the execution of the return are fixed in a "Règlement grand-ducal" - a written convention between the State and the Red Cross concerning observation of forced returns, including returns of families with children.[295]
- The use of various methods by the police in **Norway** and **Sweden** to return families with children has been heavily criticised by the NGO sector in both countries. In particular the practice of dawn raids by the police where families with small children have been arrested, has been criticised as unnecessary and contrary to the principle of the best interests of the child.[296]
- For unaccompanied children in the **United Kingdom** the Border Agency caseworker is expected to liaise with the Children's Services and/or nominated guardian with responsibility for care of the child in the United Kingdom to ensure the removal is effected in the most sensitive manner possible The new 'Family Panels' will also advise UKBA on the enforced removal of families.

[293] Interview with France Terre d'Asile
[294] Interviews with Diakonie Mainz – Bingen and UNHCR, February 2011
[295] Interview with Luxembourg Red Cross, Ministry of Foreign Affairs, Direction of Immigration, April 2011
[296] Interview with project leader, Swedish Red Cross Project Network on Return, April 2011; interview with Norwegian Organisation for Asylum Seekers (NOAS), April 2011

Escorting children on their return journey

Some Member States offer to accompany unaccompanied children on their journey of return. Practice however varies when considering which actors undertake the function of the escort:

- IOM act as escorts either throughout the whole journey or at departure, arrival and transit points in a number of countries including, **Belgium** (for all children under 15, for older children following an assessment), **Hungary, Italy**, **Luxembourg** (IOM organize the escort though occasionally the task is designated to another agency),[297] in **Poland** (for children younger than 17.5 years old) and in **Switzerland** (for younger children).
- In other countries the role falls to representatives of the Immigration Service, Police or Border Guards. Examples include **Austria, Estonia**, **France, Poland, Portugal, Spain** (alongside a representative from the organization where the child has been living, see below), **Sweden, Romania** (in instances of forced return) and to an extent the **United Kingdom** where consideration of the need to escort the child rests with the Border Agency.
- Guardians also undertake the escort role in **Estonia** (alongside a plain clothed border guard, see above) if necessary for children under 16 years old,[298] **the Netherlands**, though this is very rare, **Norway** (for children under 16 years old) and **Portugal.**
- In **Romania** (for voluntary returns) escorts are from the NGO community[299] and in **Spain** a representative from where the child has been living acts as an escort (alongside the police, see above).[300]
- Although the services of an escort have never been required in **Liechtenstein** children would be accompanied by 'an adult' trained accordingly though who can act in this role is not defined.[301]

Transfer of custody and care for unaccompanied children

There is rarely a formal procedure for the transfer of care from the responsible agency in the returning country to the family, guardian or institution that will assume care for the child upon return. Processes can be different depending on whether return is forced or voluntary. However, in practice, contact is made with the person who will take responsibility for the child, whether in the short or long term, before the child is returned and an identified person will be on hand to assume care for the child or to effect transfer to the child's parents, nominated guardian or adequate reception facilities.. Some examples of practice:

[297] In practice no unaccompanied children have been returned from Luxembourg
[298] Interview with the Policy and Border Guard Board Citizenship and Migration Bureau and Ministry of Social Affairs, April 2011
[299] Interviews with Romanian Immigration office and Romanian National Council for Refugees, March 2011
[300] Interview with Public Prosecutor for Foreign Affairs, February 2011
[301] Interview with Immigration and Passport office, April 2011

- In **Austria** where the Youth Welfare Agency has supported unaccompanied children returning voluntarily the child is always transferred to the welfare authorities in country of return.[302] In some cases NGOs or semi-governmental organisations may be involved. Within assisted return programs run by the IOM, unaccompanied children are received on arrival by IOM staff before being transferred to their legal guardians in the country of origin, in most cases the child's parents. Identity checks to establish that the guardian is bona-fide are always undertaken. In cases where the family assessment led to the conclusion that the youth authority in the country of origin should be engaged in working with the child and their family, this authority is informed about the arrival of the child. Where children are being returned non-voluntarily, they are similarly transferred to their family or to the responsible child care authorities – from whom written consent is required. The police officer (escort) supervises this procedure and makes a note in the child's file.
- The procedure when a child is voluntarily returning from **Belgium** is that the child's parents are asked to come to the airport to receive the child, or to nominate someone else to meet the child. If the child lives far away from the airport, the child is escorted home by IOM. The parents have to sign the document given by the local IOM office, which serves as a 'handover notification' - this document outlines the end of IOM's role.[303] The guardian in Belgium will ask for this document to close the guardianship of the child.
- **German** stakeholders noted that, upon return, there are no formal arrangements or procedures for the transfer of care in relation to children and it is often unclear as to whom care can be transferred.[304] However in instances of forced return there needs to be a guarantee that the child will be met at the airport by a responsible person, for example a family member. Embassies or International Social Service are often requested to contact families or child welfare agencies so that the child can be met at the airport.
- In **Greece**, the Aliens department notifies the Greek Interpol which in turn notifies the Interpol unit in the country where the child is returning to that the child will be returning and quite often the child is simply handed over to Interpol. The lack of an established age assessment procedure results in the return of children to the country of transit prior to their entering Greece.
- When a child is returned voluntarily from **Italy** IOM staff are present in transit and destination airports to assist with care to the awaiting family.[305]

[302] Interview with Youth Welfare Agency Vienna (Drehscribe), April 2011
[303] Interview with IOM Belgium, March 2011
[304] Interviews with Ministry of Interior, Lower Saxony and UNHCR, March and February 2011
[305] Interview with IOM Italy, March 2011

Table 14. Post-return

	Post-return monitoring		Re-entry bans (length)		Reintegration support	
	UAC[306]	Children in families	UAC	Children in families	UAC	Children in families
AT	√ (≥ 6 m.)	√	18 months[307]	18 months[307]	√ (IOM, Caritas)	√ (IOM, Caritas)
BE	√ (AVR, ≤1 year)	√ (AVR, ≤1 year)	x	x	√ (IOM, Caritas)	√ (IOM, Caritas)
BG	x[308]	x[308]	5 years[309]	5 years[309]	√[308] (IOM, Caritas)	√[308] (IOM, Caritas)
CH	√ (AVR, ≤1 year)	√ (AVR, ≤1 year)	5 years	5 years	√ (IOM)	√ (IOM)
CY	√ (AVR)	x	N/A	N/A	x	x
CZ	√ (AVR)	√ (AVR)	2 to 10 years	3, 5 or 10 years	√ (IOM)	√ (IOM)
DE	√ (AVR)	√ (AVR)	2 to 10 years[310]	2 to 10 years	√ (IOM)	√ (IOM)
DK	√ (AVR)	√ (AVR)	2 to 5 years[311]	2 to 5 years[312]	√ (IOM)	√ (IOM)
EE	√ (AVR)	√ (AVR)	Up to 10 years[313]	Up to 10 years[313]	N/A	√ (IOM)
EL	x	x	Up to 5 years	Up to 5 years	x	x
ES	√ (AVR)	√ (AVR)	x	x	√ (NGOs)	√ (NGOs)
FI	x	x	√	√[314]	√ (IOM)	√ (IOM)
FR	x	x	x	x	√	√
HU	x	x	x	x[315]	x	x
IC	x	x	x	x	x	x
IE	√ (AVR)	√ (AVR)	x	x	√ (IOM)	√ (IOM)
IT	√ (AVR, ≥ 6 m.)	√ (AVR)	x	x	√ (IOM)	√ (IOM)
LI	x	x	√	√	x	x
LT	x	x	√	√	x	x
LU	√ (AVR, ≥ 6 m.)	√ (AVR, ≥ 6 m.)	x	√[314]	√ (IOM)	√ (IOM)
LV	√ (AVR, ≥ 6 m.)	√ (AVR, ≥ 6 m.)	x	x	√ (IOM)	√ (IOM)

[306] UAC in this table stands for “unaccompanied children”
[307] For all rejected asylum seekers. A “residence ban” up to 10 years may be imposed as well
[308] IOM and Caritas have recently started reintegration project that may apply to UAC and families with children. Those projects will include monitoring
[309] Up to 10 years in exceptional cases
[310] The immigration authorities may reduce the length of the ban after review of the case
[311] For children under 14, bans can be applied if they have committed an immigration offence or crime For children above 14, they can be applied if they did not comply with the return decision
[312] If a member of the family did not comply with the return decision or committed an immigration offence or crime
[313] For children above 13 - Interview with the Policy and Border Guard Board Citizenship and Migration Bureau, April 2011
[314] Children are imposed the same re-entry ban as their parents
[315] A re-entry ban of 1 to 10 years is provided in the law, but stakeholders did not know of it applying to family in practice

MT	x[316]	x[316]	x[317]	√[318]	x[316]	x[316]
NL	√ (AVR, ≤1 year)	x	x[319]	x[319]	√ (IOM)	√ (IOM)
NO	√ (AVR)	√ (AVR)	x	2 years to indefinite	√ (IOM)	√ (IOM)
PL	√ (AVR, ≥ 6 m.)	x	1 to 5 years	1 to 5 years	√ (IOM)	√ (IOM)
PT	√ (AVR)	x	x	x	x	x
RO	x	x	1 to 5 years[320]	x[317]	x	x
SE	√ (AVR)	√ (AVR)	2 years[321]	2 years[321]	x	x
SI	√ (AVR)[322]	√ (AVR)	x[323]	x[323]	x	x
SK	√[324]	x	x	1 to 5 years[325]	√ (IOM)	√ (IOM)
UK	√ (AVR)	√ (AVR)	x	x	√ (IOM, Refugee Action)	√ (IOM, Refugee Action)

Reintegration

As part of the study we engaged with a number of actors who provide reintegration projects. The following is based largely on the content of these discussions. Reintegration initiatives concerning children should comprise of two phases – a general orientation and awareness raising whilst the child is still within the Member State and an active reintegration plan that is delivered once the child arrives back in their country of origin.

Examples of practice include:

- IOM[326] reports that, where children are being returned from **Belgium,** IOM will, if appropriate, contribute to a specific plan designed by the child and approved by IOM to assist with reintegration. IOM Brussels always refers to the local office to analyse the feasibility of the plan, which would usually be built around the continuation of education or provision of training and the provision of psychological support. In the case of voluntary return for unaccompanied children, IOM co-operates with IOM missions, local NGOs and government organisations in different countries of origin to get information on the feasibility of return and appropriate reintegration services. Attention is also paid to family background, as family reunification is viewed as critical. An assessment is made about whether the family is willing and able to

[316] No case in practice
[317] Possible in the legislation, no case in practice
[318] The Principle Immigration Officer can refrain from imposing re-entry bans for humanitarian reasons
[319] Only if the child committed a crime
[320] Only for children above 14
[321] If a crime or violation of immigration law was committed
[322] In time of writing the report, this programme was offered only to adults, but it was orally agreed that it could be offered to UAC as well
[323] Possible in the legislation for children above 16 who committed a minor crime
[324] On a case by case basis
[325] Up to 10 years in case of threat to public and national security
[326] Interview with IOM Brussels, the 7th of March 2011

receive the child. Assessment in the country of origin is conducted by the local IOM office. In cases where family reunification is not possible, alternative organisations or adult carers should be identified.

- With respect to **Ireland** IOM and local partners in countries of origin provide reintegration assistance to unaccompanied children and to their carers or family or to families voluntarily returning. The assistance may involve helping the child to re-enter the local education system, or for the family to have some local support from an independent professional in order to assist the child's return to the family. The reintegration assistance is not a cash grant, but rather takes the form of in-kind assistance. IOM cooperate with local partners and will endeavour to carry out regular monitoring of the reintegration process by providing advice and counselling sessions and follow up visits where appropriate. IOM will also provide post-arrival information on the child's reintegration progress to the relevant referral agency and/or guardian in Ireland (upon request). No other bodies provide grants or financial incentives.[327]
- In **Italy** a reintegration plan is developed for each child who is returned. This is led by IOM and the plan lasts between 6 months and one year.[328]
- Since 2009, the IOM Office in **Latvia** provides re-integration support to returning families. In the cases of two Georgian families with children who were being returned, both families were provided with financial support for rent upon return and to assist their travel. IOM also identified accommodation for the family.[329]
- Children returning from **Luxembourg** first have an assessment of how the practical needs of the child will be met upon arrival in the country of return. This is made by IOM in the case of assisted voluntary returns. If they request it, families are provided with information before their return about the local education system, access to health care, the availability of medical treatments, job and training opportunities, the socio-economic context, through IOM staff in the country of return. No such assessment is made prior to forced returns.[330] In practice, most families access this type of information through their own contacts locally.[331]
- IOM provides some reintegration assistance to unaccompanied children being returned from **the Netherlands.** In cooperation with the colleagues in the country of origin they provide information on education, housing etc. With a reintegration grant which the unaccompanied child receives, they will be able to enrol in school or invest in another activity that is of importance for their reintegration and future in the country of origin. Families are involved in the decision making progress and part of the money can be used to improve the home of the family so that they can take care of the child, for example if an extra bed is needed etc. Since 2008, IOM offers additional support to (former) unaccompanied children through a targeted project.[332] It includes an in kind grant of 2500 euros per person, as well as tracing family and friends and assisting with accommodation.

[327] Interview with IOM Ireland, March 2011
[328] Interview with IOM Italy, March 2011
[329] Interview, IOM Riga Office, March 2011
[330] Interview with Caritas, Luxembourg Red Cross, Ministry of Foreign Affairs, Direction of Immigration, April 2011
[331] IOM, interview, April 2011
[332] Additional support for (former) unaccompanied minors http://www.iom-

- The **Swiss** Federal Office for Migration can exceptionally, and on request, grant return assistance to the family of an unaccompanied child in the country of return in order to assure that the family can actually support their child.[333]

Monitoring post return

Where IOM undertakes reintegration initiatives, they would also lead on monitoring how return is progressing for the child. This would usually take the form of visits to the child and their family perhaps every 3 or 6 months for a period of up to 6 months or one year though the monitoring may be reliant upon the child (and family) visiting IOM. In any event the purpose of the monitoring is often unclear as additional resources and support are generally not available if the return is not progressing well.

- All stakeholders from **Luxembourg** commented that monitoring of children's welfare does not take place following a forced return. When a return is assisted by IOM, the child's situation is monitored for 6 months after the return.[334] The local IOM mission maintains contact with the child and report to IOM staff in Luxembourg during and at the end of the 6 months' period.
- In **the Netherlands** stakeholders stated that there is no monitoring at all, which is a great cause for concern to them and they would recommend an extension of the Dutch based guardianship until it is known that the child is definitely safe and settled. In general IOM does not stay in touch with children after they return. If IOM has provided in kind support or money for a reintegration plan, some monitoring takes place. In such cases IOM remains in contact up to 12 months after return. The focus of the monitoring is the reintegration plan and the financial support that has been provided and not necessarily the well being of the child. IOM states it is not their responsibility to monitor, for instance, the development of the child and contact with family members. NGOs advocate for a monitoring mechanism for returned children.
- Stakeholders in **France**[335] commented that there are no mechanisms to monitor the child's welfare and reintegration process; and in **Germany**[336] there is no regular monitoring of reintegration. Similarly once a child has left **Iceland** there are no arrangements for ongoing monitoring.

Return to institutional care for unaccompanied children

Several national authorities in Member States have indicated that they do not exclude returning unaccompanied children to institutional care where it is not possible to reunite them with family but that in such circumstances they would need safeguards in place that ensure that the return was safe and that conditions in the centre were adequate. A number of countries reported that they have

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nederland.nl/english/Programmes/Return_Reintegration/Reintegration_Projects/Additional_support_for_former_unaccompanied_minors

[333] Interview with the Federal Office for Migration
[334] IOM, interview, April 2011
[335] Interview with French Office for Immigration and Integration (OFII), March 2011
[336] Interview with the Central Return Counseling Office, Northern Bavaria, March 2011

returned children to these kinds of settings. For example, In **Greece** children have returned to institutions in Albania.[337] One child was returned from **Latvia** to an orphanage in Russia.[338] In all these instances the children were returned to mainstream childcare institutions.

Some countries have developed or supported reception centres specifically intended to serve as adequate reception facilities for the purposes of promoting return. Others are also considering doing so.

As will be further described in the section on Morocco, the **Spanish** Government has financed the construction of a reception facility for separated and unaccompanied children in Morocco (though children have not yet returned to this facility.) There was also a project to build a similar facility in Senegal, which has not yet been completed. At present, it appears these centres are being used for other purposes or their construction has been halted, given that Moroccan children have not recently been subject to forced return from Spain.

The **Dutch** have developed an initiative to return unaccompanied children to reception facilities in Angola and the Congo which are funded or supported by the Dutch government. These facilities are located in the suburbs of Luanda and Kinshasa and have been supported specifically to provide reception conditions for the return of children from the Netherlands where no family has been identified.

The Dutch Government has indicated that it has plans to define the quality standards applicable to the centres, but the basic requirement will remain adequate reception. If a child were to be returned to a reception centre in their country of origin, their Dutch guardianship should end upon departure. A special departure supervisor would maintain contact with reception centres. The centres are run by NGOs. They also accommodate local children and function as a training institute for childcare within the region. Health care is guaranteed to the children living in the centres. In general, children remain in the centres until the age of 18. The centres are a closed community, with surveillance and a fence surrounding it.

It is reported that no children have been returned to the centre in Congo. The Dutch Ministry is aware of only one child being returned to the centre in Angola and this was in the context of voluntary return facilitated by IOM. It would appear that around 20 other children were transferred by IOM to Angola with a view to being accommodated in the Mulemba centre. However, IOM has indicated that, on their arrival in the airport, family members arrived to receive the children. It is not clear, however, how the authorities proceeded with the identification of the families, assessment of their availability to assume care and custodial responsibilities for the children, with a confirmation that this would be in the best interests of the child (see further in the section on Angola below).

[337] This was as part of a reintegration and long term care plan within a project through which children were returned to Albania
[338] Interview, IOM Riga Office, March 2011

The recent activity of the European Return Platform for Unaccompanied Minors (ERPUM) - noted above in relation to Sweden – is also relevant here. Under this project, it is intended that the ERPUM country relations team together with the project manager, will develop new models and forms of cooperation with third countries regarding tracing and establishment of a care centre where the children will stay upon return for a short period while waiting to be reunited with their parents or other relatives. In particular, ERPUM is focussing on achieving returns of unaccompanied children to Afghanistan (see further in the section on Afghanistan below).

ERPUM has stated that the project envisages that, "in a few cases" where the parents or other relatives cannot be found, monitored local facilities will be offered to the child. For all unaccompanied children returning to their country of origin, ERPUM intends that an individual reintegration plan will be prepared. The reintegration plan consists of support for education, and training and some funding for each individual child. When parents or guardians cannot be found, local tracing teams will be established based on earlier Swedish experience from tracing in third countries; local facilitation teams will be established for cooperation with local staff that can be sent out from Kabul if needed. It is also intended that a study will list existing re-integration support programs and identify good practice in this regard.

To date, where return to such facilities have been voluntary (in the case of Angola and Congo), there has been extremely limited use of the centres. It would appear that the promotion of such centres by some Member States has sometimes been for their "symbolic" value, based on the premise that they act to prevent migration in the first place by demonstrating that return is a concrete possibility. However it is clear there can be little evaluation of their effect given the absence of experience.

Some NGO and IGO stakeholders have questioned whether the support of centres for this general purpose is appropriate. From a procedural perspective, stakeholders[339] have warned that the existence of reception facilities of this kind can never obviate the obligation of Member States, (1) to trace family where this is in their best interests and restore family links before return, (2) carry out an individual determination of the best interests of each child before return takes place, (3) to ensure that the centre can provide tailored treatment for the circumstances of individual children and (4) to ensure that return only happens where there is appropriate guardianship for children.

There are obvious questions as to whether such institutions can offer safe environments, in particular, in countries experiencing conflict and unrest. It is not clear how such centres will be embedded in a properly functioning child protection system. Questions have been raised about the standards required in the reception centres in relation to, for example, medical care, schooling, and reception until the child turns 18 years old and how they correspond to the standards of care that would be

[339] See for example, UNHCR, *Aide-memoire "Special measures applying to the return of unaccompanied and separated children to Afghanistan",* 2009

provided to local children. NGOs note that children can be extremely vulnerable upon return as they are easily identified by traffickers due to their western way of behaviour, use of language and clothing.

A Dutch NGO questioned the way in which the institutions work and collaborate with the child's family. They believe that the objective should be the reintegration of the child into a family environment. NGOs also referred to the risk of re-migration once a child turns 18 if no leaving care integration program has been set up.

Finally the more general comment was made that, given the current absence of monitoring after children are returned, or the number of children involved, means that there does not appear to be evidence about the impact of their return, where the children ended up living or the standards of reception that they received.

4.3 JURISPRUDENCE

It is clear from the study that national courts across Europe are regularly asked to rule on cases related to the return of children. The European Court of Human Rights also ruled on rights of children relating to detention pre-removal or on removal itself in a number of judgments, including *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (2006), *Muskhadzhiyeva and Others v. Belgium* (2010), *Rahimi v. Greece* (2011) and *Nunez v. Norway* (2011). The European Court of Justice has also had occasion to consider the issue of the best interests of the child in immigration law settings, including in the recent case of *Zambrano*.

The scope of this study did not allow for an in-depth survey of relevant case-law. However it is clear that, in several recent landmark cases, the best interests of the child has been considered to be the guiding principle in immigration settings, with courts basing their judgments on both national legislation and the UN Convention on the Rights of the Child (CRC) or on the European Convention on Human Rights (ECHR). Such national and European jurisprudence has considered some key issues, including how to determine the child's best interests when assessing durable solutions, the application of procedural rights, and detention conditions and the right to family life,

We refer below to just a few illustrative examples with a view both to noting the increasing attention to the interests of children and their situation and to acknowledging the courts' role in holding Member States accountable when their return laws or practices run counter to the rights of the child.

National jurisprudence

Right to be heard

In 2008, the **Spanish** Constitutional Court[340] delivered a key judgment related to the right of children to be heard. The case was about a Moroccan unaccompanied child who had received an administrative order to be returned to Morocco in 2006 and whose appeal was largely based on not having had the right to be heard. The Court recalled the right of children to be heard in all judicial and administrative procedures that affect them, either directly, if they have sufficient capacity and maturity, or through a representative. The Court held that the child had the adequate level of maturity to be heard directly. However, the Administration could not demonstrate that an interview of the child did occur. The Court ruled that an interview of the guardianship institution, the Children Institute of Madrid, cannot replace an interview of the children themselves, if they demonstrate an adequate level of maturity. The Constitutional Court confirmed the annulment of the return decision because of this breach of the procedural safeguards.

Following this judgement, Spain has stopped returning children until the necessary guarantees required by the Courts can be met.

[340] Constitutional Court, case 183/2008, 22 December 2008

Expulsion violating right to family life and children's best interests

In ***ZH (Tanzania) v. Secretary of State for the Home Department*** (2011),[341] the **United Kingdom** Supreme Court ruled that the removal of a Tanzanian mother of two British children would breach Article 8 (right to family life) of the ECHR, based on the best interests principle.

The appellant, a Tanzanian national, made three unsuccessful claims for asylum in the United Kingdom. Since her arrival in the United Kingdom in 1995, she had two children from a relationship with a British citizen. Though the parents were separated since 2005, the children had regular relations with their father. The Court of Appeal confirmed the Asylum and Immigration Tribunal's decision to return the mother, assuming that her children could reasonably be expected to follow her to Tanzania.

The Supreme Court ruled that it would not be in the best interests of the children to move to Tanzania, given that they had British nationality, that they had been raised and educated all their life in the United Kingdom, that they had social links there and a good relationship with their father. This judgment established that, even in a decision concerning the return of a parent, as long as the decision affects children, their best interests is of "primary importance". Indeed, in circumstances such as the one under review, the Court ruled that it should be a primary consideration which should "prevail over all other considerations"

European jurisprudence

Detention as inhuman treatment and breach of family life

In 2006, the European Court of Human rights ruled on a detention and deportation case concerning Tabitha, a five-year-old Congolese girl in Belgium in the case ***Mubilanzila Mayeka and Kaniki Mitunga v. Belgium***.[342] The Court held that there had been violation of Article 3 (prohibition of inhuman treatment) and Article 8 (right to respect of private and family life) and Article 5.4 (right to liberty and security) of the European Convention on Human Rights on account of Tabitha's detention and deportation.

Tabitha Kaniki Mitunga was detained after arriving from the RDC without legal documentation at Brussels Airport in 2002. She was accompanied by an uncle, a Dutch national, who returned to the Netherlands after she was arrested. The uncle had been asked by Tabitha's mother to bring the child from RDC to Europe and care for the girl until she could join her mother who was living in Canada having obtained refugee status there. After Tabitha's detention in Belgium, a claim that she be recognised as a refugee in Belgium was declared inadmissible and she was kept in detention until her

[341] ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4., http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0002_Judgment.pdf
[342] ECtHR, Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (application no. 13178/03), 2006

removal to the RDC two months after her arrival. There was no appropriate transfer of care and custodial arrangements on her arrival.

The Court ruled that her detention conditions were not appropriate to her vulnerable condition (in particular, her age and the fact that she was unaccompanied) taking into account that she was held in the same conditions as adults and was not placed under the care of any person. The Court also characterised this treatment as inhuman. Regarding her deportation, the Court found that the Belgian authorities had failed to ensure that she would be appropriately cared for upon her return. In addition, her detention and removal had hindered the possibility of Tabitha reuniting with her mother.

At the end of October 2002 Tabitha joined her mother in Canada following the intervention of the Belgian and Canadian Prime Ministers.

Following the case, Belgium took measures to end the detention of unaccompanied children. In 2007, a new law was voted which states that children cannot be detained for more than 6 days at the border.

Detention unlawful and conditions inappropriate for children

In the case ***Muskhadzhiyeva v. Belgium***[343], the European Court of Human Rights ruled that the detention of four children pending their removal was unlawful and the conditions of their detention amounted to inhuman treatment.

Mrs Muskhadzhiyeva and her four children, all Russian nationals from Chechnya, arrived in Belgium in 2006 after having stayed in Poland for some time. They sought asylum in Belgium but, through an application of the Dublin Regulation,[344] they were to be transferred to Poland. Pending their removal, they were detained for a month in a transit centre near the airport.

The Court found that the detention of the children had amounted to inhuman treatment (Article 3) because the detention centre was ill-suited for children and because of their vulnerability. The judgment refers to various reports on detention conditions in the specific centre where the family was held and to standards set in the case of *Mubilanzila Mayeke et Kaniki Mitunga* (see above). In addition, the Court held that their detention was a breach of their right to liberty and security (Article 5.1) as it was not proven necessary. However the Court did not find that the rights of the mother had been violated.

Since this judgement, Belgium has stopped detaining families in immigration procedures. However, in May 2011, the government announced a plan to build facilities suitable for families in one of the detention centres of the country.[345]

[343] ECtHR, Muskhadzhiyeva and others v. Belgium (application no. 41442/07), 2010
[344] European Council Regulation of 18 February 2003 "establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national"
[345] http://www.lesoir.be/actualite/belgique/2011-05-10/le-retour-des-enfants-detenus-839219.php

Detention of unaccompanied child and lack of care as degrading treatment

In ***Rahimi v. Greece***[346], the European Court of Human Rights found that the detention conditions of an unaccompanied child and the failure of the authorities to take care of him amounted to degrading treatment. The Court also ruled that there had been a violation of the applicant's right to an effective remedy and his right to liberty and security.

Eivas Rahimi, an Afghan national, was arrested in 2007 in the Greek island of Lesbos after crossing the border illegally. He was 15 years old at the time. According to the applicant, he did not receive information on his right to apply for asylum and was held with adults in appalling conditions. The Greek government contested this version, stating that he had been duly informed and was detained in a cell suited for children. He was issued a return decision shortly after his arrival which indicated that he was accompanied by a cousin. Eivas contested knowing this so-called "cousin". Eivas was released and travelled to Athens. He remained homeless for several days before being accommodated by a local NGO.

The question whether Eivas was unaccompanied was contested by the Greek authorities, but given the facts and the absence of proof, the Court considered that Eivas had indeed been unaccompanied. The Court ruled that, given Eivas' extreme vulnerability, his conditions of detention, even if only for two days and the lack of care he received after his release (e.g. no guardian appointed, no accommodation or protection) amounted to degrading treatment in breach of Article 3 ECHR.

The Court also condemned the automatic application of detention, without consideration of the best interests of the child, as well as the absence of effective remedies as a violation of Article 5.1 and 5.4 ECHR (right to liberty and security).

Parent's removal violating best interests and rights of children

In a recent judgement, ***Nunez v. Norway***[347], the European Court of Human Rights held that the removal of a mother of two children would be in breach of her right to private and family life because it would have a strong negative impact on her children and would not be in their best interests.

Mrs Nunez, a Dominican national, received an expulsion order in 2005 for having lived and worked unlawfully in Norway. She had breached a re-entry ban and applied for residence permits under a false identity. During her stay in Norway, she had two daughters with a Dominican national settled in Norway, from whom she separated in 2005. Pending the final judgement on her removal, custody of the children was given to the father in 2007. In 2009, the Supreme Court of Norway upheld the decision to expel Mrs Nunez and apply a two-year re-entry ban.

[346] ECtHR, Rahimi v. Greece, (application no 8687/08), 2011
[347] ECtHR, Nunez v. Norway (Application no. 55597/09), 2011

The European Court of Human Rights ruled that the Norwegian authorities had not taken due consideration of the best interests of the child, in line with Article 3 of the CRC. The expulsion and ban from re-entering Norway for two years would strongly affect her children, given their close bonds, the disruption and stress they had experienced and the long time the authorities took before delivering a return decision. The Court ruled that the Norwegian authorities had violated the right to private and family life of the applicant, as they did not strike a fair balance between "*the public interest of ensuring effective immigration control, on the one hand, and the applicant's need to be able to remain in Norway in order to maintain her contact with her children in their best interests, on the other hand.*"

The ***Ruiz Zambrano v. Office national de l'emploi (ONEM)*** case,[348] before the Court of Justice of the European Union, which considered the rights of EU citizen children in the case of immigration proceedings involving their father is also worth noting. The Court held that Article 20 TFEU "is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.

[348] CJEU, Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM), Case C-34/09, 2011

SECTION 5.
A GENERAL OVERVIEW OF THE ADMINISTRATIVE PRACTICE IN THE SELECTED COUNTRIES OF RETURN CONCERNING THE RECEPTION OF CHILDREN

The tender requested that this study incorporated six to eight countries of return where the legislative and policy framework, and the practice for receiving children who are returned from the Member States could be considered. A set of criteria was prepared to act as a tool to aid the selection of these countries that considered:

- The numbers of children (unaccompanied and in families) originating from the country
- The numbers of children (unaccompanied and in families) being returned to the country
- The existence of established return programmes for children, for example, the return of children from the Netherlands into an orphanage in Angola
- The availability of relevant stakeholders and the likelihood of effective engagement with them

In addition the selection criteria also wanted to ensure:

- A reasonable global spread of countries of return
- All three categories of children in migration, that is those who are fleeing persecution and seeking protection, those who are trafficked, and those who have migrated for economic or other reasons, are reflected by the field of the selected countries
- A variation in the standard of child protection systems in the country of origin was also reflected by the field of the selected countries
- There was a balance regarding the return of separated children and the return of children as part of a family unit
- There was consideration regarding the return of children to countries of transit.

Drawing on these criteria the following countries of return were chosen to be included in the study:

- Afghanistan
- Angola
- Kosovo
- Morocco
- Nigeria
- Sri Lanka
- Ukraine

The systems for receiving children, whether within family units and those who are unaccompanied in each of the countries studies varied greatly. The systems were also complex and in many areas lacked clarity. To follow is a consideration of the return of children set out country by country.

5.1 AFGHANISTAN

Context of returnees to the country

Afghans have sought refuge outside of their country since the 1990s and have arrived in high numbers in Europe especially since the fall of the Taliban regime in 2001. In 2010, Afghans accounted for the highest numbers of refugees worldwide.[349] In the first half of 2011, Afghans still formed the majority of asylum seekers in industrialised countries, with more than half of all Afghan claims being submitted in just four countries: Germany (3,800), Sweden (1,500), Belgium (1,400), and Austria (1,100).[350] In the EU Member States, 6,355 Afghan unaccompanied children applied for asylum in 2009.[351]. This equated to almost half of the total number of applications by unaccompanied children in the Member States.

Two Ministries are in charge of returnees: the Ministry of Refugees and Repatriation (MoRR) and the Ministry of Labour, Social Affairs, Martyrs and Disabled (MoLSAMD). The MoRR is responsible for Afghan refugees outside of the country. It is also responsible for making arrangements for deported families and children through representatives in each province and at border points where they register returnees and provide them with some assistance, such as food, temporary shelter, or transportation to reach their province of origin. The MoLSAMD provides some financial support through "safety net programmes". In addition to MoRR and the MoLSAMD, UNICEF, UNHCR, IOM, the Afghanistan Independent Human Rights Commission (AIHRC) and the NGO INTERSOS are involved in issues relating to the return of children.

Data

The Ministry of Refugees and Repatriation (MoRR) has stated that it had not accepted any request for returns of unaccompanied children from the EU to date because of the security situation and because of a lack of a satisfactory child protection system.[352] The Ministry does not record disaggregated statistics regarding families but they stated that in the first quarter of the Afghanistan calendar 1390[353] 369 people voluntarily returned from Saudi Arabia and Europe, and 348 were subject to forced returns from the same regions. Statistics provided by IOM in different European countries show that some voluntary returns of unaccompanied children and families with children occur. Children who have been illegally present in Pakistan and Iran have been returned in large numbers: According to UNHCR 3265 unaccompanied children were deported from Iran between 2008 and 2010. More specifically in 2010 1549 unaccompanied children were assisted in the Gazergarth transit centre by UNHCR, IOM, UNICEF and their implementing partners. The MoRRs Statistics and Analysis department and IOM do

[349] 3 million according to UNHCR 2010 global trends
[350] UNHCR, *Asylum Levels and Trends in Industrialized Countries*, first half 2011
[351] Eurostat
[352] Interview with Ministry of Refugees and Repatriation
[353] Year 1390 corresponds to 21 March 2011 to 19 March 2012

not have overall data available regarding the number of families returned voluntarily and forcefully from Europe.

Legal framework applying to children

Under Afghan law, children are defined as being under 18 years of age.

In 2006, a National Strategy for Children at Risk was adopted with the aim to better identify children at risk (victims of trafficking, internally displaced or returnees and unaccompanied children) and to develop a network of services and programmes to ensure their protection. However, stakeholders note that the implementation of the strategy is limited. A Child Protection Secretariat is currently being set up under the Ministry of Labour.

In addition, in 2003, a Child Protection Action Network (CPAN) of governmental and non-governmental organisations was established by the Ministry of Labour in cooperation with UNICEF. It currently works in 28 out of 34 provinces. The goal of the network is to prevent and respond to exploitation, abuse and violence against children. Individual cases can be referred to the network to assess the case and prepare a care plan. As of now, CPAN has been contacted in some return cases (10 cases last year) and there was an effort[354] to coordinate between the CPANs in the different provinces to respond to the cases of returned children from Iran and accommodate them in transit centres. However, no formal system has yet been established to specifically support returned children. UNHCR has established focal points in 17 provinces who have been involved in a few cases of tracing families. UNHCR mentions lack of resources and the relevant expertise as the main reasons for not been able to support all the children returned from Iran and Saudi Arabia.[355]

The Juvenile Code provides for guardianship but it is not applied in practice and it is reported that children accommodated in orphanages have no legal guardian. The NGO Children in Crisis noted that separated children are usually put in orphanages, without any specific procedure to establish guardianship.

Contacts between returning countries and receiving countries prior to return

As unaccompanied children have not yet been forcefully returned to Afghanistan from Europe, there is little practice in terms of liaison between Member States and Afghanistan.

UNHCR has signed tripartite Memoranda of Understanding with the government of Afghanistan and several European countries (Denmark, France, Netherlands, Norway, Sweden, Switzerland and the United Kingdom) that include a section on vulnerable groups (including unaccompanied children). This section aims to ensure that their needs are met. Further to those agreements UNHCR published an

[354] Interview with UNHCR
[355] Interview with UNHCR

Aide Memoire in August 2010 detailing the safeguards states should be applying when considering the return of children to Afghanistan.[356] These special measures applying to the return of separated children to Afghanistan note that:

- Sending countries must ensure that separated children are not returned to Afghanistan unless a formal procedure with all necessary safeguards that puts the child's best interests as the primary consideration has been undertaken. As part of this procedure the child shall be informed and consulted at all stages of the process.
- Sending countries with the cooperation of the Afghan government will ensure that genuine efforts are made to trace family members. If the family is traced the governments will cooperate to undertake an individual assessment that the family is willing and able to receive the child. This assessment will inform the decision on return.
- Where family tracing is unsuccessful consideration may be given, as a last resort, to return to a child-care institution in Afghanistan. All documents regarding the attempted family tracing will be handed to the caregiver so that the family tracing can continue after the child's return. The government of the sending country will cooperate with the Afghan government to ensure that specific and adequate reception and care arrangements are in place prior to return. As a minimum these should include:
    - Receiving the child at the airport and providing immediate access to appropriate accommodation, education, health care and other basic needs.
    - Appointment of an appropriately qualified and trained caregiver who is knowledgeable in child protection and who is formally assigned to the child and can exercise legal capacity if necessary.
    - An individual reintegration plan drawn up with the child and their guardian in the sending country which covers an assessment of access to food, housing, health care, education, vocational training and employment opportunities. The plan must be shared with the assigned caregiver (see above).
    - Adequate and ongoing post-return evaluation.

The *Aide-memoire* further outlines that these safeguards cannot be implemented without cooperation between the governments of the sending country and Afghanistan.

A number of EU Member States, in particular, the Netherlands, Norway, Sweden and the United Kingdom, through their cooperation in ERPUM (the European Return Platform for Unaccompanied Minors),[357] have indicated a goal of setting up reception centres in Afghanistan to support and aid the return of unaccompanied children who have had their final asylum application rejected.[358] According to the project summary it will provide a basis for direct cooperation between a number of migration

[356] UNHCR, *Aide memoire on 'Special measures applying to the return of unaccompanied and separated children to Afghanistan'*, August 2010
[357] http://www.migrationsverket.se/info/4597_en.html
[358] Telephone interview with ERPUM Project Manager, October 2011

services with third countries' authorities in the practical work in returning unaccompanied children primarily to their parents or guardians or other forms of organized reception in the country of origin. A representative of ERPUM outlined that good diplomatic relations are essential between returning and receiving countries if initiatives like this are to be successful. An ERPUM country relations team, together with the project manager, will develop new models and forms of cooperation with third countries regarding tracing and establishment of a care centre where the children will stay upon return for a short period while waiting to be reunited with their parents or other relatives.

ERPUM envisages that most children would quickly return to family care, as once families realise that their child has been returned, or is in the process of returning, to Afghanistan, they would re-establish contact. In the few cases where the parents or other relatives cannot be found, monitored local facilities would be offered to the child. Where family tracing in the Member State has failed to trace the family, the tracing process would continue if necessary in Afghanistan. ERPUM anticipates that tracing would be undertaken by independent 'human rights friendly' organisations. Long term accommodation would be available if families do not re-establish contact and in such instances unaccompanied children would be supported with training and education and would be given assistance in setting up small businesses. For all unaccompanied children returning to their country of origin an individual reintegration plan would be prepared. The reintegration plan would consist of support for education, and training and some funding for each individual child. When parents or guardians cannot be found, local tracing teams would be established based on earlier Swedish experience from tracing in third countries; local facilitation teams would be established for cooperation with local staff that can be sent out from the capital if needed; a study would list existing re-integration support programs and identify good practice.

Relevant to these plans and as mentioned above, UNHCR has published a number of safeguards[359] deemed necessary when considering return to reception facilities.
Moreover, whilst representatives of the relevant Afghan ministries have engaged in discussions with those Member States, as yet there are no established structures or mechanisms to develop these centres.

UNICEF in Afghanistan states that plans to return children to institutional care has raised a number of concerns from NGOs and IGOs.[360] Many of these concerns are based around child protection issues and the lack of linkage between the CPAN system and MoLSAMD. UNICEF believes it would be of concern to set up centres in this context without working to improve the system of social work and child protection. The Ministry has itself raised concerns about the return of children from the European Union to institutional care. MoRR is also against the development of shelters and would not accept the return of children because of the security situation and the lack of government structure or mechanism

[359] UNHCR, *Aide memoire on 'Special measures applying to the return of unaccompanied and separated children to Afghanistan'*, August 2010
[360] Interview with UNICEF Afghanistan

in the country to effectively support returning children.[361] UNHCR is also concerned about shelters being set up without sufficient safeguards in place to ensure the best interests of the child, hence the drawing up of the *Aide-memoire* (see above).

The Afghanistan Independent Human Rights Commission (AIHRC) has undertaken some family tracing activities on the request of the Swedish government and the Afghan Ministry of Labour. AIHRC was requested to trace the family of 1000 children who were in Sweden. The Swedish Embassy and Ministry of Foreign Affairs provided information on 13 cases. One family was traced in Pakistan but this did not lead to a return because it was considered[362] that the return would put the child at risk. It was impossible to trace the other families – AIHRC claimed that the information provided was insufficient - and no other requests have been communicated to AIHRC.[363] The International Committee of the Red Cross (ICRC) indicates that they are increasingly being asked to trace families of Afghan children living in Europe.[364] They note however that tracing is rarely successful because of incomplete of false information provided by the children themselves or lack of cooperation from identified communities and villages to provide information.[365]

Procedures on return

Unaccompanied and separated children

There is no current system in place for the return of children from Member States to Afghanistan. However, the system that has been used for the return and reception of unaccompanied children from Iran can illustrate the shortcomings and gaps in the system at the present time.[366] Children returned from Iran are met at the border by staff from the Ministry of Refugees and Repatriation and advised to go to the transit centre supported by IOM and under the remit of the Ministry of Refugees and Repatriation. Children stay in the centres for a short period until the family's address is identified and then they are given funding for their transportation to return home.[367] Only in a minority of cases of more vulnerable children (young children or girls), some efforts are made to ensure that they will be escorted home by a relative, but no formal system is in place to ensure the children's security during their trip home. There is also no assessment of the family during this process, no formal system of handover of care once children are returned and no monitoring after return. For children whose parents cannot be found, they are transferred to an orphanage. In order to improve the protection system for unaccompanied children deported from Iran, UNICEF developed a partnership with the NGO INTERSOS[368] to strengthen and develop a referral system for family tracing and family reunification through a project at the Islam Qala border. The system was operational in 2008 and

[361] Interview with the Ministry of Refugees and Repatriation
[362] The decision was taken by the Ministry of Foreign Affairs in consultation with AIHRC
[363] Interview with Afghanistan Independent Human Rights Commission (AIHRC)
[364] Interview with ICRC Afghanistan
[365] ICRC suspects that communities try to prevent returns as important amount of money are often invested to pay for the child's trip to Europe
[366] Interviews and documents provided by UNICEF and UNHCR
[367] Previously UNHCR provided financial support for transportation but now this is given by IOM
[368] INTERSOS also collaborates in this project with UNHCR, AIHRC and the Department of Refugees and Repatriation

again since 2010.[369] Through this project, a formal procedure was set up for taking care of children arriving at the border, including interviews, emergency assistance and transfer to a transit centre until the family is traced. The project also provides child specific training[370] to staff working at the centre.

Another example of return of unaccompanied children mentioned by UNICEF and the Ministry of Labour is the arrival a few years ago of about 500 children who were returned from Saudi Arabia to Afghanistan in a single operation. The government in Saudi Arabia contacted the Ministry of Foreign Affairs in Kabul to arrange for the children to be returned. UNICEF reported that there was no planning and the children were returned with little notice. Ministry social workers collected the children at the airport. There was no documentation with the children, just a list of the names of the children being returned. Children were taken to a Ministry of Labour's children centre in Kabul while the family were traced. It is further reported by UNICEF that some children ran away from the transit shelter. The families of the children in the centre were contacted and they had to go to court to prepare documents confirming that they were the legal guardian of the child. These documents were often made extremely quickly following a visit to the child's family by social workers. Ministry staff reviewed the documents and transferred the children to their families. Other children were taken by social workers to their communities where, in the presence of community leaders, they were reunited with their families. Approximately 90% of the children were from one particular district. UNICEF, together with an NGO working in the district, set up a one year long reintegration programme to follow up the outcomes for around 300 children returned to their families. A range of support was provided to children and their families including social work visits, vocational training and micro-finance support to set up small businesses including tailoring and poultry farming, though to date documentation in relation to an evaluation of this project is not available.

The Ministry of Labour has drafted care standards for orphanages and residential care centres in Afghanistan but these do not mention reception centres for returning children and there is no system in place for organised family tracing mechanism.[371] This is contradictory to the general shift in policy and practice aimed at deinstitutionalising the care of children. In November 2004 MoLSAMD prepared the National Strategy for Children 'at-risk' (NSFCAR). The NSFCAR sought to provide a 'Strategic plan for the transformation of children's institutions into Child and Family Resource Centres' to support the care of children within their families and reduce reliance on residential care.

[369] According to UNHCR statistics, from 2008 to 2010, 3265 unaccompanied children returning from Iran were assisted at the border and in the transit centre by UNHCR, IOM, UNICEF Coordination of Humanity Assistance, AIHRC and INTERSOS
[370] Training include core social work skills of assessment, care planning and case management
[371] Interview with the Ministry of Labour

Families with children

In the case of returns from Iran, due to the lack of information regarding the whereabouts of remaining family, some children are returned without their families, thereby frequently splitting children from parents or adult guardians when they are deported to Afghanistan.

Reintegration support post return

There are currently no reintegration programmes in place for families or unaccompanied children. Except for the limited financial support for unaccompanied children described above, there are no support programmes available.

Training of staff involved in return

The authorities seem to receive little training on children's rights and how to respond to and address the needs of returning children. UNHCR has reported that there has been some training for staff but this tends to be infrequent and there is no evaluation following its delivery.

UNICEF is carrying out social work training in 12 provinces. At the end of 2010, 259 social and care workers from the Ministry of Labour, the Juvenile Rehabilitation Centres and orphanages had been trained. The training included assessment of children at risk, referral of protection cases through the CPAN, child rights, development and protection, and juvenile justice. Community outreach workers were also trained on child development and working with families and communities in the field of family assessments.

The lack of childcare professionals and social workers in Afghanistan adds to the difficulties in returning children and providing a system of care that allows for the safe return of unaccompanied children and families with children.

5.2 ANGOLA

Context of returnees to the country

Angola experienced many years of civil war that led to the displacement of many people and caused the separation of children from their parents or relatives. Many families crossed borders, looking for safe living conditions in foreign countries as refugees. A high number of unaccompanied children as well as children in families reached Europe and in particular the Netherlands. Since the end of the war in 2002, the situation has improved considerably. There is now economic growth following the end of the war and some families and unaccompanied children have returned or plan to return to the country.

In order to facilitate the return of unaccompanied children, the Dutch Ministry of Justice financed the modernisation and expansion of an orphanage near Luanda, run by the NGO, Mulemba. The new centre was inaugurated in September 2003. Mulemba[372] has signed an agreement with the Netherlands and IOM Luanda to provide accommodation and education to unaccompanied children returned from the Netherlands, for whom family tracing was not successful. The agreement came to an end in January 2011 and Mulemba is currently negotiating with the Netherlands and IOM for a potential renewal. Mulemba also worked temporarily with Switzerland on similar grounds.

Data

There is no data available on the overall returns to Angola from Europe. Since 2004, only one girl was accommodated[373] at the Mulemba centre after her return from the Netherlands. Through the agreement with Switzerland, two boys were accommodated at the Mulemba centre for a "readjustment" period,[374] before being transferred to their families by IOM. Other unaccompanied children returned from the Netherlands are said to have restored contacts with their families prior to their return and to have been transferred to them at the airport (see further below).

Legal framework applying to children

Angola defines a child as a person under 18 years of age. The definition of unaccompanied children adopted by the Ministry for Assistance and Social Reintegration (MINARS) refers to all children separated from their parents or relatives in different circumstances. Angolan law considers primary family members to be parents and their children. Secondary family members consist of aunts, uncles, cousins and grandparents.

[372] Interview with NGO Mulemba, August 2011
[373] According to the Mulemba director, the girl had contacts with her family but did not want to be reunited with them. She stayed at the centre for a few months until she turned 18
[374] One of the boys was taught Portuguese

In 2007, the Government established a National Council for Children (known as CNAC), which is an inter-ministerial committee for the coordination of early childhood in Angola.[375] The main goal of the CNAC is to coordinate and oversee the development and implementation of national policies that promote child rights, services and programmes to children. The Minister for Social Assistance chairs CNAC under the direct supervision of the Angolan President. The CNAC has adopted a number of specific national policies and plans of action, such as the National Policy for Orphans and Vulnerable Children. Also in 2007, the Council developed a plan of action called, '11 Commitments for Children,[376] in partnership with UN agencies and civil society organisations. These commitments comprise 11 targets and indicators to promote children's rights, and, to a large extent, reflect the Millennium Development Goals. Commitment eight focuses on the prevention and mitigation of violence against children, including trafficking and different forms of abuses and Commitment nine provides for the promotion of family based care for orphan or separated children. These constitute a framework against which to measure progress on child protection in Angola. These Commitments concern all children, including those who have been returned. Children returned to Angola are able to benefit from the commitments in areas associated with access to education and health care and the tracing of families. These commitments were formally endorsed by the Government.

Unaccompanied children are considered vulnerable to many risks including trafficking, labour, sexual abuse or prostitution. All children who return from abroad as orphans or who are otherwise separated from parents for whatever circumstances are included in the policies and plans linked to the 11 Commitments, though the plan of action is not specifically targeted at them. However, the bi-annual implementation plan for 2009-2011 places priority on vulnerable children, including children separated from their parents. The legislation[377] provides for admission conditions of children in Angola but does not specify specific arrangements for the reception and care of unaccompanied children. Returning separated children or returning families with children are not subject to sanctions even if they have migrated irregularly.

Contacts between returning countries and receiving countries prior to return

Return of children is coordinated by the embassies of Angola in the sending countries in order to provide children with the necessary travel documents.

The Minors Court can be involved in return cases following the child's arrival in Angola. The Court is an organ of the Ministry of Justice, which works in collaboration with the National Institute for Child Protection (INAC), MINARS, the Ministry for Interior, the Foreign Emigration Service, IOM, UNICEF, NGOs and respective embassies. The court, for example would get involved if decisions had to be made concerning the custody of returned children. According to MINARS, there are no formal agreements between European countries and Angola regarding return procedures. MINARS stated that there is a need to form an inter-agency commission, which may include members from the

[375] CNAC was established under Decree 20/07 of April 20th 2007
[376] http://www.cnacangola.org/index.php?page=os-compromissos (in Portuguese)
[377] Law 02/07 of 31 August 2007

sending countries and Angola in order to facilitate the involvement of both parties in preparing returns, including on the tracing process, arrangements upon return and reintegration.

Procedures on return

Families with children

Upon return, families who have returned voluntarily and who live outside the capital receive assistance to travel to their former place of residence. Transportation is funded by the government in partnership with UNHCR. The local authorities at the destination are informed that they will be arriving.

Unaccompanied and separated children

There are no specific procedures in relation to the transfer of custody and care and to safeguards to protect unaccompanied and separated children. Generally speaking, MINARS is responsible for the reception and care of children including returnees. Others actors involved include the Foreign Emigration Service, the Ministry of Foreign Affairs and NGOs.

All returnees, including unaccompanied children and children in families are given support from government institutions such as the Migration and Foreigners Service of Angola (SME), the Police working in partnership with MINARS and other vocational Government Sectors. The Migration Services issue the documents necessary to allow entry into the country and MINARS provides social support and accommodation. Unaccompanied children should be directed from airports and border posts to MINARS who as well as providing accommodation initiate family tracing. Those coming from the Netherlands are directed to the Mulemba Centre (described more fully below), which works together with IOM. MINARS also works with IOM and UNHCR on return processes. This includes birth registration, access to education and health services. These services are granted in line with the 11 policy commitments by the Angolan Government and its partners (see above). Some NGOs are involved in the implementation of these services. When unaccompanied children are returned voluntarily, the sending government organises the logistics for their reception and supports their transportation. For example, in the case of children coming from the Netherlands, the sending government organises transportation as well as other support in the destination including support for their reintegration. Other groups, particularly from other African countries, are entitled to basic assistance by the Angolan Government, in partnership with national or foreign institutions.

The renovated Mulemba centre was inaugurated in 2003 by the Dutch Minister of Immigration. It operates in collaboration with IOM. It now works as a transit and reception centre for unaccompanied children returned from the Netherlands, in addition to hosting local street children and offering classes to local children. The Mulemba Association also provides support for those who were accommodated in the centre and have turned 18, to build their own house. New reception facilities dedicated to returnees from the Democratic Republic of Congo are under construction. Only one young woman has returned from the Netherlands to the centre. More generally, IOM (Netherlands) estimate that about 150 children have been returned from the Netherlands to Angola. Of these about 130 were returned

directly to their families following prior arrangements. The remaining 20 were en route to the Mulemba centre but upon arrival IOM reports that their families turned up at the airport and the children were reunited with their families following the Angolan authorities' procedure. It is not clear, however, how the authorities proceeded with the identification of the families, assessment of their availability to assume care and custodial responsibilities for the children, with a confirmation that this would be in the best interests of the child.

Existing reception facilities for children returning from other African countries are used for transit purpose only until the child is reunited with their family. In most cases these facilities are managed by UN Agencies working together with churches, NGOs, IOM and Governmental actors. Entries and visits to the centres are regulated in order to avoid access to traffickers or smugglers. Children are not allowed to receive visits alone until it has been proven that the visitor is really a parent or another relative. Teams in the centre include staff from the police, border police, IOM and INAC staff. A family tracing process is engaged in the centre.

In 1989, during the civil war, the Angolan Government developed a tracing programme through MINARS and partners, which consists of six steps aimed to support the welfare of children. This tracing system is also applied to unaccompanied children and can take place both pre and post return. The six steps are:

1. **Identification** of children separated from parents. This is done by the technical staff of MINARS and other members in a community.
2. **Registration** - following identification, the child's history and personal details are registered on forms.
3. **Spreading of information** through posters where necessary and tracing by MINARS staff as well as other organisations. The ICRC services may also be requested.
4. **Verification** - once the family has been traced, verification takes place to confirm the data held is accurate and the return conditions of the child's family are assessed (including social conditions).
5. **Reunification or placement** - the team together with the child's family discuss and schedule a date and place for reunification. Prior to the reunification, visits to the family may occur, or the family can visit the centre. A child may also be placed in a foster family. For those who turn 18 and were not reunited with their family, they can receive support to help them to build a house and continue professional training.
6. **Monitoring** – the reunification is followed by a three to six months monitoring of the reintegration of the child in the family and the physical, psychological, emotional and material conditions.

Reintegration support post return

The government can implement an assistance plan for a specific period of time (at least 6 months) to contribute to the reintegration of returnees (adults and children). This can include provision of agricultural materials or materials to build a house. Children have a right to education and benefit from

free registration process led by the Ministry of Justice in partnership with UNICEF as well as access to health services and vaccinations. Illiterate young people are provided opportunities to enrol into the Youth and Adult Education process led by the Ministry of Education. Literate young people are entitled to enter technical centres, but this can depend on the availability of places in different settlement areas. Most centres are based in the cities while many families live in remote rural areas. Families that have been returned may receive basic services, such as birth certification and health services, or food and kitchen packages under the provisions of the 11 Commitments.

Training of staff involved in return

MINARS and police staff receive training related to entries at the borders. Training is provided twice a year and includes teaching on international child rights standards. There is also training provided on how to identify, register and fill internal forms for children, parents or relatives and the reunification conditions as well as further follow up. This enables staff to build a better picture of the child's experiences and situation and their reasons for migration and to understand the support that is necessary for a successful reintegration.

Monitoring Mechanisms

MINARS has teams in the provinces trained to monitor the cases of reunited children from European States, with their families. The monitoring forms part of the tracing programme that was developed for unaccompanied children during the civil war. The monitoring used to last six months but has recently been reduced to three due to financial constraints. The goal is to see if the families are still receptive to the return of the child and that basic conditions are met in relation to physical, psychological, emotional and material conditions. Stakeholders noted that, after 8 years of peace, the context in Angola has changed and the content of the reintegration help and monitoring should be re-evaluated.

5.3 KOSOVO

Context of returnees to the country

Prior to the declaration of Independence in 2008, United Nations Mission in Kosovo (UNMIK) under its mandate deriving from the UNSCR 1244 concluded a number of Memoranda of Understanding on repatriation of irregular migrants and unsuccessful asylum seekers (e.g. with Germany on 17 November 1999, Switzerland on 6 April 2000 and Sweden on 13 February 2006). In these readmission agreements, UNMIK and the concerned governments agreed to cooperate in promoting and facilitating an orderly and voluntary return of Kosovar "citizens". The agreement with Switzerland also included provisions on facilitation of reintegration of the returnees. Other countries such as Denmark, France and Italy addressed return of persons to Kosovo through standing UNMIK readmission procedures without having concluded specific repatriation agreements. UNMIK readmission policies were to a large extent drafted in conjunction with UNHCR Position Papers issued by the Office of the Chief of Mission in Kosovo. The last Position Paper was updated in June 2006[378], where inter alia the following groups of persons of concern were given particular attention: Kosovar-Serbs and Roma, Kosovar-Albanians originating from the northern municipalities where they constitute a minority, ethnically mixed marriages and persons of mixed ethnicity, victims of trafficking, and separated children without relatives or caregivers in Kosovo.[379].

In 2007, UNMIK and the Provisional Institutions of Self-Government (PISG), with the support of a number of other actors, including UNHCR, developed and endorsed the Readmission Strategy.[380] In the Strategy, objectives and measures in areas of legal reintegration, healthcare, education, employment, social welfare, housing and property were presented, with the aim of ensuring sustainable return and reintegration of returnees. Special attention was paid to the needs of vulnerable groups and minority communities. The Action Plan on implementation of the Readmission Strategy was subsequently endorsed in April 2008.[381] The actual implementation of these policy documents presented a real challenge at the time and as a result the overall process of readmission and reintegration of repatriated persons – in particular of those forcibly returned and from groups of particular concern to UNHCR – has been described as lacking coherence, ownership and accountability and was criticised by the OSCE in its 2009 report.[382] After broad consultations the

[378] UNHCR's Position on the Continued International Protection Needs of Individuals from Kosovo, June 2006; http://www.unhcr.org/refworld/pdfid/449664ea2.pdf, accessed 08.07.2011

[379] As a result of positive developments in the context of inter-ethnic environment in Kosovo, the Position issued in 2006 no longer included Ashkali and Egyptian communities among those at risk. The most recent UNHCR policy document are the Eligibility Guidelines issued in November 2009[379]. UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo, 9 November 2009 (HCR/EG/09/01), http://www.unhcr.org/refworld/pdfid/4af842462.pdf, accessed 08.07.2011

[380] UNMIK/PISG Strategy for Reintegration of Repatriated Persons, approved by the government of Kosovo on 10 October 2007

[381] Government of Kosovo Action Plan for the Strategy for Reintegration of Repatriated Persons, April 2008

[382] The OSCE Report was issued following extensive consultations with a variety of actors at different levels, OSCE Mission in Kosovo, *Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities*, November 2009; http://www.osce.org/kosovo/40180, accessed 08.07.2011

Kosovo authorities issued a report on the implementation of the strategy in 2010.[383] Following a number of concerns raised by different actors and political pressure coming from EU Member States and other European States, authorities increased their engagement in the area of readmission and reintegration and further streamlined their activities. On 3 February 2010 for example, a Memorandum of Understanding was signed between the Government of Kosovo and the Swiss Federal Council in order to establish a migration partnership in areas such as readmission of nationals, stateless persons and of third-country nationals, return assistance, co-operation in the field of education and training, integration, capacity building in migration administration authorities etc.

As a result of the increased engagement by the authorities, the new Law on Readmission[384] was rapidly developed in close consultation with EU Member States and other actors, and presented to the Assembly for its endorsement in 2010. The Law on Readmission is envisaged to govern only the readmission procedure as such, including accompanying procedures and responsible actors, but does not cover reintegration aspect of the process. The main objective is to set up procedures for readmission of persons who are either citizens of Kosovo or foreigners who do not fulfil or who no longer fulfil requirements for entry or residence applicable in the requesting state.[385]

In parallel to developments of the Law on Readmission, the authorities have initiated revision of the 2007 Reintegration Strategy and its Action Plan. It has been finalized through the Working Group consisting of both local and international actors, and a new Revised National Strategy for Reintegration of Repatriated Persons (Strategy for Reintegration) and the Action Plan Implementing the Strategy[386] were formally endorsed in 2010. As indicated by the interviewed stakeholders, little has been done so far in order to implement these instruments. Readmission and reintegration segments have existed separately from each other and there is still not enough interaction between them.

Although a number of issues remain to be clearly defined and confirmed, it appears that EU Member States and other donor entities have indicated their commitments to support the process with financial means, and the authorities have established a special Reintegration Fund, which in 2011 will have euro 3.4 million available for assistance to readmitted persons.

Data

The only entity in Kosovo collecting, processing and disseminating consolidated data on returns is the UNHCR mission. In charts on returns from Western Europe no information on overall numbers of

[383] Government of Kosovo, Ministry of Interior, *Assessment of the mechanism for reintegration of repatriated persons: Ensuring best possible treatment and respect for human rights to all repatriated persons,* April 2010
[384] Law on Readmission, 2010 (Law No. 2010/03-L-208)
[385] The concept of the law had a strong support from EU institutions and most of the EU Member States and as such appears to be a compromise solution in the context of overall process of EU accession perspectives and visa liberalization. The Law appears to be a unique one (at least within the broad region) and in contrast to the UNMIK/PISG Readmission Strategy of 2007 it is hard law and not just a policy document
[386] Government of Kosovo, Revised National Strategy for Reintegration of Repatriated Persons, 2010 and Action Plan Implementing the Strategy for Reintegration of Repatriated Persons, 2010

children is included. Age and gender breakdown is provided for returns from internal displacement (from central Serbia and from within Kosovo) and external displacement within the region (Former Yugoslav Republic of Macedonia, Montenegro and Bosnia and Herzegovina). Voluntary returns from third (mostly Western European) countries are also included in this overall number. Within the total number of voluntary returns from all regions in 2010, out of 2275 returnees 242 were children up to 4 years old (119 girls and 123 boys) and 595 children between 5 and 17 years of age (311 girls and 284 boys). Furthermore, IOM assisted the return of 2204 people (adults and children) from Western European countries in 2010 and 2910 persons (adults and children) were subject to forced returns from Western Europe the same year.[387]

Legal framework applying to children

The Constitution of Kosovo incorporates numerous international human rights instruments, including the CRC, the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights and Fundamental Freedoms (ECHR). This provides a strong human rights framework, but safeguarding some of these rights in practice still remains a challenge.

The main legal and policy instruments relating to return and reintegration include the above mentioned Law on Readmission, readmission agreements, the Revised National Strategy for Reintegration of Repatriated Persons and its Action Plan. Other relevant national acts, such as Family Law, Law on Education in the Municipalities, Law on Social Assistance, Law on Social and Family Services, etc. which apply to all children alike, including those who returned, without any specific regulations for this particular group.

According to the Family Law of Kosovo, family is defined as a vital community of parents and their children and other persons of the kin. Every person under 18 is regarded as a child. In the legislation the term “child without parental care” is used meaning a child whose parents are not alive, unknown, have disappeared, or for any reason permanently or temporarily do not fulfil the obligations of parental custody.[388]

Legally, children readmitted or repatriated to Kosovo shall enjoy the same rights as all other children. The Strategy for Reintegration does not in principle create any particular rights for returnees, but rather proposes measures which should make use of existing rights possible. Children’s and families’ needs are acknowledged in the Strategy in relevant areas (education, social assistance, etc.). Victims of trafficking, in particular children and women, children without parental care, abandoned, abused or maltreated children and children with special needs (e.g. disabled) are considered vulnerable groups.[389]

[387] UNHCR, Office of the Chief of Mission, Pristina, Kosovo, *Statistical Overview, Update at end March 2011*
[388] Family Law of Kosovo, 2004 (Law No. 2004/32)
[389] Revised National Strategy for Reintegration of Repatriated Persons, 2010

No laws exist to impose sanctions on returnees and none are applied in practice. Sending countries often provide only very basic data and no background information (such as criminal records) on persons who shall be readmitted. The phenomenon of irregular migration is perceived rather positively, which is understandable, taking into account the overall situation in Kosovo, a significant size of diaspora present in EU Member States, strong family ties and reliance of a big part of society on remittances.

Although, under readmission agreements, non-citizen children and families can also be returned to Kosovo, none of the interviewed stakeholders was aware of such cases. As mentioned by UNHCR, it can, however be expected that Kosovo receives in the future a number of non-Kosovo nationals and in the absence of political recognition with other countries (no diplomatic relations, no bilateral readmission arrangements) it will not be in a position to repatriate them to their home countries. Consequently, the scarcity of resources may become an even more prominent issue.

Contacts between returning countries and receiving countries prior to return

Family tracing prior to return

No legal provisions regulate family tracing, family care or other assessments in the context of children's returns. It is very difficult to obtain information on existing practices, given the reluctance of interviewed stakeholders to provide information on individual cases. As far as assisted voluntary returns (e.g. organised by IOM) are concerned, family tracing shall be conducted prior to return, with the involvement of the IOM office in Kosovo and in the returning country. Whilst family tracing is led by IOM, various actors may be involved in family tracing, including for example, the guardian in the sending country, embassies and, specialist family tracing and assessment agencies such as the ICRC or the ISS. Assistance of local NGOs and authorities can also be sought in such cases.[390]

Information provided on returning persons

In general, the background information exchange on forced returnees between a country of return and Kosovo is very limited in comparison to the information exchange arising out of voluntary returns, wherein the whole activity is based on the principle of voluntariness and as such the level of information between returning and receiving country is more extensive and detailed. According to information provided by the authorities, prior to return, returning countries are sending only the basic data of readmitted persons to the Department for Citizenship, Asylum and Migration (DCAM) and do not include information on the specific needs of readmitted individuals (e.g. health conditions). In many cases no criminal record in the country of deportation is provided. Furthermore, information provided to DCAM of the Ministry of Internal Affairs (MIA) is not effectively transmitted to other Kosovo

[390] Based on information provided by IOM and other stakeholders in returning countries - although not specifically referring to Kosovo - certain common procedures for assisted returns seem to have been established

government agencies tasked with assisting readmitted persons. Readmitted individuals frequently arrive with incomplete documentation and, in many cases, no documentation, apart from an emergency travel document, or laissez-passer, issued by the country of deportation. All in all it seems that there is lack of advance information on deportations of readmitted persons, ineffective dissemination of information throughout relevant government structures, and lack of official records and documentation.

Escort during return

Some of the interviewed stakeholders have informally outlined that they came across cases which concerned unaccompanied or separated children, where children were accompanied by a close relative authorised by the sending country specifically for this purpose. This information is however difficult to corroborate.

Procedures on return

Immediate reception on return, transfer of care and custodial responsibilities

The body responsible for readmission is the Department for Citizenship, Asylum and Migration (DCAM) of the Ministry of Internal Affairs (MIA).[391] None of the laws in force specifically regulate the issue of transfer of care and custodial responsibilities in case of returned children; nor have any other formal procedures been established. According to interviewed stakeholders, there are no specific institutions and mechanisms specifically designed and put in place to take care of returned children.

In theory, all returnees should be met upon arrival by representatives of MIA/DCAM and provided with a multilingual information brochure.[392] Recently, MIA established a reception area outside the airport building. The office is housed in a shipping container and is not well marked and it is not visible enough for the readmitted persons. MIA staff does not enter the airport to greet returnees. The Advocacy Training and Resource Centre (ATRC, implementing partner of UNHCR, monitoring readmissions at the airport since 2002) is currently referring readmitted individuals to the MIA office. This would appear to happen promptly following arrival. According to MIA officials at the airport, MIA is informed of all persons forcibly returned to Kosovo in advance. They interview readmitted persons at the airport and record their data on a form, which is then sent directly to the respective Municipal Offices for Communities and Returns (MOCR). According to MIA, MOCRs are prepared to receive and assist returnees, but this is not the experience of other stakeholders.

[391] Readmission procedures are regulated by the Law on Readmission and, in case of countries recognizing Kosovo's independence – by bilateral readmission agreements signed by the country of deportation and Kosovo, and in case of countries that do not recognize Kosovo – by the UNMIK regulations
[392] Revised National Strategy for Reintegration of Repatriated Persons, 2010

According to IOM Vienna, which is operating a reintegration project in Kosovo, upon arrival, separated children are received by IOM staff not later than after the passport control. The children are then transferred to their legal guardians in the country of origin (in most cases parents). Before the handover, IOM checks whether the person present is in fact a guardian, i.e. by checking the local circumstances, for example, to exclude human trafficking. During handover the identity of the person is checked once again (control of identity card). In cases where the family assessment led to the conclusion that the youth authority in the country of origin should be involved, this authority is informed about the arrival of the child. According to IOM, within the voluntary returns context and exclusively under the specific contractual arrangements between IOM and the returning country, they conduct a thorough assessment of each case separately and in close consultation with relevant authorities in Kosovo.

As mentioned by two stakeholders in Germany, in practice, transfer of care can be a problem, as in the case of a 16-year-old girl who has been sent back based on the readmission agreement between Germany and Kosovo. She was supposed to be received by "URA2" (project funded by German authorities, offering different types of assistance, including temporary accommodation). However, ultimately her uncle living in Serbia picked her up.

Temporary assistance to returnees

For returnees having a serious medical condition and for those who cannot travel on the same day to their final destination, the Ministry for Labour and Social Welfare (MLSW) shall provide temporary accommodation for a period not exceeding seven days. In special cases, when repatriated persons have no place of residence, long-term solutions should be found which can be arranged with a rental scheme. MLSW shall create and administrate a transit centre for accommodation of repatriated persons. In practice, currently there is one initial reception facility – emergency shelter Hotel "Aviano" nearby Pristina International Airport. It is run, as of the beginning of 2011, by a commercial company contracted by the authorities for this purpose. On extremely exceptional basis the maximum stay of seven days can be prolonged. No cases of unaccompanied children placed in this facility have been identified.

Reception of unaccompanied and separated children

In the long term returned children shall be entitled to the same social services as other children, including foster care or eventually adoption in case of children without parents. MLSW has contracted an NGO to offer their services to shelter these children with an annual capacity up to 50 children.[393] This children's institution is open to local children in need of institutional care but can also be used to accommodate returning unaccompanied and separated children but the current mechanisms and structures put in place do not foresee any plans to support the unit in dealing with the particular needs

[393] Revised National Strategy for Reintegration of Repatriated Persons, 2010

of unaccompanied or separated children. Placement of returning children would need to be processed through the existing procedures, which in turn, may sometimes be complex and time-consuming. Temporary accommodation is also offered to unaccompanied and separated children within some assisted return programs (e.g. “URA2”).

Reintegration support post return

According to the interviewed stakeholders, the situation of returnees who after the initial 7 days have nowhere to go is a serious problem, which has not been addressed appropriately. Currently, the Inter-Ministerial Executive Board which governs the Reintegration Fund is looking into the possibility of developing a scheme for addressing the needs for rehabilitation and reconstruction of the housing, but for the moment there is no final decision and as such it remains unclear what actions will be taken. Some of the stakeholders emphasised the matter is viewed mainly through a technical and financial perspective and not enough consideration is given to vulnerability of returnees and psycho-social aspects. Under the authority of the Inter-Ministerial Executive Board, three contracts have been signed so far with private companies for reintegration purposes:

- Contract signed in February 2011 with the company “Auto Taxi Naim Osmani”: Transport to final destination and the immediate shelter for those in need of it. This company has sub-contracted Hotel “Aviano” for the temporary shelter up to seven days near Pristina Airport.
- Contract signed in April 2011 with the company “ILIRICUM”: Rental scheme, initially for six months.
- Contract signed in June 2011 with the company “BENAF”: Food and hygienic items.

The Municipal Offices for Communities and Returns (MOCR), created in August 2010 through the merger of the Municipal Returns Officer (MRO) and the Municipal Communities Office (MCO), are tasked to provide necessary assistance to all minority returnees, and to all readmitted persons, involuntarily and voluntarily (both majority and minority communities). As of the end of March 2011, MOCRs were in various stages of development and so far have received no extra budget from the government, but must make use of existing funds from the Municipal budget. Financial aid from the Reintegration Fund has not yet been disbursed to the municipalities or the process has just started. Many MOCRs are not yet formally established under the new structure and are awaiting formal appointment of staff and resources from the Municipalities. Reportedly, communication between the MIA and MLSW at the national level, and MOCR at the municipal level, is not functioning effectively. Often MOCRs are not aware of readmitted persons until they arrive in their municipality. Nor are readmitted persons aware they should report to the MOCR for registration and assistance. Referrals of individual cases from the MOCR offices to MIA had only just started as of March 2011. No specific monitoring mechanisms have been established under current legal framework.

Aware of deficiencies of the system, UNHCR is looking into the possibility of compilation and issuance of periodic reports in the context of a Minority Returnee Monitoring Framework. Hopefully, the reports will be a useful source of information and give a better overview of specific aspects of reintegration.

IOM is implementing several projects of assistance to voluntary returnees to Kosovo and has contractual arrangements with a number of countries from the EU. These programs, which are comprised of various types of assistance, often specifically tailored in accordance with the skills and background of the beneficiary, are implemented in close coordination with the IOM offices in the sending countries and authorities in Kosovo. IOM programs are subjected to contractual arrangements and donations, but in principle most of them foresee repatriation assistance: cash grants, facilitation of employment opportunities, vocational training, support to education in different forms, social assistance and care, etc.

The ICMPD pilot project "ReKoKo" was recently launched to facilitate voluntary returns from Austria (Vienna and Styria regions). The programme provides immediate and longer-term assistance (temporary accommodation and food, legal assistance for obtaining personal documents, education assistance and vocational training, micro-credits and job placement with Austrian entities operating in Kosovo). So far ReKoKo has facilitated return of 13 individuals out of which 3 were children with their families (ICMPD).

The "URA2" project is funded by the German authorities and is assisting both forced and voluntary returns from four federal states in Germany. The project offers different types of assistance, including temporary accommodation. However, according to national stakeholders interviewed, the URA2 project appears to have a reputation of not being very open and transparent regarding who can benefit from the project and the criteria applied. URA2 was also critically evaluated in an UNICEF study on the situation of Kosovar Roma, Ashkali and Egyptian children in Germany and post return to Kosovo. This Report noted that Kosovo is not currently able to integrate children and youths deported from Germany. [394]

Monitoring mechanisms

Since 2002 UNHCR has been monitoring all readmissions of minority communities (Roma, Ashkali, Egyptian, Bosnian, Gorani and Serb, as well as Albanian in a minority situation, i.e. in North Kosovo) at the airport through the local implementing partner, the Advocacy Training and Resource Centre (ATRC). ATRC interviews nearly all persons belonging to minorities readmitted to Kosovo. Information provided to ATRC comes from readmitted persons themselves and cannot be independently verified. UNHCR monitors also reintegration of readmitted minorities through its field offices in Kosovo, focusing on human rights and challenges to reintegration, and refers cases to UNHCR's legal aid

[394] See UNICEF Kosovo and the German Committee for UNICEF, "Integration Subject to Conditions. A report on the situation of Kosovar Roma, Ashkali and Egyptian children in Germany and after their repatriation to Kosovo", 2010, p13

implementing partner, the Civil Rights Program – Kosovo (CRP/K) for legal assistance in obtaining personal documents and social inclusion.[395]

In a way, the example of UNHCR's monitoring has been replicated by the Kosovo authorities through the establishment of their physical presence at the airport arrivals, in order to register and counsel persons arriving in Kosovo. However, according to UNHCR, the programme is at the very early stage and there are serious shortcomings that need to be addressed.[396]

General ramifications of returns

Kosovo is a country, which is still healing its wounds after the recent conflict. It is still very dependent on foreign aid, investments and remittances. In general, the process of returns to Kosovo is interlinked with political criteria for prospective EU accession and a visa liberalization regime. This is largely reflected in all segments of the process and it is evident that compliance with international human rights standards is not always satisfactory.

Additionally, due to the political situation of Kosovo (so far 75 states have recognized Kosovo, out of which 22 are EU Member States), the authorities are not in the best position to negotiate for equal share of responsibilities. Unlike other countries in the region, Kosovo is not in a position to enter into negotiations on a readmission agreement with the EU, therefore bilateral agreements with specific Member States are signed instead. Some stakeholders believe that some of the Member States are thus in a position to obtain greater concessions from Kosovo.

[395] It should be noted that UNHCR's monitoring concentrates exclusively on minority communities. All information gathered by UNHCR is used only for internal purposes and the only publicly available documents are Position Papers and Eligibility Guidelines, whereby the most recent one dates back to *2009.* (UNHCR/ATRC)
[396] Summary based on UNHCR's views

5.4 MOROCCO

Context of returnees to the country

There are significant numbers of Moroccan migrants leaving Morocco for Europe, in part because of the proximity of Europe and the community of Moroccans living in some European countries. Unaccompanied children account for a significant part of the migration from Morocco (in particular to France, Belgium, Italy and Spain), including through irregular channels.[397] Several actors in Morocco are involved in the return of Moroccan nationals: the Ministry of Interior, the Ministry of Justice, IOM, Spanish authorities and non-governmental organizations (including a clinic that provides medical care for people suffering from psychological problems).

IOM manages return and reintegration programmes in Morocco concerning the return of migrants from Europe and since 2007 has assisted returnees from 7 European countries. In 2010 children accounted for 4% of the total number of returns.

Spain has concluded a bilateral agreement with Morocco concerning migrant unaccompanied children in 2007.[398] Though the agreement has not been signed by the Moroccan parliament, only by the government.

In 2008, Human Rights Watch reported[399] that Spanish authorities were planning to finance a number of centres for the purposes of return. However, after a decision from the Constitutional Court[400] forced returns of unaccompanied children were halted and all the centres (except Catalunya Magrib, see below) are either being used in relation to activities concerning the prevention of migration or support to local children, or their construction has been suspended.

The Spanish Agency for Cooperation (AECID) has, for example, financed two centres in Nador and Fkih-Ben Salah that will be run by IOM and Entraide Nationale, a governmental agency. The purpose of the centres has been redefined and their goal is to strengthen the public child protection system and preventing irregular migration of children.[401]

The Catalonian authorities are also involved in Morocco though their project Catalunya Magrib. The Catalunya Magrib project[402] has been established in 2007 between the Catalonian and Moroccan authorities, with two main goals, the prevention of migration through the provision of training,

[397] See UNICEF Nouveau visage de la migration: les mineurs non accompagnés – Analyse transnational du phénomène migratoire des mineurs marocains vers l'Espagne-, 2005
[398] Agreement between Morocco and Spain on cooperation to prevent the illegal emigration of unaccompanied minors, for their protection and their concerted return. Rabat, 6 March 2007; Spain: Official Journal, 14 September 2007, n°429
[399] Human Rights Watch, Returns at any costs: Spain's Push to Repatriate Unaccompanied Children in the Absence of Safeguards, October 2008, p5
[400] See section on Jurisprudence above, p91
[401] Entraide Nationale, IOM http://www.un.org.ma/IMG/pdf/iom_newsletter_ok-2.pdf
[402] http://www.catalunyamagrib.cat/

education and job opportunities and facilitating voluntary return of children through contacts with family members, travel assistance and provision of training and job opportunities and support in the reintegration process. The setting up of the project was co-financed by the European Commission's AENEAS fund.

Under the same funding, in 2005, the Autonomous Community of Madrid started a project on reception and counselling for children younger than 14 reunited with their families in Morocco. The project is implemented by the Spanish NGO Paideia, in collaboration with Entraide Nationale. Through this project, two centres were built or refurbished, one close to Tangier (Taghramt) and one close to Marrakech (Ben Gurir).[403] Those two centres are currently used for professional training and accommodation space for trainees in Taghramt, and for abandoned children or children at risk in Ben Gurir. They also provide school tutoring and facilities for recreational activities.[404]

Data

There is very limited data on children returned to Morocco from Europe, whether they are unaccompanied or within their families. Between 2004 and 2008, 114 unaccompanied children were forcefully returned from Spain (59 in 2007, none in 2008).[405] However there does not appear to be recent cases of forced return of children from within the EU.[406]

IOM reports[407] that its experience in children returning from Europe is limited, with 2 returns of unaccompanied children from Belgium in 2007 and 2010 respectively and the return of one woman with 4 children from Malta in 2009. The Catalunya Magrib project notes that, since 2008, there have been 24 returns of unaccompanied children on a voluntary basis from Catalonia to Morocco within the context of its project.

Legal framework applying to children

There is no specific legislation related to unaccompanied children returning to Morocco. More general child protection laws do apply to their situation.

This includes a law in force since 2002, which provides procedures, guarantees and criteria related to "Kafala" (a local custom of adoption for "abandoned" which is set within the exclusive competence of

[403] Associacion Paideia Activity report 2007, http://www.asociacionpaideia.org/wp-content/uploads/2010/10/Memoria-de-Actividades-2007.pdf; M. Jimenez, *Intruders in the fortress*, PHd thesis, 2011, http://digitool-uam.greendata.es/R/GQI92BMR4G6X8QXIM168GSGLR67M7DF36IQGBD1CHH4CE67V3I-00061?func=collections-result&collection_id=1171&pds_handle=GUEST
[404] Associacion Paideia Activity report 2010, http://www.asociacionpaideia.org/wp-content/uploads/2011/08/Memoria-PAIDEIA-2010.pdf
[405] UNICEF, *Ni ilegales, ni invisibles (Neither illegal, nor invisible),* 2009 (in ES)
[406] There is a case before the European Court of Human Rights in Strasbourg concerning the return from Belgium of a boy who had stowed away on a ship which docked in Antwerp on its journey around Europe. The child was taken from the ship and ultimately returned to Morocco. His Belgian guardian brought a case to the ECHR in relation to the decision to return him [to validate]
[407] Interview with IOM Rabat, April 2011

judicial authority).[408] The criminal code also provides protective measures[409] for children under the age of 16 deemed to be in a "difficult situation."[410] The Juvenile Court judge can decide to hand the child to his parents, guardian or any person "trustworthy" person, to what is termed an "observation section", to institutional care, to the educational service or to an organization.[411] The judge may also decide to place the child for no more than 3 months in an authorised centre in case of health, psychological or behavioural difficulties. The general protection of children is regulated by the Family Code, Article 54 (duty of the parents or guardian and duty of the State to ensure child protection and respect of children's rights).[412]

There are legal provisions related to possible sanctions for having migrated illegally. [413] Any person who leaves the territory of Morocco in a clandestine manner and anyone who enters the territory of Morocco or departs from or through places other than border posts created for this purpose can be punished by a fine of 3,000 to 10,000 dirham and imprisonment from one month to six months. Children are not excluded from these provisions and the law does not either contain any special provisions in their regard.[414] Returnees are also interrogated by the police upon their arrival at the airport.

Contacts between returning countries and receiving countries prior to return

Generally, there are no formal procedures established between the host country and Morocco in terms of family tracing before the return of the child.

The 2007 Agreement between Spain and Morocco provides that return can be implemented only if there are guarantees about reintegration in the child's family or in institutional care. According to Article 5 of this agreement, Spain and Morocco have to establish that the return of the child should take place with respect to the best interests of the child, effective family reunification or the existence of suitable care. However, at present, there do not appear to be returns of children under this Agreement.

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[408] Law of 13 June 2002 on the Kafala of abandoned children, Official Bulletin 5036 of 15 September 2002
[409] Art 512 of the Criminal Code
[410] Returned unaccompanied children can fall in this category. A child can be considered in a "difficult situation" according to article 513 of the Criminal code when their physical safety, mental, psychological or moral or education is in danger because of the company of criminals or people known for their bad reputation or who have criminal records; when they rebel against the parental authority, person having custody, guardian, the person who supports them, the person or institution to which they were in care, and when they repeatedly flee from the institution where they are studying, when they leave their home or when they do not have a proper place where to settle "
[411] According to Article 471 of the code of penal procedure, this means NGOs whose scope of activities is directed towards the protection of the children rights
[412] Family Code (Moudawana) of 2004
[413] Law 02-03 of 2003 on the entry and stay of foreigners in the Kingdom of Morocco and on irregular emigration and immigration
[414] The UN Committee on the Rights of the Child expressed concerns in 2004 over reported ill treatment of returned children by the police and recommended investigation on these cases. CRC/C/15/Add. 211, of 26 July 2004

In the cases of voluntary returns, IOM[415] may be involved to trace the family and makes an evaluation of their situation, including on financial and socio-economic aspects.

The Catalunya Magrib project (PCM)[416] has been established between the Catalonia authorities and authorities in Morocco with two main goals, both the prevention of migration through the provision of training, education and job opportunities and facilitating voluntary return of children through contacts with family members, provision of training and job opportunities and support in the reintegration process. Since 2008, 24 children have benefited from the programme, as well as 9 young people aged 18 and 19.

In practice, the return takes place in the framework of a governmental programme carried out by Spanish and local NGOs. The process is envisaged to operate as follows:

1. The children who want to return are identified in the reception centres of Catalonia.
2. A request for family evaluation is sent to PCM.
3. A risk and socio-economic assessment is made including assessment of risk of abuse, exploitation, situation of the family (e.g. level of poverty, schooling of other children, previous migration experience, etc). The assessment is carried out by a team of trained social workers and child experts. Those teams of experts have been modelled on the existing social services in Spain and other Member States.
4. The agreement of the family is sought. The family is contacted with a view to promoting the family's consent and involvement in the return. Families are made aware of the difficulties in Spain, which the child might confront on turning 18 and having an irregular status.
5. Ongoing counselling of the child in Catalonia to prepare their return.
6. Coordination with the Moroccan authorities to get travel documents.
7. Return: the child is accompanied during their journey by a social worker.
8. Reception at the airport's border by the staff of PCM (in collaboration with the police) for the formal transfer of care to the parents. The children are directly handed over to their parents after all the necessary formalities.

Since 2008, 427 visits to families have been carried out with the purpose of assessment and sensitisation.

The Programme has been criticised by Catalan and Moroccan civil society[417] mainly on the grounds of its inefficiency. Civil society highlights that despite the money invested in the project, only a small number of children have returned through the programme, which led to the extension of the scope of the project to other activities. In 2008, four organisations published recommendations on the

[415] Interview with IOM Rabat, April 2011
[416] Interview with Catalunya Magrib Programme, August 2011
[417] Written information from CEAR Catalunya, and Mercedes Jimenez, IMEDES, October 2011

programmes of Catalunya and Madrid.[418] Firstly, following recommendations from the Ombudsman,[419] they urged the European Commission to request that the project implementers appoint a lawyer to all children engaged with the projects to guarantee respect for their best interests. Then, they called for an external evaluation of the projects that would involve the beneficiaries and their families. They highlight the particular importance of hearing the views of the families and of preventing pressure on them. They also noted that the launch of the two programmes motivated the disappearance of some of the Moroccan children accommodated in these regions, because they were fearful of being forcefully returned as the programmes were carried out alongside forced returns. It was also noted by the civil society that the main aim of those projects seemed to be to set a disincentive to migrate in the first place.

Procedures on return

There are no general formal procedures specific to the transfer of care and custodial arrangements of unaccompanied children who are being returned. Formal procedures are in place within specific projects such as that of IOM or Catalunya Magrib.

Reintegration support on return

In some situations, financial assistance may be granted to the family after the return of the child for a period of 6 months to one year. In the framework of the ERSO (European Reintegration Support Organisations) network,[420] a specific programme was launched in January 2011 in Morocco, led by the NGO Cardev in partnership with Caritas (Austria), Maatwerk bij Terugkeer (the Netherlands), Caritas International (Belgium), ACCEM (Spain), Raphaels-Werk (Germany), Caritas Europe and France Terre d'Asile (France). [421] This programme, offers reintegration assistance to voluntary returnees. It also includes medical, social, and psychological support to children who are returned. Three children, who had already returned to Morocco through other programmes, have received this assistance since the program started. Specific training on unaccompanied children is planned in the coming months for social workers from Cardev. In addition, the NGO Main dans la Main provides assistance to returned women, some of them with children, mainly from Spain or Italy. Assistance includes discussion groups, as well as psychological and legal counselling but they are facing a number of obstacles (mostly financial and institutional) to carry out their project.

IOM offers financial assistance through its reintegration programme to support the family's needs and cover education or training.

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[418] Written information from Mercedes Jimenez, IMEDES, October 2011
[419] Ombudsman, *Report on legal assistance to foreigners in Spain,* 2005, http://www.defensordelpueblo.es/es/Documentacion/Publicaciones/monografico/contenido_1261584153052.html
[420] ERSO started return and reintegration programmes in different countries of origin in 2007. The Moroccan programme is part of ERSO West, a project focusing on five Western African countries (Cameroon, Morocco, Senegal, Sierra Leone and Togo)
[421] Interview with Cardev

In relation to the Cataluyna Maghrib project, professional training (e.g. hotel, tourism, clothing and construction related jobs) takes place in the "Lyceu" (high school). The training offered is recognized by the Ministry of Labour, the Office for Professional Training and the Ministry of Education. PCM guarantees employment to the participants until their 21st birthday even if the child wishes to change jobs. It is envisaged that all children involved in PCM are followed until they turn 21. The follow up should include regular visits, counselling about a personalised training and work plan. The family or the child himself can always ask to meet with the centre staff to re-evaluate the plan and change place of employment.

Monitoring mechanisms

In the context of returns organized by IOM, a national social worker makes regular visits to the family to monitor the child's reintegration (during 6 months to one year depending on the sending country's programmes).[422] In the case of a child returned from Belgium to a family who had been traced, it is reported that the child left Morocco for Spain fairly rapidly after his return from Belgium, potentially triggered by an inadequate reintegration process.

In conclusion, there does not appear to be a solid infrastructure for return and integration of children. In Morocco there is no mechanism following return to monitor the child's welfare, except the legal framework regarding the protection of the child.

[422] Interview with IOM Morocco

5.5 NIGERIA

Context of returnees to the country:

Nigeria is known for extensive trafficking networks, in particular of girls for the purpose of exploitation, including prostitution. Nigerian children are trafficked to other African countries but also to Europe, in particular to Italy.[423] Nigeria is one of the main countries of origin of trafficked persons in the EU, and generates the highest number of trafficked persons within the African continent.[424]

Nigeria has signed and ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, often referred to as the Palermo Protocol. According to the US Department of State 2010 Trafficking in Persons Report,[425] the Government of Nigeria complies with the minimum standards for the elimination of trafficking. The government seeks to combat and prevent trafficking as well as protecting victims. The anti-trafficking work of the government is done through its National Agency for the Prohibition of Trafficking in Persons (NAPTIP). In addition, though Nigeria is not among the main countries of origin for asylum seekers in the European Union, there are still important numbers[426] of unaccompanied or accompanied Nigerian children seeking asylum, especially in Austria, Germany and the Netherlands.

Data

There is no comprehensive data on returned children available for Nigeria as there is no central agency or Ministry coordinating returns. NAPTIP collects some data on returned trafficked persons, and they confirmed that a number of children were returned in 2009 and 2010, but they do not disclose the countries from where children were returned or exact numbers.

Legal framework applying to children

Nigeria defines children as those persons under 18 years of age. A family in relation to a child includes a person who has parental responsibility for the child and a person with whom the child is living or has been living. Legislation deals with protection of children against trafficking but does not define trafficking.

Nigeria has no specific legislation relating to the return procedure for children. The existing Children's Rights instruments, National Child Protection and Safeguarding policies and Nigerian Immigration Laws are applicable. Legislation provides for the protection of children in need of care and against physical or moral danger and empowers a Child Development Officer or Police Officer or any other authorised person to bring a child in "need of care and protection before a court for a corrective order, if he has reasonable grounds for believing that the child is an orphan or is deserted by his relatives, neglected, ill treated or battered by his parent or guardian or custodian, or found destitute, wandering,

[423] See US government's Trafficking in Persons Report 2010
[424] See UNODC, *Trafficking in Persons to Europe for sexual exploitation* , 2009
[425] http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm
[426] See Eurostat

homeless or surviving parent undergoing imprisonment, mentally disordered or otherwise severally handicapped; or found begging for alms or in company of a reported/common thief or prostitute, or otherwise beyond parental control or exposed to moral or physical danger."[427]

No sanctions are imposed on returnees on account of irregular migration, as far as the Nigerian State is concerned, rather the returnee is received and rehabilitated except if the person has been returned in relation to the illegal drug trade.

Contacts between returning countries and receiving countries prior to return

In the context of returns, sending countries collaborate with the Ministry of Foreign Affairs to arrange the practicalities. Little information was available to the Study on how this is done in practice.

Procedures on return

Upon arrival at the border, returnees are contacted by representatives of the Ministry of Foreign Affairs, and immigration and law officers in order to assess whether the returnee was trafficked, migrated illegally or has pending criminal charges. If the returnee is identified as a trafficking person, they are referred to National Agency for Prohibiting of Trafficking in Persons (NAPTIP). Whilst returning adults may face sanctions if they have committed offences abroad, children are not subject to any such sanctions. In the case of children, the governmental Child Rights Implementation Committees and the Child Development Department of the Ministry of Women Affairs are involved, in particular to trace the family of unaccompanied children.

Unaccompanied and separated children

ransfer of care and custodial arrangements from the sending country are usually based on bilateral agreements or memoranda of understanding. The actors involved are the Federal Government of Nigeria, via the Ministry of Interior, Ministry of Justice, Nigeria Immigration Service (NIS), National Agency on Prohibition of Trafficking in Persons (NAPTIP), Ministry of Women Affairs, and the host country. If the family is identified, the child is escorted home by officials of the Child Development Department. However, in the case of trafficked persons (both for adults and children), they are handed over to NAPTIP.

Upon return, the returned trafficked persons are transferred to reception facilities run by NAPTIP in collaboration with other government bodies. The purpose of these reception facilities is to provide support to the returnees for their effective reintegration in the society. Facilities are located in urban or semi-urban areas and are fairly isolated. They are guarded by the Nigeria Civil Defence Corps, the police or private security guards to prevent access to the residents by traffickers or other abusers. The centres are not designed to permanently host returnees and the period of stay depends on the progress of each individual and their ability to re-integrate. Actors that can interact with these returnees while in the centres include NGOs and religious organisations which deliver education and provide furnishing for the centres. Access to basic education (formal or vocational) is ensured with a

[427] Section 50 – 52 of the Child Rights Act 2003

view to the reintegration of the children. Some family (or community) tracing efforts are undertaken while children are in the centres, by the Immigration Office in collaboration with NAPTIP, Nigerian Civil Defence Corps and the state security service. Should families be traced efforts are made to ascertain the background of the family and to assess the situation prior to the child's return.

Where children are returned who have not been trafficked and whose families are not traced accommodation should be provided in state run rehabilitation centres where they receive subsistence, health care, basic education and vocational training. Limited information was available to the study on how this operates in practice, in particular, whether children are appointed guardians and how long they typically stay in such centres.

Financial assistance has been granted to build, refurbish and maintain shelters in the six geo-political zones of Nigeria run by NAPTIP. Some European States are involved in supporting and financing the NAPTIP facilities as well as programmes of returnees in Nigeria, including Norway and Italy.

Reintegration support post return

A reintegration and long-term care plan for all returnees, whether trafficked persons or otherwise, should always be put in place by NAPTIP, NAPEP and the Citizenship Department of the Ministry of the Interior through agencies that monitor the implementation and effectiveness of these plans. Education and training as well as job opportunities are streamlined and made available to the returnees. Families who have returned can access skills training, and can apply for a loan for setting up small businesses. The care plan processes are periodically reviewed to monitor the well being of the child. NGOs are not involved in the post-return monitoring and evaluation.

Training of staff involved in return

Staff of the relevant Federal Government Agencies working with returned trafficked persons participate in training on psychology, guidance and counselling. Staff are also given training to equip them with the knowledge needed to ensure that the rights of returnees are not infringed.

Monitoring Mechanisms

Upon the return of children to Nigeria, responsibility and management of the children at the reception facilities are handled by NAPTIP and the Ministry of Women Affairs. There are welfare departments in every Local Government Council in Nigeria whose duty it is primarily to monitor children who have returned. However, it is the specific responsibility of NAPTIP and the Child Welfare Directorate in the Ministry of Women Affairs to look after, monitor and manage the re-integration process and focus on ensuring access to basic education as well as to basic primary healthcare. Individual cases are followed up periodically until the child becomes self-reliant and this is also the case regarding families.

5.6 SRI LANKA

Context of returnees to the country

In May 2009, the internal conflict between government forces and the Tamil Tigers ended. During the conflict, a high number of Sri Lankans (both Tamils and Singhalese) left the country, many of whom applied for asylum in Europe. UNHCR expects to see increasing numbers of refugees, including many families, returning to Sri Lanka mainly from Tamil Nadu in India in 2011. Sri Lankan institutions and infrastructure are cited by UNHCR as not yet being able to deal with the needs of returnees. Sri Lanka is dependent on external humanitarian assistance and donor aid. UNHCR has begun work on community development by teaming with local NGOs to involve them in returnee reintegration and recovery.

The Ministry of Resettlement is responsible for the return of internally displaced persons (IDPs) and persons still living in camps in South India, but not for returns of persons from other countries. Return arrangements are handed by the Department of Immigration and Emigration as far as identification and distribution of travel documents is concerned. Unaccompanied children returned fall under the responsibility of the National Child Protection Authority (see below). IOM implements a number of voluntary return programmes from Europe as well as some local projects for returnees.

Data

There is no data on children returning to Sri Lanka from the EU as there is no central agency collecting statistics on return.

From January to end of September 2011, UNHCR has helped some 1,493 Sri Lankan refugees (466 families) return to Sri Lanka under its voluntary repatriation programme. A majority of the returnees come from camps in Tamil Nadu, India. Small numbers have also returned from Malaysia, Georgia and the Caribbean Island of St. Lucia. There has been no return from Europe so far.

According to the National Child Protection Authority (NCPA), all the returnees from Europe that have been placed under their protection were Tamil speaking Sri Lankans. There were more boys than girls and most of them were teenagers. NCPA also stated that a large number of these children had been returned from the point of transit.

Legal framework applying to children

A child is defined as a person below the age of 18 identified by using the legitimate birth certificate issued by the Government of Sri Lanka or if the birth certificate is not available, the age is determined by a medical practitioner and then validated by a Court.

The traditional family in Sri Lanka is the extended family, which includes the closest blood relations i.e. parents (one or both) and children and the grandparents and sometimes sisters and brothers. The concept of "nuclear family" is also sometimes used and refers to the parents and their children (biological or adopted). The Census of Sri Lanka Act defines a family unit as consisting of all the members of that unit who are living under the same roof and sharing the same food cooked in the premises.

Sri Lanka is a signatory to the CRC and the 1996 Hague Convention on the International protection of Children. The National Child Protection Act (1998), the Street Children Network and the 1990 National Plan of Action for Children, are some of the measures that seek to protect children. Whilst these have relevance for returned children there is no specific mention of responses to this group of children in Sri Lankan law. The National Child Protection Authority (NCPA) was established under legislation in 1998.[428] According to the NCPA, the same policies and procedures applicable to any children living in Sri Lanka will be applicable to any child returning from abroad (removed or otherwise). The NCPA's mandate includes the protection and treatment of child victims of abuse. Forced returned unaccompanied children are considered to fall under the mandate of the NCPA. When the child is returned they are registered by the Immigration Office and then handed over to the NCPA.

A child cannot be sanctioned for having irregularly migrated but their legal caregiver can be. Although there is no information about how likely in practice the parent or caregiver is to be condemned for such an offence, stakeholders stated that when a travel document is issued to a child, a parent or guardian undertakes responsibility for the child. Families may be asked why they violated the immigration legislation but again sanctions are not applied. A child found abroad with a Sri Lankan travel document indicates that the guardian has overlooked his or her responsibility and is accountable to the State.

Procedures on return

Families with children

Sri Lankan refugees returning under UNHCR voluntary repatriation programmes receive an initial standard reintegration grant. Once at their destination in Sri Lanka the returnees can approach one of UNHCR's five offices in the North and East of the country to obtain a kit of basic household supplies. Sri Lankan refugees abroad who wish to return home can approach the closest UNHCR office in the country of asylum. Once the request is processed they are provided with an air ticket to Sri Lanka and assisted to obtain return travel documents. IOM also has a reintegration programme in Sri Lanka.

Unaccompanied and separated children

When the state is aware of the forced return of an unaccompanied child, prior to the removal, the National Child Protection Authority (NCPA) will liaise with the Sri Lankan embassy in the host country.

[428] National Child Protection Act no 50 provided for the establishment of the NCPA to formulate national policy on prevention of child abuse, the protection and treatment of children who are victims and the coordination and monitoring of action against all form of abuse

Children who have been deported automatically come under the custodial care of the Government of Sri Lanka after their arrival. Children are met by a representative of the NCPA and are presented to the Juvenile Court. State protection is granted to the child if no family has been identified. The NCPA along with the Department of Probation and Child Care is then responsible for providing protection to the child until their family is traced. Family tracing depends entirely on the information given by the child. Stakeholders expressed doubts that children subject to forced return would provide information as they are likely to have migrated illegally and therefore their family might be subject to court proceedings.

Unaccompanied children returning to Sri Lanka whose family cannot be traced are placed in mainstream residential institutions (run by NGOs as well as governments) until they turn 18.
Limited information was available to this study on how this operates in practice, in particular, whether such children are appointed guardians and how long they typically stay in such centres. The transfer of care to a family member, a guardian or to institutional care is ruled by a judicial decision based on an assessment from the Probation and Child Care Services. Guardianship may be granted to a member of the wider family circle.

EU Member States are not involved in support, building or financing of reception facilities for separated children in Sri Lanka. Apparently many children are not reunited with family, often because not enough information is provided by the child to trace family members. Also it has been reported that families may be deterred from contacting the authorities as they run the risk of being subject to sanctions related to irregular migration of their children.

Reintegration support post return

Returned children have the right to enjoy the same services, benefits and protection as other Sri Lankan children such as free education and health care. Technical or vocational training as well as further education can be provided and financed by the government if required. Some of the reintegration support can be granted to families of former unaccompanied children, for example, through the provision of monthly subsidies to assist the family in caring for the child after their return. Returning children within families are also supported with free education and vocational training.

Monitoring Mechanisms

The Probation and Child Care Services will delegate a Probation Officer to monitor the welfare of the child. The Probation Officer also reports to the Court about the situation of children that are being reunited with someone who is not a direct relative.

5.7 UKRAINE

Context of returnees to the country

Ukraine is both a country of transit for migrants on their way to the EU and a country of emigration. It is also reported[429] to be one of the main European countries from which children and women are trafficked abroad for sexual and other forms of exploitation. The EU-Ukraine readmission agreement regulates the procedures and evidence for the re-admission from the EU to Ukraine of Ukrainian and third country nationals (TCN) who entered the EU from Ukraine. However, so far no EU Member State has concluded implementing protocols under the agreement and in practice, those countries that had previous bilateral readmission agreements with Ukraine continue to use them.

Data

Data on returns of both Ukrainian and third country nationals are incomplete. According to IOM,[430] in 2010, 638 Ukrainian nationals and 398 third country nationals (TCN) were readmitted to Ukraine from the EU. Statistics from the State authorities suggest that no unaccompanied children were returned from any of the Member states in 2010. Only 8 children, originally from Afghanistan, were readmitted to Ukraine with their families. Other stakeholders, however, have reported that returns of unaccompanied children have taken place. Caritas, Uzghorod has recorded 11 cases of returns of unaccompanied children (TCN) from Slovakia under their monitoring project and UNHCR has reported 7 cases of return of unaccompanied children from Hungary (TCN). One reason for the inconsistencies in the data on unaccompanied children returned might be rooted in Ukraine's age assessment practice which carries the risk that children are listed as adults in the data from state authorities.

Legal framework applying to children

There is no single definition under Ukrainian law of family: different laws may provide various definitions. The family code states that 'family comprises of persons, who reside together, are related by common life, have mutual rights and responsibilities'.

Concerning families of third country nationals, the 2003 Refugee Law defines refugee family members as "a husband (a wife), children who are under eighteen years of age, parents incapable of working or other persons who are under guardianship or care of a refugee". A child separated from a family is defined as "a person under eighteen years of age who is arriving or has arrived into the territory of Ukraine without parents or parent, grandfather or grandmother, adult brother or sister, guardian or tutor appointed pursuant to the legislation of the country of refugees' origin or other persons of full legal age who voluntarily or due to traditions existing in the refugee's country of origin assumed responsibility for upbringing of the child prior to arrival in Ukraine".

[429] See for example the USAIM project on "Human Trafficking Prevention and Assistance to Victims in Ukraine" , http://www.usaim.org/page11.php
[430] GUMIRA project Anthology, January 2009-March 2011, IOM

In addition to the rights specified in the refugee law regarding unaccompanied children, all children in Ukraine are protected under the constitution as well as specific children's rights instruments. However, a stakeholder commented that the provisions of these laws are not always applied and the principle of the best interests of the child seems to be poorly integrated into existing policies.[431]

Ukrainian law provides that illegal entry or border crossing is punishable by a fine, correctional labour and administrative arrest. An exemption is made for Ukrainian victims of human trafficking and third-country nationals seeking asylum. Otherwise, the provision applies to third country nationals and, in some limited cases (e.g. illegal border crossing, lack of documents or use of forged ones), to Ukrainians. According to the law, children are not criminally or administratively liable (with some exceptions depending on age but these do not concern border crossing). Nevertheless, there have been cases in which fines have been imposed on third country national unaccompanied children but were subsequently overturned by courts on appeal.

Contacts between returning countries and receiving countries prior to return

There is no specific procedure regulating the contact between authorities of Ukraine and the authorities of the returning country prior to the return of children, other than the standard procedures specified in readmission agreements which apply to everyone. Usually, readmission agreements include an accelerated procedure (which is applied when a person is arrested after coming directly from the territory of the requested state) and a regular procedure. In Ukraine, the State Border Guard Service (SBGS) is responsible for the accelerated procedure, while the Ministry of Interior (MI) deals with the regular procedure. The Ukrainian authorities claim that since the entry into force of the Readmission agreement there have been no returns of unaccompanied children.[432]

Procedures on return

Families with children

Ukrainian families do not receive any travel assistance from the State to return. However, various EU Member States provide assistance under AVR programs, which may also cover transport to the final destination.

Third country national families face initial short-term detention upon return for a period of up to 10 days. Unlike single adults who are detained in temporary holding facilities, families are usually detained in the 'Dormitory' in Mukachevo, a facility used exclusively for families, women and children. Some temporary holding facilities also have special sections for women and children. While most facilities have been renovated recently with funds from the EU and some Member States, their maintenance and the provision of adequate food, especially one suitable for babies and pregnant

[431] Interview with the Danish Refugee Council in Ukraine
[432] But see indications of the contrary in interviews with other stakeholders mentioned below

women, remains problematic due to lack of funding.[433] Even more worryingly, however, is that stakeholders report that a number of families have alleged that they have been subjected to inhuman and degrading treatment upon return during interviews by the police and other authorities attempting to gather information about smugglers and their networks. Physical ill treatment of detainees, during initial questioning was also documented in reports. [434]

Following this initial detention period, the subsequent treatment of the family depends on whether they lodge an asylum claim in Ukraine. Our research suggests that most people apply for asylum in Ukraine upon return, except for some nationals of CIS countries (Moldova, Georgia, sometimes Russia and Belarus). Some Chechens choose not to apply for asylum because their claims may be seen as lacking credibility or for fear of being extradited to Russia. If the family does not apply for asylum and has no legal basis to stay in Ukraine, they can be detained and returned to the country of origin. Ukrainian law prohibits the return of a person if they would face torture or other risks upon return but it was reported that these provisions are not always applied in practice.[435] Families awaiting return are detained in Migrant Accommodation Centres (detention centres operated by the Ministry of the Interior). Their children accompany them in detention as it is considered to be better for the children not to be separated from their parents. The detention centres have separate accommodation for women with children and men are allowed to visit them once a week. The maximum period of such immigration detention is 6 months and can be appealed but courts in practice often take longer than 6 months to review the case, which makes the appeal futile.

Families wishing to apply for asylum at the border upon return must rely on the SGBS to submit their application to the migration services. However, a stakeholder commented that there seems to be a lack of cooperation between the migration service and the SGBS and frequent reorganisation means that the process is far from straightforward and may present real risks of refoulement.[436] These risks are compounded by the existence of readmission agreements with other countries (e.g. Russia) as well as some gaps in current legislation concerning guarantees against expulsion following extradition requests (Uzbek and Russian asylum seekers being most at risk). The law states that a refugee, an asylum seeker during the procedure, or a person facing torture or other risks on return should not be extradited but the prohibition may be overridden in cases 'otherwise provided for by the international treaty of Ukraine' Moreover, these guarantees may not always be respected in practice.[437] Once they are admitted to the asylum procedure, families are accommodated in temporary accommodation centres for asylum seekers. Their children are allowed to access school.

[433] Interview with the Danish Refugee Council in Ukraine
[434]“ Buffeted at the Borderland. The Treatment of Asylum Seekers and Migrants in Ukraine”, Human Rights Watch, 2010
[435] See Amnesty International, *Ukraine must not forcibly extradite Chechen man to Russia*, 14 January 2010
[436] ECRE : Country Report 2009, Situation for refugees and asylum seekers
[437] Ukrainian Refugee Council, press statement: “The EU-Ukraine Readmission Agreement - MYTHS, FACTS AND RISKS”

Unaccompanied children

Regarding the return of unaccompanied Ukrainian children, there is a decree which states that the diplomatic agency abroad should inform the Ministry of Foreign Affairs (MFA) that should approach the Ministry of Interior, Ministry of Youth and relevant regional competent authorities in order to trace family members of such children in Ukraine. The Ministry of Interior is responsible for family tracing and should inform MFA regarding the results of such activities. If there are no family members of the child in Ukraine, the Ministry of Youth is responsible for identifying the relevant state care institution in which to place the child. The Ukrainian diplomatic institution abroad informs the relevant regional body about the time and date of the child's arrival in Ukraine. The representative of the regional state administration meets the child in Ukraine (children from 14 to 18) or accompanies them on return (children below 14 or those with disabilities).

Concerning third country national unaccompanied children, identification is difficult due to the lack of formal procedure for conducting age assessment on a migrant child, except in relation to criminal offences. As a result, the practice varies widely, ranging from accepting the child's own claim, contesting it and asking them to undergo an age assessment test despite the lack of clear procedure, registering the child as an adult or, registering an adult as a child, allegedly sometimes as the result of a bribe.[438] Despite the legal safeguards stating that children are not criminally or administratively liable and the requirement to transfer them to the Child Protection or Migration services, third country national unaccompanied children may find themselves in short-term detention upon return particularly if their stated age is disputed. Similar to families, they are usually accommodated not in the temporary holding facilities but in the dormitory in Mukachevo. At the interviews, both the MI and SBGS stated that there was no practice of return of unaccompanied children to third countries. However, in the course of the research, such cases were revealed in reports and in interviews with other stakeholders (HRW report, Hungarian Helsinki Committee, UNHCR, Caritas). Moreover, the Committee on the Rights of the child[439] has expressed concern at alleged cases of torture and ill treatment of juveniles by *Militsia* officers to extract confessions and of migrant children while in custody of the SBGS. In addition, due to deficiencies in age assessment, unaccompanied children may have to share accommodation with adults who have wrongly been considered to be children.

Ukrainian law on refugees contains specific provisions on the treatment of unaccompanied children. If an unaccompanied child wants to apply for asylum, the Border Guard must inform the migration agency and the child protection authorities, which should ensure accommodation of the child. A child cannot submit an application on his/her own behalf; it has to be done by their guardian who must be appointed by the Children's Social Service within the regional administrations. However, there are no clear procedures in place that ensure that the administration will effectively appoint a guardian. Only an employee of these services can be appointed as a guardian. The Danish Refugee Council (DRC)

[438] "Buffeted at the Borderland. The Treatment of Asylum Seekers and Migrants in Ukraine", p99 Human Rights Watch, 2010

[439] Consideration of Reports Submitted by State Parties under Article 44 of the Convention. Concluding observations on Ukraine, Committee on the Rights of the Child, 2011

has a project on developing legal and institutional systems, strengthening social assistance and developing support for orientation and adaptation of children into Ukrainian society, and developing models of temporary care for unaccompanied child asylum seekers. They mentioned practice in one region, where the same person acts as a guardian for all unaccompanied children in the region. This is different to other regions where a number of different guardians work with unaccompanied children. After the procedure of appointment is completed, the guardian approaches the migration service, which accommodates the child in open-access temporary accommodation centres. In theory, unaccompanied children, regardless of whether they apply for asylum, are also entitled to stay in shelters for orphans and children deprived of a family environment. In practice, however, they are often unable to access such accommodation because of administrative and practical obstacles.[440] Stakeholders reported that sometimes children have to find their own accommodation, which most often means sharing a flat with people of their nationality. They have to pay rent, and due to lack of financial means, they have to perform domestic and other work. Sharing an apartment with unrelated adults and having to pay for rent and other expenses leaves them very vulnerable to abuse. Children are allowed to access school but few of them do; they usually attend language classes in the accommodation centre.

For Ukrainian children, family tracing is done as described above, before the child is returned. With regard to third country national unaccompanied children, stakeholders were unaware of any state institution ever initiating family tracing. Usually the request is made by non-state actors and conducted by the Red Cross.

Reintegration support post return

No special assistance is provided to Ukrainian families who are returned and they would be required to access mainstream provision (e.g. if a family is homeless they could access the shelter for homeless people or sign up for the state employment agency to look for a job as well as receiving unemployment benefits). Unaccompanied children, whose family is not found, are entitled to state care. Various Member States provide re-integration assistance through their Assisted Voluntary Return programs, which varies according to the specific program.

It is difficult to assess the sustainability of returns because there has been no evaluation of the effectiveness of AVR programs. There have been some projects run by European Support and Reintegration Organisations (ERSO),[441] which have been successful. From interviews with stakeholders it emerged that returns of third country nationals are generally not viewed as sustainable. There are a number of reasons cited for this, including the fact that many perceive Ukraine as a transit country and that the deficient asylum procedure provides little chance of protection. The precise impact of returning children is hard to measure but stakeholders complained

[440] Interview with the NGO – "Child Protection Service"
[441] More information on ERSO, a network of 11 European Organisations working together in providing assistance to persons returning voluntarily is available at http://www.erso-project.eu/.

that it created additional problems for the already dysfunctional asylum system and, more importantly, for the children themselves.

There is no state body responsible for combating trafficking and assisting victims, but returning trafficked persons receive assistance from IOM. Under their re-integration program for trafficked persons, applicable to both own and third-country nationals and unaccompanied children, trafficked persons receive comprehensive needs-based assistance funded by some of the returning states. IOM provides assistance with regard to repatriation, reception (overnight accommodation, further transport to final destination), rehabilitation support (medical, psychological, social, legal, recreational, educational) and reintegration assistance (vocational training, job mediation, business training and support). Given that by far the largest number of trafficked persons returned to Ukraine from EU Member States are being returned from Poland, some stakeholders expressed disappointment that Poland does not have a specific reintegration programme in Ukraine.

Training is usually organized by the NGOs and international agencies. IOM covers training on trafficked persons and the Danish Refugee Council as well as UNHCR and their partner NGOs provide training and support for the authorities with regards to asylum or potential asylum seeking children. The Danish Refugee Council's Project "Legal and Social Protection of Asylum Seeking Children in Ukraine", funded by the EU, aims to provide child-focused training to the authorities, legal counselling to unaccompanied children and guidance for lawyers involved in such cases.

Monitoring Mechanisms

There is no general post-return monitoring though monitoring is undertaken under specific reintegration programmes such as assisted voluntary return programmes run by IOM or NGOs and IGOs. Under most of IOM's AVR programs monitoring lasts for 6 months but under IOM's reintegration program for victims of trafficking assistance can last for up to 2 years. UNHCR and DRC as well as their NGO partners try to carry out monitoring of third country nationals who are returned.

There is a specific project "Family tracing activities and assisted voluntary returns of unaccompanied foreign minors", in support of the Italian Committee for Foreign Minors which aims at family tracing for Ukrainian unaccompanied children in Italy, contact with the families in Ukraine and monitoring upon and after return, carried out by IOM.

SECTION 6.
CRITERIA FOR IDENTIFYING GOOD AND NOTEWORTHY PRACTICES

The study's specifications do not establish the criteria for identifying good and noteworthy practices in return. Part of the aim of the project is to establish what was considered to be good or noteworthy practice by the various stakeholders involved. Typically this varies from stakeholder to stakeholder, though patterns sometimes emerge where actors with the same or similar roles have criteria that converge.

Identified criteria has considered to what extent practice:

- Is consistent with the obligation to respect the rights of children and other international law obligations
- Is based on the existence of clear and formal procedures for undertaking return, which are the subject of effective appeals
- Reflects constructive inter-agency work embracing a multi-disciplinary approach
- Is cost efficient
- Is effective i.e. children are removed from Member States
- Delivers durable outcomes and sustainable return and reintegration

A consensus on what constitutes good or noteworthy practice between all of the stakeholders is difficult to achieve given their divergent perceptions of desirable outcomes of the process and the different weights they might attribute to different individual criteria. In very broad terms, the stakeholders representing the NGO sector providing services to children cited good practice where the best interests of children and the promotion of their rights was the primary consideration. Stakeholders representing the agencies of Member States were more likely to view good practice as procedures that were straightforward and speedy and resulted in a quick enforcement of the return decision. However, it should also be emphasised that stakeholders can often be reluctant to define practices as either good or bad, indicating that the numbers of children being returned from their country, whether unaccompanied children or children within families, was too small to draw any conclusions about practice. In other cases, practices are emerging or under development and have not yet demonstrable effects.

SECTION 7.
AN INVENTORY OF NOTEWORTHY PRACTICES CONCERNING THE RETURN OF CHILDREN BOTH IN MEMBER STATES AND COUNTRIES OF RETURN

The inventory reports on practices which stakeholders across Europe and in some countries of return have identified as noteworthy because they are addressing key elements in the return process. This study was not intended, and has not been resourced, to evaluate all of the objectives, processes or effects of these practices. For this reason, when referring to this inventory, it is essential to acknowledge that:

- Practices which affect many aspects of the situation of individuals, and which may imply the engagement of several procedures and actors, often produce a range of effects, some more positive than others.
- Some practice might be considered as good only if certain preconditions are met, such as adequate resourcing and the involvement of properly qualified and trained actors.
- Several stakeholders have recently developed practices or are developing practices that do not yet have demonstrable effects but they are indicated here because they are worthy of attention.
- Most practices mentioned in the inventory are national practices. However some projects concerning regional cooperation or regional exchange of information are also referenced in the inventory. Such regional cooperation and exchange can be crucial to responding to what is a transnational phenomenon.
- A number of practices which are relevant more generally to child protection or migration issues can also be included as potentially helpful in designing or implementing effective return processes for children.

The inventory contains a description of noteworthy practices, followed by an indication of the relevant criteria of good practice which are relevant to the practice. Certain practices are also introduced by background comments to explain their context (e.g. that the practice has just been developed). The inventory is organised so that it can be cross-referenced with the *Checklist to achieve good practice when considering the return of children to third countries* and in particular the indicators contained therein. As in the case of the checklist it would be useful to revise the inventory of noteworthy practice periodically to reflect any progress in policies and practice.

7.1 DESIGNING THE RETURN PROCEDURE: GENERAL CHILD RIGHTS AND CHILD PROTECTION

Training of actors

Children are a distinct group with specific rights and needs. The provision of training to staff working with children should aim to ensure that these rights and needs are understood and respected. In general, training modules should always be carefully designed with contributions from relevant actors including services working with these children. Training should take place on a regular basis and should be carefully evaluated to ensure that it is effective.

All **United Kingdom** Border Agency staff at operational and case working grades are required to complete training applicable to their level of involvement with children. The statutory guidance of the Agency states that key arrangements – applying both generally to public bodies who deal with children and specifically to the UK Border Agency - include staff training on safeguarding children and promoting the welfare of children for all staff working with or in contact with children and families.[442] UKBA staff are trained (in house) in safeguarding children. The first level of training is an e-learning module on safeguarding children. The second level is mandatory for staff who have some involvement with children (e.g. at borders) but who do not interview them about their claim or make decisions on their cases. The third level is mandatory for staff who will be responsible for interviewing and making decisions on the children's claim. Ongoing training is arranged locally and the individual staff member's manager decides whether or not this will be mandatory.

Training activities:

- ✓ *Are consistent with the obligation to respect the rights of children and other international law obligations*

[442] http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/change-for-children.pdf?view=Binary

7.2 ASSISTANCE TO UNACCOMPANIED AND SEPARATED CHILDREN PRIOR TO A RETURN DECISION

Provision of Information

The CRC establishes that children have a right to access appropriate information. The SCEP Statement of Good Practice recommends that information is presented to children in a language that they understand and in a manner that is appropriate for children. The provision of information is most effective when children are assisted in their review of the material and are given an opportunity to raise questions in relation to their content and in relation to their specific situation.

In **Belgium**, the NGO Minors in Exiles Platform, has produced a brochure comprising 14 information sheets, including two relevant to return (family tracing and voluntary return), intended for all unaccompanied children present in the Belgian territory. The goal of the brochure is to offer a comprehensive range of information on the main actors involved and the main stages of the immigration and asylum process for unaccompanied children.[443.] The brochure is distributed to the children by their guardians or staff at the reception centres. At the moment, the brochure is available in 6 languages (French, Flemish, English, Russian, Swahili and Arabic). The Platform plans to translate it as well in Dari, Poular and Pashtoun.

Providing information:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*

Guardianship

Authoritative guidance emphasises the importance of guardians for unaccompanied children, for example, the Committee on the Rights of the Child General Comment No 6, UNHCR's Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum and SCEP's Statement of Good Practice. Availability of a guardian to provide assistance and representation for the child and to pursue the best interests of the child is important for all unaccompanied children, regardless of their immigration status. Guardianship schemes work most effectively with a widespread

[443] These are entitled 1. What part does your guardian play? 2. What part does your lawyer play? 3. Where do you live after you have arrived in Belgium? 4. What if you are stopped at the border without identity documents? 5. Asylum in Belgium. 6. If you are not an asylum seeker, how can you obtain permission to stay in Belgium? 7. Education in the French Community. 8. Education in the Flemish Community. 9. What does the CPAS do? 10. If you fall ill, who will pay for medical care and medicine? 11. How can you get in touch again with your family? 12. What should you do if you wish to return to your country? 13. You are or will be 18. What will happen? 14. OE, FEDASIL, CGRA, etc. What do they all mean?

availability of qualified and trained guardians. It is important to ensure the independence of the guardian from immigration control, so as to avoid conflict of interest in the guardian's role.

The Dutch Civil Code, states that all children in the Netherlands must be under the legal custody of an adult who exercises parental authority. All unaccompanied asylum seeking children in the **Netherlands** are appointed a professional guardian, provided by the NIDOS foundation to exercise overall legal capacity and to act on behalf of the child regarding all legal matters. Guardians are appointed promptly (indeed NIDOS is also present at Schipol airport, Amsterdam, to assist children as they arrive).

The foundation's mission statement outlines that, as an independent guardianship and family supervision agency, NIDOS carries out the guardianship task for unaccompanied child asylum seekers in line with relevant legislation. Guardians working for NIDOS are professionals who are skilled in working with children in migration. A bachelor degree in social work is needed to become a guardian. Guardians are supported by ongoing workshops and in-house training courses. The guardian promotes the best interests of the child, secures the child's education and care and works to prevent abuses and disappearances. The guardians, through their involvement and with specific expertise, focus on the best interests of the individual child, with respect for the cultural background of the child. They seek to manage the child's development towards independence and will intervene if it appears that the development threatens to stagnate in any manner.

The final decision on whether the child should be returned lies with the Immigration and Naturalisation Office. Whilst guardians cannot veto return, they will seek judicial oversight of the decision to return when they believe it has not been made in the child's best interests and the court may overturn the original Immigration and Naturalization Office decision.

From an early stage, the guardian involves the child in determining a durable solution, including consideration of return to the country of origin. The work of NIDOS on return is based on the wishes of the child and an assessment of their best interests. Plans cannot be made or changed without consultation with the child. If the guardian is of view that there is adequate reception in the country of origin, the guardian supports the child in working through the processes of return to the country of origin. Each plan is tailored to the needs and situation of each individual child and the return plan is based on an initial period of support and investment for the child when they arrive in the Netherlands, cooperation with reliable and trustworthy agencies in the country of origin and an assessment by NIDOS that return is durable. This is supported by a reintegration plan. NIDOS report that there is room to improve the number of reliable organisations and focal points in the countries of origin who could assist with family tracing and to assess if the location that the child is being returned to is consistent with meeting the child's needs as identified in the return plan.

When considering return, the guardian facilitates various preparatory activities for the child, including meeting with organisations providing assisted voluntary return programmes (IOM, Maatwerk bij Terugkeer – the Mediation Agency for Return) in the Netherlands and vocational training targeted at activities after return and counselling on the return procedure.

Availability of independent, qualified guardians with an appropriate mandate:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Supports the existence of clear and formal procedures for undertaking return, which are the subject of effective appeals*
- ✓ *Helps deliver durable outcomes and sustainable return and reintegration*

In **Belgium**, guardians must be appointed to all unaccompanied children. Guardians may be either professional guardians or volunteers. The guardian, as part of his or her role, makes a proposal for a durable solution to the immigration authorities and the authorities then make the final decision. Guardians can challenge the decision in court if they disagree with it.

There are no fixed criteria for the determination of a durable solution. The guardian is expected to ensure that the views of the unaccompanied child are taken into account and may make contact directly with the child's family in their country of origin. Such contact may promote better understandings within the family of the child's situation in Europe and promote a more open consideration of future options for the child, also based on a better understanding of his circumstances in the country of origin.

In cases where the child has expressed a wish to return, all relevant documents for the immigration authorities – social report, reintegration application form, etc - have to be drafted by the guardian in close coordination with the child. The guardian can escort the child during the return, though this can also be undertaken by another adult. In any event the child should be supported by their guardian both emotionally and practically during the preparation for return which can take up to several months, and during the return itself to the country of origin.

Availability of independent, qualified guardians with an appropriate mandate:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Supports the existence of clear and formal procedures for undertaking return, which are the subject of effective appeals*
- ✓ *Helps deliver durable outcomes and sustainable return and reintegration*

Helping Children Consider their Future

The CRC outlines that children have a right to be heard and to participate in the decision-making processes which impact upon them. Children should also be treated as individuals with their own particular histories, experiences, strengths and vulnerabilities. Children often need practical support in developing the appropriate plans and skills necessary to enable them to actively partake in society.

Council of Europe Life Projects Manual provides a valuable resource to support those working with unaccompanied children to engage children in the process of considering what life projects to pursue. A life project is defined as a plan prepared by the unaccompanied child and the authorities in the host country, which takes a multi disciplinary approach and draws on the input from a range of relevant professionals. Life projects should be personal, holistic and flexible. A life project takes account of the child's past and links it to the present with the goal of enhancing their future. The projects should ensure that the child's best interests are respected, that their rights are upheld and the child is supported to develop the necessary skills to become a full and active participant in society. The child's life project will cover different aspects of his or her life from housing, health, and education to personal development, cultural development, social integration and future employment. Depending upon the goal of the individual project the life project may be undertaken in the receiving country, the child's country of origin or both. A training manual was developed for use by all actors working with children.

Support for children to develop and achieve projects for their future:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Helps deliver durable outcomes and sustainable return and reintegration*

The **Beyond Borders** project[444] in the **Netherlands** supported young (former) asylum seekers to make plans about their future, including return with the goal of preventing them living in an irregular situation and hence on the margins of society in the Netherlands. The project was launched in 2006 by the Foundation for Unaccompanied Minor Asylum Seekers Humanitas (SAMAH) and was managed by the Mediation Agency for Return (Maatwerk bij Terugkeer). The project was open to young people from 15 to 25 who had recently arrived in the Netherlands. It encouraged them to make an informed decision and plan their future through the development of personal action plans, information workshops, tailor-made training, coordination of relevant activities between various organizations and information sharing through social networks. The development of these networks between young people and their peers in countries of origin was a key feature of this project, encouraging young people to connect with the realities and opportunities in countries of origin. Those networks reach to the countries of origin, such as Afghanistan, Angola and Sierra Leone.

444 http://beyondborders.nu/

It was recently announced that the Project will be winding down their work because of lack of funding. That project has been part of an umbrella project involving support work for all returnees including adults and the funding for this umbrella project has been stopped due to criticism that it did not contribute to a significant overall number of returns.

Support for children to be better informed and plan for their future:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Helps deliver durable outcomes and sustainable return and reintegration*

Related note: Caritas International Belgium is currently leading an effort to obtain funding for an international project building on this experience in Belgium, Greece, Netherlands, Spain, and the United Kingdom with a view to: (a) ensuring that methodologies based on pre-departure and post arrival assistance of unaccompanied children and former unaccompanied children are improved and implemented on a wider scale in five Member States and four countries of return, (b) exchanging experience and good practice to identify 'lessons learned' and a common approach and methodology that can be shared with and implemented by the countries concerned in this project (and later on by other Member States and countries of origin) and (c) ensuring effective cooperation and communication between the countries concerned in this project.

Tracing and Assessing Family and Restoring Family Links

Children have a whole range of rights regarding contact with both their parents and other family members, with respect for family life and the promotion of family reunification established under international law conventions, including in the CRC and the European Convention of Human Rights. The International Committee of the Red Cross (ICRC) has a lengthy and varied experience of restoring family links. However the organisation can only safely and effectively engage in tracing activities where the information provided to them is accurate. Third party requests are generally inappropriate and children should never feel under pressure to disclose family details or to initiate a trace because someone else or another agency instructs them to do so. Where clear information about the family's location is not available, there can be a real risk for personnel involved in attempting to trace on the basis of inaccurate information, in particular in areas where there is conflict or violence. Tracing a child's family should not only be linked to the return of the child but should have the initial aim of restoring contact between family members. Once a family is traced, an assessment of their situation should be undertaken to inform a durable solution that is based on the best interests of the child.

The Family Links Network of the **International Red Cross and Red Crescent Movement** (hereafter the Movement), consisting of the International Committee of the Red Cross (ICRC) and the tracing services of the 186 Red Cross and Red Crescent National Societies around the world, has longstanding experience and expertise in the area of restoring family links between family members separated as a result of conflict, disasters, migration and other situations of humanitarian need.

"Restoring family links" is, for the Movement, a generic term for a range of activities aimed at preventing separation and disappearance, restoring and maintaining contact between separated family members, and clarifying the fate of persons reported missing. During recent years, the Movement has been paying particular attention to persons separated as a consequence of migration and makes itself available to assist with tracing family members of unaccompanied and separated children in Europe and already does so in many cases.

The Movement operates on the principle that tracing the relatives of unaccompanied and separated children is a right of children both under the Geneva Conventions and the Convention on the Rights of the Child. The Movement will trace family members (defined broadly) of these children provided that: (i) the request comes from the child, or, if they lack capacity, from their guardian, (ii) stems from the child's genuine wish to find their relatives and (iii) is in keeping with the child's best interests. The Movement therefore prefers, when possible, individual contact between the National Society (or the ICRC) and the child. In addition to ensuring the most accurate information, this also guarantees that there is a genuine desire on the child's part to initiate the tracing process. The Family Links Network is guided primarily by the interests and the desires of the child, but also by the desires and situation of the child's family. Indeed, the Movement considers that a person has the right not to be found. Therefore, no contact details of the person traced may be disclosed to the enquirer without their consent.

Tracing the family of unaccompanied children does not necessarily end in the child being reunited with their family. External circumstances (e.g. security conditions in the country of return) and the consent of the family are determining factors in deciding, postponing or ruling out reunification. In cases where reunification is not feasible, the work of the Family Links Network is limited to helping restore and maintain contact between the child and the family.

The Family Links Network treats tracing information as confidential data. Only the child and, in certain circumstances, the caretaker (or the guardian), are informed of the results of the tracing and only they decide whether this information may be shared with third parties. Practically, in order to trace family members of unaccompanied children, the Movement uses different tools and approaches, ranging from active tracing in the field to the use of modern technology, such as websites. For example, the Belgian Red Cross has set up a database called the "Red Cross EU Tracing Application", facilitating tracing of family members looking for other family members within Europe (e.g. who have been separated upon their arrival.

Restoring family links:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*

The International Social Service (ISS), which is an international NGO with a network of partners in more than 120 countries, carries out tracing of families, including for unaccompanied children. The main goal of ISS is to re-establish contact, but the tracing is also seen as part of a plan to return if it is deemed in the best interests of the child.

The General Secretariat of ISS (Geneva) signed a formal cooperation agreement with the Finnish Immigration Service in 2007 regarding tracing families or legal guardians of unaccompanied children. The Finnish Immigration Service is responsible for the overall tracing obligation according to a legislative amendment regarding tracing (this amendment is based on international treaties to which Finland is bound) that entered into force on 1st February 2007. Whilst ISS are not party to the decision on the asylum application they believe that the information they gather and supply to the Immigration Service about the child's situation in their country of origin does inform the decision on whether a child should be returned or otherwise. Parents or former guardians of unaccompanied children must be traced where possible before a decision is made on whether to return the child or not. However tracing will not be pursued in situations where there is insufficient information, for example, addresses of sought persons are not available, or it is felt that tracing could expose the child or their family to danger. Indeed the Finnish Immigration Service is explicit in stating to ISS that tracing must be stopped if, in the opinion of ISS, it becomes apparent that the child or their family may be exposed to danger. The child's guardian or tutor is also kept informed of developments with the tracing enquiry and they too can intervene if they believe that the tracing enquiry is exposing someone to danger. The agreement states that the duration of tracing is five months, though this can be adapted on a case-by-case basis.

Working with local actors both with the NGO and Governmental sectors, ISS provides a detailed report of the situation of the family including a description of the conditions that may affect reunification, covering housing, economic situation of the family, health conditions of family members, willingness of the parents / the guardian to re-unite with the child, capability to take care of the child, the relationships between the family members, and possible drug or alcohol abuse etc.

Restoring family links:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Reflects constructive inter-agency work embracing a multi-disciplinary approach*
- ✓ *Helps deliver durable outcomes and sustainable return and reintegration*

Noteworthy regional practices in providing assistance to unaccompanied children

Practitioners, decision makers and policy makers across different countries should have opportunities to share good practices and to learn from each other when developing initiatives for unaccompanied and separated children. This can enhance capacity, develop consistency and save on both developmental and service delivery resources.

Save the Children and the EU fund the network of 30 organisations working on the issue of unaccompanied and separated children in Europe called the **Separated Children in Europe Programme (SCEP).** This regional network works together on a range of issues in order to improve the assistance and protection of separated children in Europe. As part of this process, the programme has an ongoing commitment to developing partnerships between organisations working with separated children in European countries. SCEP has produced, amongst other materials, a Statement of Good Practice, which identifies good practice when assisting and returning children. It has working groups on several priority areas including guardianship and return.

The European Network of Guardianship Institutions ("ENGI"), a project led by the NIDOS, the Dutch guardianship authority and funded by the EU, is noteworthy in that it is engaged in a number of successive projects with the aim of improving guardianship services in the EU Member States through exchange of information on guardianship systems in certain European countries and fostering links between them.

The EU funded project on guardianship **working towards common standards for guardians** is led by Defence for Children International (DCI) working with partners from SCEP. The project aims to develop core standards for guardians, with a focus on their role and qualifications, based on the views of separated children in relation to their rights according to the Convention on the Rights of the Child. Organisations in eight Member States[445] are engaged in the project. The project provides an instrument to improve the ability of a guardian to take the special needs, and rights, of separated children into account.

[445] Belgium, Denmark, Germany, Ireland, Italy, the Netherlands, Slovenia and Sweden.

7.3 DECISION MAKING PROCEDURES

The child's right to participation and to have decisions made in their best interests is embedded in the CRC but also in other significant guidelines relevant to unaccompanied children. Indicative but not exhaustive examples include the Committee on the Rights of the Child General Comment No 6, UNHCR's Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum and SCEP's Statement of Good Practice. Children, including children within families, should be supported in the processes designed to consider their views and to hear what they have to say and particular attention should be given in this regard to gender, culture, language and ethnicity, and their individual experiences, including their likely or actual exposure to trauma.

In 2009, the **Spanish** High Court delivered a key judgment related to the right of children to be heard. The case was about a Moroccan unaccompanied child who had received an administrative order to be returned and whose appeal was based on not having had the right to be heard. In Spain, the return decisions are issued by the General State Administration who is required to hear the opinions of the child and the child protection services. In this case, the Administration could not demonstrate that an interview of the child did occur. The Court ruled that an interview of the guardianship institution, the Children Institute of Madrid, cannot replace an interview of the children themselves, if they demonstrate an adequate level of maturity. The High Court confirmed the annulment of the return decision because of a breach of the procedural safeguards. The Court held that, by not interviewing the child, the Administration had given rise to an effective violation of the possibility for the child to defend himself (*indefensión material*), which is a procedural right and could have had a real influence on the return decision.

Ensuring that children are heard:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Is based on the existence of clear and formal procedures for undertaking return, which are the subject of effective appeals*

UNHCR and **UNICEF** are currently developing guidance on determining the best interests of separated and unaccompanied migrant children in industrialised countries within a European context (the Guidance will be published early 2012). The determination of the best interests of the child, based on Article 3 of the CRC, is at the core of all procedures related to children, including decisions regarding whether or not to return a child. However, there is little formal operational guidance available on how to apply the best interests' principle in this context. In 2008, UNHCR published "Guidelines on Determining the Best Interests of the Child"[446] in an attempt to fill this gap, but these guidelines are aimed at UNHCR's "field" operations. The new guidance will be targeted at defining formal best interests determination procedures in Europe, taking into account the multiple actors involved (civil servants, social workers, lawyers, guardians etc.) and the different categories of children concerned (irregular migrants, victims of trafficking, asylum seekers). In the context of decision-making on durable solutions, the aim is that the guidance will be a tool for practitioners involved in the best interests' determination procedure, containing adequate safeguards and ensuring that all options have been considered taking into account the child's best interests. The Guidance will be based on research of existing practices in a number of countries in Europe as well as jurisprudence and (evolving) international and regional legal and policy frameworks.

Formal determination of the best interests of the child in individual cases:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Is based on the existence of clear and formal procedures for undertaking return, which are the subject of effective appeals*
- ✓ *Delivers durable outcomes and sustainable return and reintegration*

7.4 POST DECISION AND PRE-RETURN PHASE

Support for children with failed asylum applications

Before a return decision is implemented disruption to the placements and routines of children should be minimised, in particular, through continuity in the availability of education and health care. The CRC notes that children have rights to association with other children (and adults) and have developmental rights associated with learning and play. Children typically function better when they have stability and are able to engage in activities with other children.

[446] http://www.unhcr.org/refworld/docid/48480c342.html

In **Denmark**, rejected asylum-seeking children and families remain in the Danish Red Cross reception centres, though they might be transferred from one centre to another. In those centres, children are offered a range of services. Employees at the centres aim to establish daily meaningful social activities for children, which typically take place in the afternoon after normal school hours. Additional activities are also organised during the school holidays. The Danish Red Cross also have projects which aim to integrate asylum seeking children into activities in the local communities such as sports, dance, music and other creative activities.

Support for children which ensures they have access to key services and meaningful activities post a return decision:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Reflects constructive inter-agency work embracing a multi-disciplinary approach*

7.5 DETENTION

Alternatives to detention

The CRC and relevant guidelines are clear that the detention of children should only be as a matter of last resort. Further, children should be detained for the shortest period possible, in conditions appropriate for their age, separate from adults (unless this is not in their best interests) and with access to legal representation. Alternatives to detention must be fully explored and work best when children and families with children are given support in engaging with the immigration process, including accurate information on developments.

Since October 2008, families with children who are required to leave **Belgium** are no longer held in closed detention centres, but are placed in individual open housing units, called “return-houses”. There are two categories of family in the return-houses: the families who were arrested on the territory and the families who asked for asylum at the border. Family unity is maintained even when children have turned 18 years old. Family members are allowed to exit the house, providing that one adult member of the family remains present in the unit. Children are allowed to attend school, even though it is sometimes difficult to ensure in practice (due to lack of available places in schools, short period prior to the return, etc). Families have access to health care in addition to an obligation to a medical check when entering the return-houses and to a “fit-to fly” examination before return.

Within the return houses, families receive counselling from a return-coach, who works for the Foreigners Office. Each coach works with 3 to 4 families at a time and is in almost daily contact on behalf of the families with the authorities. The coach's role is to prepare families for return whilst

exploring the possibilities of them receiving a residence permit and supporting them in their current situation. They provide families with information and coordinate the involvement of other actors working with the family, for example, lawyers, and help children enrol in school. They also prepare families for regularisation of their stay. From October 2008 up to February 2011, 145 families with 268 children stayed in the return houses. Amongst them, 60 families returned to their country of origin or to a third country. In very few cases were coercive measures necessary for the return.

NGOs have regular access to monitor the programme in the houses. In December 2009, 10 NGOs and the Belgian National Committee of UNICEF published a report on the implementation of the return houses in which they expressed favourable views on this alternative to detention, calling for it to be strengthened and durable. The Fundamental Rights Agency Report on Detention noted, "This pilot project draws from the successful experience in Australia, where immigrants were released into community care. Absconding rates have remained relatively low at about 20%. The difference with other forms of alternatives consists in the integrated approach, which includes individualised counselling. Differently, from the Swedish and Australian experiences, the Belgian pilot focuses primarily on promoting return rather than exploring all possible immigration outcomes, although recently the role of the coacher has been expanded."

Avoiding the detention of children when ensuring effective and appropriate returns:

- ✓ *Is based on the existence of clear and formal procedures for undertaking return, which are the subject of effective appeals*
- ✓ *Reflects constructive inter-agency work embracing a multi-disciplinary approach*
- ✓ *Is cost efficient*
- ✓ *Is effective i.e. children are removed from Member States*

The **International Detention Coalition** has published a handbook entitled "There are Alternatives" which is based on research into a variety of national practices and which serves as a tool to facilitate countries in developing effective alternatives. The handbook identifies and describes a range of mechanisms to prevent unnecessary detention and outlines a number of possible alternatives to detention. It outlines a new five step conceptual and practical framework in considering alternatives to detention, which the Coalition calls the Community Assessment and Placement (CAP) model. There should be a presumption against detention and restrictions of liberty should only be applied as a measure of last resort. Individual screening should take place to identify the needs, strengths, risks and vulnerabilities in each case and an assessment of the community context should be undertaken to identify any support mechanisms that need to be put in place to maintain engagement with the immigration process. Consideration should also be given to alternatives to detention, such as reporting requirements or supervision.

Unaccompanied children are not subject to immigration detention

The CRC and relevant guidelines stress that the detention of children should be avoided and that other options for maintaining immigration control should always be vigorously pursued. The benefit of doubt should be given to the individual in the event that there is an age dispute and pending any age determination, interim measures, including whether or not to detain a child, should reflect that the applicant may be a child.

In **Belgium, Cyprus, Estonia, France, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Portugal, Slovakia, Spain, Romania** and the **United Kingdom** there is no detention of unaccompanied children in practice. However it must be noted that if an applicant who claims to be a child has been age disputed they may be treated by the immigration services as an adult. As a consequence, if other grounds for detention are met, the applicant may be detained even if they maintain that they are a child.

Avoiding detention of children:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*

Children are provided with education whilst subject to immigration detention

Children have rights regarding access to education as set down in the CRC. From a practical perspective, they should be assisted in achieving this right through the provision of necessary support, for example, transport where necessary to help the child get to school. It is recognised that a child's development needs should not be put on hold because they are detained.

In the Bela-Jezova detention centre in the **Czech Republic** children in families and unaccompanied children must be accepted at the nearest primary school and the detention centre has to provide transport to and from the school. In addition the Refugee Facilities Administration provides tutoring classes inside the detention centre.

Ensuring that children have access to essential services during pre return period:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Reflects constructive inter-agency work embracing a multi-disciplinary approach*

7.6 THE RETURN PROCESS

Assisted voluntary return and reintegration projects (AVRR)

Generally voluntary return is seen as a preferred option to forced return. Choices around AVRR should ensure that children, including children within families, are provided with information and are allowed time to reflect upon this and are provided opportunities to discuss their options with their parents, guardian or other trusted adult. Any programme concerning the return of unaccompanied children should be underpinned by a Best Interests Determination, to ensure that the return does in fact reflect the wishes of the child and their best interests.

IOM offers a number of Assisted Voluntary Return and Reintegration (AVRR) projects to Member States where support and assistance is offered to children within families and to unaccompanied children who choose to return to their countries of origin. Many Member States commission IOM to design and run AVRR schemes on their behalf and the Member States will provide agreed resources to support elements of the programme. Some programmes are better resourced than others (for example, as regards reintegration support or reintegration monitoring).

IOM's work in finding agreement with Member States in relation to return assistance for unaccompanied children is supported by their internal guidelines on the return of unaccompanied children.[447] IOM notes that these guidelines outline good practice as well as identifying practices that would be inappropriate. The guidelines are not public but IOM has indicated that they define some preliminary parameters that need to be met when considering the return of unaccompanied children in an AVRR, such as:

- Confirmation of the identity of the legal guardians in both the host country and the country of origin.
- Confirmation that the host government is legally required to conduct a Best Interests Determination (BID) prior to the possible return.
- IOM assistance will be determined by the outcome of the BID process and the participation of the child in the process.
- "Unaccompanied children may only be returned to country of origin if, on arrival, adequate reception and care are available (based on their needs, age and degree of independence). Care can be provided by parents or other adults responsible for the child, or by governmental or non-governmental bodies, it should be obligatory to ensure that a legal guardian is available in the country of origin".[448]

[447] IOM Guidelines on the Protection of Unaccompanied Migrant Children, Information Note (January 2011), IML, Geneva

[448] IOM Guidelines on the Protection of Unaccompanied Migrant Children, Information Note (January 2011), IML, Geneva

- In cases where parents or members of the extended family are not available in the country of origin, or where they are not able to care for the child, IOM will only provide assistance upon formal confirmation by the legal guardians in both the host country and the country of origin that adequate reception and care and custodial responsibilities for the child are in place in the country of origin.

In interviews IOM noted that the involvement of a legal guardian in helping unaccompanied children is a crucial element of this process. Similarly IOM noted that successful AVRR is highly dependent on the quality of care and guardianship provided to the child upon return.

IOM states that, as a vulnerable group, unaccompanied children should always have a reintegration plan which will cover education, the re-establishment of family relationships and consideration of what support should be available to the child's family. More generally, as noted above, the level of reintegration support and monitoring will depend on the resources available to the project. The plan should be framed within considerations for why the child migrated in the first place. Time limited monitoring of the child's situation following return is also generally provided. In some schemes monitoring will take place only for three months after a child's return, or in some cases it will take place for six or even twelve months. At a minimum, the monitoring should seek to establish whether what was agreed in the child's individual reintegration plan has been delivered. Monitoring also seeks to establish whether the child has made formal links to other support services. Monitoring often involves direct visits or interviews with children. To date there has been little evaluation of the reintegration of children following their return.

The AVRR schemes run by IOM will necessarily have different components. The scheme ran in Italy for unaccompanied children, primarily from North African countries, was felt to be successful by IOM because a Best Interests Determination was central to the decision about return and looked simultaneously at two parallel options - return or remaining in Italy, without starting from an assumption that return was necessarily in the child's best interests.

IOM points out that there are challenges in getting reliable information from countries of origin. This is so in relation to finding families (family tracing), contacting families and assessing the families' social and economic situation, their willingness and ability to care for the returning child and in particular in assessing whether children are at risk of trafficking or other situations that would indicate that they are at risk of harm. When the organisation does not have the capacity or resources to conduct generic risk assessments itself, relevant information can be obtained from the police, local or international NGOs, UN offices or others.

More generally, IOM recommends providing support to the wider community in the country of return, seeking to balance 'push and pull' factors and attempting to avoid situations where services provided

to returning children are better than those available to children who have not migrated. IOM believes that the risk should be avoided of creating situations where children may feel encouraged to migrate so that they can have improved access to services upon their return. They also feel support for the national child protection systems is important in this regard.

Promoting voluntary return, with involvement of all appropriate actors and with appropriate processes to ensure that the best interests of the child are a primary consideration:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Is reflective of constructive inter-agency work embracing a multi-disciplinary approach*
- ✓ *Is effective i.e. children are removed from Member States*
- ✓ *Is able to deliver durable outcomes and sustainable return and reintegration*

In the **United Kingdom**, in April 2010, IOM launched a specific assisted return and reintegration programme for families and children (Assisted Voluntary Return for Families and Children - AVRFC). The NGO Refugee Action has taken over this work from IOM since April 2011. The programme is open to third-country families and unaccompanied children who have either claimed asylum, have discretionary leave, or are irregular migrants. It includes Refugee Action making travel arrangements and paying for travel costs as well as a reintegration assistance package. The package is composed of a cash relocation grant of £500 per person and £1500 in kind assistance per family member which is meant to cover excess luggage, temporary housing, medical and psychological support, education, vocational training, business set-up and job placement. Prior to return, the families and children meet with a caseworker to prepare their return through the provision of information on the country of return, setting up travel and accommodation plans as well as looking for education or work opportunities. Refugee Action works with local partners in a number of third countries to arrange the in kind assistance and monitor the outcomes for those who return. Within this scheme attention must be paid to the reintegration needs of children and the family must use some of the reintegration funding on the child, for example, for their education.

Promoting and supporting reintegration for returning families with children:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Is cost efficient*
- ✓ *Is effective i.e. children are removed from Member States*
- ✓ *Delivers durable outcomes and sustainable return and reintegration*

Practices for the removal of children are appropriate and proportionate

Once a return decision has been made families should be encouraged to engage with the removal process. A multi disciplinary approach should ensure that the welfare needs of children are addressed and opportunities should be provided for families and children to input into the return plan.

The new multi disciplinary family returns panel, currently set up in the **United Kingdom,** will advise the UK Border Agency on return plans to ensure that the welfare of the child is taken properly into account. The Panel will look at the individual return plans for each family rather than being responsible for a general oversight for the return of families. Families are not able to inform the decisions that are made about them and do not see the plan put before the Panel. Children's views are not heard by the panel, although if children's services have been working with the family, the children's social worker will be invited to submit information that will aid the Panel's decision. Options will include a form of limited notice of removal, the use of open accommodation and, as a last resort where families resolutely fail to comply, family friendly, pre-departure accommodation.

The panel is interim at the moment whilst a formal recruitment process is undertaken. The interim panel members are two former directors of local government children's services, a former service manager of asylum services, a current children's asylum team manager and a doctor who works very closely with the Home Office on a range of issues.

Establishing specific means for careful consideration of the circumstances of families and facilitating an appropriate return process:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Delivers durable outcomes and sustainable return and reintegration*
- ✓ *Is based on the existence of clear and formal procedures for undertaking return, which are the subject of effective appeals*
- ✓ *Is cost efficient*
- ✓ *Is effective i.e. children are removed from Member States*

Related note: This practice has just been developed and its outcomes have yet to be evaluated.

7.7 ARRIVAL IN COUNTRY OF RETURN AND POST RETURN REINTEGRATION ACTIVITIES AND MONITORING

Accompanying unaccompanied children on their return journey

SCEP Statement of Good Practice outlines that because of their particular vulnerabilities unaccompanied children should be escorted on their journey to their country of origin. This should minimise risks to the child's safety and provide emotional support if necessary to the child. The practice will benefit from children being allowed to select who they would like to be their escort.

In **Belgium**, unaccompanied children under 15 years old are systematically accompanied to their country of origin. For those that are older, the need for an escort is assessed individually.

Support for children during the return journey and ensuring the transfer of care and custodial responsibilities:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Is based on the existence of clear and formal procedures for undertaking return, which are the subject of effective appeals*
- ✓ *Delivers durable outcomes and sustainable return and reintegration*

Reintegration support for children

UNHCR, the Committee on the Rights of the Child and SCEP amongst others outline the importance of individual approaches to reintegration that enable the child to input into the process. The question of transfer of care and reintegration is key when considering the post return phase. Jurisprudence[449] *has shown that countries have to ensure proper transfer of custody and the Return Directive requires that the child be returned to a member of his or her family, a nominated guardian or adequate reception facilities. Reintegration measures ensure the sustainability of the return. In reintegration practices, contacts and communications with family are highly sensitive and efforts should be made to ensure that qualified local actors are involved and trust, based on successful outcomes, is developed within the broader community. Plans should always be based on a Best Interests Determination for each child.*

The **Swiss** Foundation of the International Social Service (ISS) is running reintegration projects for children in West Africa, through the "**West Africa Network for the protection of children**" (WAN)[450] The goal of the project is to protect and support vulnerable children on the move to reintegrate socially, educationally and professionally. The WAN Project conducts tracing, social and economic evaluation of the families and develops reintegration projects for each child who is individually

[449] European Court of Human Rights, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (Tabitha), 2006*
[450] www.resao.org

monitored. The Network activities are based on the collaboration between various actors, including the children themselves, their families, NGOs, State authorities, international organizations and child welfare and migration professionals. Collaboration includes networking, regular meetings to coordinate work on cases and provide training and apply harmonised procedures for the reintegration of children in relation to:

- Identification
- Emergency care (protection)
- Psycho-social wellbeing of the child
- Evaluation of the personal situation of the child
- Family tracing and subsequent socioeconomic evaluation of the family
- Reintegration into the biological family (or seeking alternatives)
- Support for an individual social and vocational or educational project
- Individual follow-up system
- Common minimum standards for child protection

The WAN network covers currently 12 countries[451] and builds on transnational cooperation at the regional level, through the involvement of local partners and intends to develop regional protection measures for children on the move within the Economic Community of West African States (ECOWAS). The reintegration projects of ISS are monitored for 2 years to prevent unsafe migration or re-trafficking. Currently 1700 children and young people have been reintegrated in a family setting and are still followed by the WAN network. To overcome difficulties of monitoring children living in small and inaccessible villages, the ISS developed a direct follow up of persons in contact with the child (teachers, village chiefs, religious leaders, etc). The projects include capacity building activities to align the local child protection system to international standards and apply a common methodology of intervention as well as a harmonized procedure between the countries.

The procedure of reintegration as well as the regional standards for child protection will be the object of a publication and training programme aimed at professionals working with vulnerable children to help them adopt the right ethics and attitude to respect the child's best interests. This tool aims at harmonizing the process of reintegration of the child by proposing clear steps to be undertaken by the child, their family and the relevant professionals. The tool will be finalised by the end of 2011 and its application will start during the first part of 2012.

Establishing local capacity, appropriate processes and resources to ensure proper reintegration processes in counties of origin:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Delivers durable outcomes and sustainable return and reintegration*

[451] Burkina Faso, Ivory Coast, Gambia, Guinea Bissau, Guinea, Mali, Niger, Nigeria, Senegal, Benin, Ghana and Togo . In 2012, three more countries will join :Cape Verde, Liberia and Sierra Leone

The **Catalunya Magrib** project (PCM) in Morocco has been established between the Catalonian authorities and the relevant authorities in Morocco with two main goals, namely: (1) the prevention of migration through the provision of training, education and job opportunities and (2) the facilitating of voluntary return of children through contacts with family members, provision of training and job opportunities and support in the reintegration process.

In practice, return takes place in the framework of a governmental programme carried out by Spanish and local NGOs in Morocco. It is envisaged that the project will operate as follows:

1. The children who want to return are identified in the reception centres in Catalonia
2. A request for family evaluation is sent to PCM
3. A risk and socio-economic assessment is made including assessment of the risk of abuse, exploitation, and the situation of the family (e.g. level of poverty and debt, schooling of other children, previous migration experience, etc). The assessment is carried out by a team of trained social workers and child experts. Those teams of experts have been modelled on the existing social services in Spain and other Member States
4. The agreement of the family is sought. The family is contacted with a view to promoting the family's consent and involvement in the return. Families are made aware of the difficulties in Spain, which the child might confront if they have an irregular status on turning 18
5. Ongoing counselling of the child in Catalonia is undertaken to prepare their return
6. Coordination takes place with the Moroccan authorities to get travel documents
7. Upon return the child is accompanied during their journey by a social worker
8. Reception at the airport by the staff of PCM (in collaboration with the police) for the formal transfer of care to the child's parents. The children are directly handed over to their parents after all the necessary formalities.

Post return, training takes place in the "Lyceu" (high school). PCM guarantees employment to the participants until their 21st birthday even if the child wishes to change jobs. It is envisaged that all children involved in PCM are monitored until they turn 21. The follow up should include regular visits and counselling about personalised training and work plan. The family or the child can always ask to meet with the centre staff to re-evaluate the plan and change the place of employment.

Several challenges have been identified in relation to the practical application of the project. These are set out in the study itself and include concerns about the efficiency of the project, the need for external evaluation of the project involving beneficiaries and their families, the need to ensure children have legal assistance before they commit to the scheme so as to ensure their best interests are promoted and the need to ensure contact with the family is carried out in an appropriate way. (See Section 5.4 on Morocco.)

Supporting return where it is in the best interests of the child and establishing appropriate reintegration infrastructure in countries of origin:

- ✓ *Is consistent with the obligation to respect the rights of children and other international law obligations*
- ✓ *Is based on the existence of clear and formal procedures for undertaking return, which are the subject of effective appeals*
- ✓ *Is effective i.e. children are removed from Member States*
- ✓ *Delivers durable outcomes and sustainable return and reintegration*

In **Kosovo** the development of a relevant legal and policy framework (Readmission Law, Reintegration Strategy and Action Plan and also a National Strategy for Reintegration of the RAE community, etc.) has further strengthened the overall safeguarding instruments and mechanisms for the protection of human rights and fostering reintegration. However, these policies need to be implemented through the establishment of an appropriate administrative framework and respective structures on the ground. Similarly, the establishment of the Governmental Fund, with an Executive Board and its structures dedicated to reintegration of readmitted persons, is a good example of direct engagement and assumption of responsibility by the authorities. It is at a very early stage of the process and there are still shortcomings, which should be addressed in due course. The Executive Board, consisting of representatives of several Ministries as well as UNHCR and IOM, is the main body in charge of overseeing the implementation of the Government strategies and policies in the fields of readmission and reintegration. In order to avoid duplication of assistance and to prevent cases from going unnoticed, the Executive Board in April 2011 established a coordination forum where all relevant entities involved in the process of readmission exchange information and coordinate their activities. Establishment of the Municipal Offices for Communities and Returns (MOCR), which is still in development, is described as a "breakthrough" in the context of enhancement of institutional responsibility for respecting human rights and safeguarding the welfare of readmitted persons. These institutions, which will be established in all municipalities in Kosovo, will replace the former structures of Municipal Returns Offices (MRO) and the Municipal Communities Offices (MCO). They are expected to have relevant competences, sufficient budgets and operational capacities to assume the responsibility for monitoring and providing assistance to all those returned whether involuntary, assisted voluntary and voluntary.

Enhancing institutional capacity and establishing clear processes for return and reintegration amongst actors in countries of return:

- ✓ *Is based on the existence of clear and formal procedures for undertaking return, which are the subject of effective appeals*
- ✓ *Is effective i.e. children are removed from Member States*
- ✓ *Delivers durable outcomes and sustainable return and reintegration*

The Central Return Counselling Office in **Northern Bavaria** undertakes field trips once a year to visit those who have been returned, for example to Kosovo, in order to monitor the reintegration process and identify problems. This helps to further improve subsequent return counselling.

Ensuring monitoring of return and reintegration:

- ✓ *Is effective i.e. children are removed from Member States*
- ✓ *Delivers durable outcomes and sustainable return and reintegration*

SECTION 8.
A CHECKLIST
FOR SUPPORTING MEMBER STATES WHEN CONSIDERING THE RETURN OF CHILDREN TO THIRD COUNTRIES

The checklist is meant to be used as a stand alone document and is presented as such

A CHECKLIST
TO ACHIEVE GOOD PRACTICES WHEN CONSIDERING THE RETURN OF CHILDREN TO THIRD COUNTRIES:

A TOOL FOR QUALITY PLANNING FOR MEMBER STATES

Contents

Introduction to the Checklist

1. Goal of the checklist
2. Policy background
3. How to use the checklist
4. Abbreviations used for references

The Checklist

1. Designing the return procedure: general child rights and child protection
2. Assistance to unaccompanied and separated children prior to a return decision
3. Decision making procedures
4. Post decision and pre-return phase
5. Detention
6. The return process
7. Arrival in country of return and post return reintegration activities and monitoring

A. INTRODUCTION TO THE CHECKLIST

1. Goal of the Checklist

The goal of this checklist is to support Member States in achieving good practices when considering the return of children to third countries. The checklist addresses the situation of both children within families and those children who are unaccompanied or separated. Where sections of the checklist below are more relevant for unaccompanied and separated children, this is indicated. However, in general, policies and practices concerning children should be non discriminatory in accordance with the Convention on the Rights of the Child (hereafter the CRC).

The checklist identifies the different steps associated with a decision and procedure to return as required under the Return Directive.[452] It is informed by obligations under EU and international law. Furthermore, it takes account of emerging jurisprudence at national level and from the European Court of Human Rights and the European Court of Justice. Practical indicators are provided for achieving good practices and these are informed by the Inventory of Noteworthy Practices.

The checklist should serve as a key reference for Member States in working towards good processes and practices when returning children when considering the return of children to third countries. It is suggested that the checklist be revised by the Commission on a periodic basis thus reflecting the emergence of relevant evolving practice.

2. Policy background

Member States have the right to decide which third country nationals may enter and reside in their territory and they have the attendant right to take a return decision concerning illegally staying third country nationals in line with international human rights obligations.

When the return of children is in question, Member States must consider the general rights of children, including their right to be heard and the specific needs and rights of children to be protected from harm. In particular, as required under the Return Directive and the CRC, Member States will need to consider the best interests of the child before taking any decision and when working to implement a decision.

In the case of children travelling with their families, Member States will respect and protect the rights of the individual child within the family and the right to private and family life. Member States need to consider the situation of children when making decisions concerning the return of the family and they

[452] Directive 2008/115/EC of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals

must also consider the safety of the child within the family. Consequently it is important to incorporate safeguards in the return process to ensure that the best interests of children are properly considered.

In the case of unaccompanied and separated children, it is acknowledged in the EU Action Plan for Unaccompanied Minors,[453] and most recently in the Trafficking Directive[454], that Member States should aim to identify durable solutions, taking the best interests of the child as a primary consideration and based on an assessment of the individual circumstances of each case. Return to a country of origin should be considered as an option amongst others, including integration into the host country or transfer to a third country.

It is also clear that where return is considered to be in the best interests of the child and when the child is unaccompanied or separated, there must be adequate care and custodial arrangements in place that are adequate for the individual child before they are returned. The Return Directive expressly indicates that a child must be returned to a family member, a nominated guardian or adequate reception facilities.

3. How to use the checklist

Towards quality planning in return processes

Member States have traditionally faced a number of challenges when considering the return of children. These include how to assess the situation and circumstances in both the Member State and the country of origin and how to assess the best interests of the child. For example, in the case of an unaccompanied or separated child, Member States frequently encounter challenges as regards methods for family tracing and for assessing the situation of the family. Difficulties may be experienced in transnational contacts with actors in third countries that need to be involved in assessing or implementing returns.

As a consequence, several countries simply do not return unaccompanied children until they reach the age of 18 or work towards the return of the child only when it is part of a voluntary return programme, rather than an outcome determined by a formal procedure. Several other countries have worked to develop practices which would allow for return of children but these tend still to be in development, rather than being mature, systematic practices with demonstrable effects.

In relation to children within families, Member States' practice tends to focus largely on the situation of the adults in the family, although there is emerging jurisprudence concerning the need to take account of the best interests of the children within the family. In Nunez v Norway, the European Court of

[453] Communication from the Commission to the European Parliament and the Council, Action Plan on unaccompanied Minors (2010-2014) SEC(2010)534
[454] Directive 2011/36/EU of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

Human Rights held that the removal of a mother of two children would be in breach of her right to private and family life because it would have a strong negative impact on her children and would not be in their best interests. Similarly, in the United Kingdom, for example in *ZH (Tanzania) v Secretary of State for the Home Department* the court found that the best interests of the child must be a primary consideration when considering the removal of any family member.

As a consequence, the checklist is designed as a quality-planning tool to support Member States in developing or strengthening their practices. It refers to the legal obligations and authoritative guidance in relation to each step. Its indicators will help actors to assess their existing practices or to develop new practice. The Inventory of Noteworthy Practices allows Member States to learn from each other's experiences and indeed to aim to further improve practices.

Addressing the process as a whole

An important feature of the checklist is that it enables actors to look at the process as a whole, rather than addressing isolated elements of the process. This approach is crucial to developing effective and appropriate processes for engaging with the situation of the child.

Facilitating cooperation between actors

A clear feature of processes considering return is that there is a wide range of actors involved in the situation of a child. They hold different mandates and, operationally, are oriented towards different primary goals, be it migration control or child protection, which may, or may not coincide in each individual case. This checklist should facilitate cooperation between these actors by providing a common framework within which they together discuss the situation of the child and their best interests.

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The checklist and the Inventory of Noteworthy Practice are underpinned by good practice criteria which highlight some of the common interests of the various stakeholders including that returns are:

- Durable
- Undertaken in a manner that respects Member States' international obligations
- Undertaken in an orderly manner and without unnecessary delay once a decision has been made
- Carried out in a manner that minimises disruption to the stability of children and without causing distress to children
- Undertaken in a manner that upholds the dignity of individuals and in particular children, without violence or harm being inflicted on individuals

Further it is in the interests of all stakeholders that mechanisms are in place to provide:

- Fair, expedient, appropriate and transparent decision making processes
- Accurate and accessible information, available at the beginning of the procedure, not least to explain options concerning return thus enabling real choices about voluntary return

Facilitating cooperation between actors will also help ensure a suitable and effective allocation of resources and improve children's participation in the process, thereby making the return process more fair, workable and sustainable.

4. Abbreviations used for references

The checklist refers to some of the relevant international standards, recommendations and guidelines. The following abbreviations and acronyms are used:

- *CRC* - United Nations Convention on the Rights of the Child
- *UN Refugee Convention* - United Nations 1951 Convention Relating to the Status of Refugees
- *CoE Trafficking Convention* - Council of Europe Convention on Actions against Trafficking in Human Beings,
- *Return Directive* - Directive 2008/115/EC of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals
- *Trafficking Directive* - Directive 2011/36/EU of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
- *Asylum Procedures Directive* - Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
- *Asylum Reception Directive* Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
- *General Comment No 6* - Committee on the Rights of the Child General Comment No 6 on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin
- *General Comment No 12* – Committee on the Rights of the Child General Comment No 12 on the right of the child to be heard
- *SCEP Statement of Good Practice* - Separated Children in Europe Programme, Statement of Good Practice, 2009
- *UNHCR Guidelines on Unaccompanied Children* - UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997
- *UNHCR Guidelines on Child Asylum Claims* - UNHCR Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 2009
- *ExCom Conclusions* - UNHCR Executive Committee Conclusion on Children at Risk, 2007

- *CoE Guidelines on Forced Return* - Council of Europe, Twenty Guidelines on Forced Return, 2005
- *UNHCR BID Guidelines* - UNHCR Guidelines on Determining the Best Interests of the Child, 2008
- *JHA Conclusions* - Council conclusions on unaccompanied minors, June 2010
- *Belgian Presidency Recommendations 2010* - Belgian EU Presidency Recommendations on Unaccompanied Children at the EU External Borders

B. THE CHECKLIST

1. Designing the return procedure: general child rights and child protection

International Legal Obligations:

- Return Directive, Article 5
- CRC, Article 3

1.1 National child protection provisions apply to the situation of children who are subject to a return procedure and appropriate child protection procedures are followed where necessary

International Legal Obligations:

- Return Directive, Article 5
- Trafficking Directive, Articles 11(4) and 13(2)
- CRC, Article 2 and 19

Authoritative Guidance:

- General Comment No 6, paragraph 67

Indicators:

- All children in situations of irregular migration, whether within families or unaccompanied, fall under national child protection legislation and measures
- Children are cared for within their families unless it has been demonstrated that this is not in the child's best interests; where children have been removed from their families under national legislation, all appropriate procedures have been followed
- Inter-agency cooperation protocols are in place between actors involved in the situation of the children
- Child welfare/protection authorities are responsible for the care and well-being of separated and unaccompanied children
- Agencies providing care to children have child protection policies and staff caring for children are trained in child protection
- Child protection agencies have training in relation to the situation of children in migration and the issues which they confront

1.2 Mechanisms exist to identify children who may be victims of trafficking or who are at risk of abuse, exploitation, neglect or violence

International Legal Obligations:

- Return Directive, Articles 5 and 10(1)
- Trafficking Directive, Articles 11.4, 18.3
- CoE Trafficking, Article 10
- CRC, Articles 1, 8 and 35
- Asylum Reception Directive, Article 17(1)

Authoritative Guidance:

- General Comment No 6, paragraph 31
- SCEP Good Practice, sections C3 and D2
- UNHCR Guidelines on Unaccompanied Children, paragraphs 5.1 – 5.3

Indicators:

- Border guards, immigration officials and other actors encountering arrivals or presence of third country national children in their country should receive tools and appropriate training to identify children in situations of risk
- Member States develop a toolkit containing profiles and indicators to assist officials in identifying children in situations of risk, including trafficking
- Mechanisms are in place to ensure all children in situations of risk are referred to the appropriate and specialised child welfare agencies who provide them with care and protection

1.3 When designing the return procedure, specific safeguards must be introduced throughout the return process to ensure that the best interests of the child is a primary consideration and that appropriate respect is given to best interests throughout the process

International Legal Obligations:

- Return Directive, Article 5, preamble paragraphs 4 and 22
- Trafficking Directive, preamble paragraph 8, Article 13.1
- CRC, Articles 3 and 6

Authoritative Guidance:

- General Comment No 6, paragraphs 26 and 27
- General Comment No 12, paragraphs 2 and 70.

Indicators:

- There should be an obligation to provide information to persons subject to the return procedure which specifically refers to the way in which the best interests of the child must be identified and considered within the process
- Decision-making and return processes are required expressly to consider the best interests of children (more generally see 3.1 below). Where the child is within a family, the child's best interests must be systematically considered, independently from the circumstances of their parents, with a view to contributing to the overall decision in relation to the family or individual decisions in relation to family members. In the case of unaccompanied children, there should be a best interests determination (see 2.4 below)
- All relevant actors and decision makers involved in the situation of children are familiar with the necessary legal considerations and procedures for returning children and have received training and are qualified to fulfil their roles regarding the return of children

1.4 When designing the return procedure, specific safeguards must be introduced to ensure that children are provided with opportunities to have their views and opinions heard

International Legal Obligations:

- Trafficking Directive, Article 14
- CRC, Article 12

Authoritative Guidance:

- General Comment No 6, paragraphs 25 and 84
- General Comment No 12, paragraphs 2 and 70
- SCEP Good Practice, section B4
- UNHCR Guidelines on Unaccompanied Children, paragraphs 5.14 and 5.15
- UNHCR Guidelines on Child Asylum Claims, paragraphs 70 and 71

Indicators:

- There must be a requirement to explain options to the child and information about their situation and they must be supported in understanding this information
- As part of the decision making process, the lawyers of the child and the decision makers must be required to solicit the child's views in appropriate processes. The child's views must be fully taken into account accordance with their age and maturity
- Interviews, appointments, meetings and discussions about the child's wishes and feelings must be required to use child appropriate language and be conducted in a child sensitive manner in appropriate settings

Also see Section 3 below.

1.5 Prior to any return decision and procedure, voluntary return is explored with families with children, with appropriate consideration of the best interests of the children and appropriate consultation with children

International Legal Obligations:

- CRC, Articles 3 and 12

Authoritative Guidance:

- SCEP Good Practice, section D15.2

Indicators:

- Assisted voluntary return and reintegration (AVRR) programmes are available which are specially adapted to the needs of children and families
- Information is provided to families on the availability of such programmes covering:
    - Availability of financial support
    - Availability of assistance with reintegration, including reintegration for the children into education or training
    - The potential consequences of accepting or refusing AVRR, for example possible re-entry bans or the requirement to reimburse AVRR expenses if they subsequently return to the EU
- Children within families have been provided with opportunities to contribute to the decision regarding voluntary return
- An assessment of whether voluntary return is in the best interests of the child has been undertaken, with input from all relevant actors including those specialising in the welfare and protection of children

2. Assistance to unaccompanied and separated children prior to a return decision

2.1 Mechanisms are established to identify children who are separated from their primary caregivers

International Legal Obligations:

- Return Directive, Article 10.1
- Trafficking Directive, Article 11.4
- Asylum Procedures Directive, Article 17
- CRC, Articles 11 and 20

Authoritative Guidance:

- General Comment No 6, paragraph 31
- SCEP Good Practice, sections D2 and D4
- UNHCR Guidelines on Unaccompanied Children, paragraphs 5.1 – 5.3

Indicators:

- Border guards, immigration officials and other actors encountering third country national children arriving or present in their country, regularly receive training, tools and materials on:
  - Circumstances and behaviour that may indicate an applicant is a child
  - Communicating with and interviewing children
  - The principle of applying the benefit of the doubt where a person who may be an unaccompanied or separated child
  - The processes which exist to initiate formal identification procedures where necessary with all appropriate safeguards
- Mechanisms are in place to ensure all children are referred to the appropriate and specialised child welfare agencies who provide them with care and protection
- In cases of doubt as to age or responsibility of the adult in relation to the child, child appropriate identification procedures are in place relating to age assessment and screening of accompanying adults

2.2 Prior to any return decision and procedure, unaccompanied and separated children are provided with special protection and assistance, with a view to ensuring that all decisions have their best interests as a primary consideration

International Legal Obligations:

- Return Directive, Article 10.1
- Trafficking Directive, Articles 13, 14.1, 14.2 and 16.3
- CRC, Articles 3, 12, 18 (1,2) and 20 (1)

Authoritative Guidance:

- General Comment No 6, paragraphs 33 – 38 and 95
- SCEP Good Practice, section D3
- UNHCR Guidelines on Unaccompanied Children, paragraph 5.7
- UNHCR Guidelines on Child Asylum Claims, paragraph 69

Indicators:

- Children are provided with appropriate accommodation and are able to access basic services such as health and education
- Information is provided to children in an appropriate format on the processes in which they may be involved and the services and assistance available to them
- A guardian is appointed for every unaccompanied child as soon as possible and is provided throughout any procedures and formal identification procedures
- The guardian is:
  - Qualified and trained, independent and accountable
  - Has a clear mandate in relation to the situation of the child and is tasked to act in the child's best interests
  - Able to communicate effectively with children
  - Knowledgeable about child migration, including asylum and trafficking, and familiar with the general context of immigration procedures including return procedures[455]
  - Able to communicate in a language the child fully understands or is otherwise skilled in working with interpreters
  - Able to ensure the necessary involvement of other actors including interpreters and cultural mediators
- The guardian is fully consulted by other actors and the opinion of the guardian is taken into consideration on all stages of the return procedure
- Legal assistance is available to the child throughout any procedures
- Processes exist to engage the child in considering the opportunities that they wish to plan around for the future

[455] This knowledge could be acquired after appointment into the role through training

2.3 Processes are in place to restore family links for unaccompanied or separated children where this is requested by the child or their guardian, is in the best interests of the child and where it is safe to do so for family members

International Legal Obligations:

- Asylum Reception Directive, Article 19(3)
- CRC, Article 10

Authoritative Guidance:

- General Comment No 6, paragraphs 80, 81 and 82
- SCEP Good Practice, section D7
- UNHCR Guidelines on Unaccompanied Children, paragraph 10.5
- UNHCR Guidelines on Child Asylum Claims, paragraph 68

Indicators:

- The child or their guardian has requested that family tracing is undertaken
- Steps are taken to ensure that it is safe to pursue family tracing and that there are no risks to the family associated with the tracing
- The tracing enquiry is undertaken by an independent agency experienced in family tracing
- Child sensitive and age appropriate methods are used to gather the information necessary to undertake the tracing enquiry
- The child's right to a confidential service and privacy is respected
- Support exists to restore the child's contact with the family where this is possible and assessed to be appropriate, including support from a guardian, where necessary to facilitate understanding by the family of the child's circumstances
- Counselling is provided to assist the child and their family restore their relationship

2.4 A formal procedure for determining the best interests[456] of an unaccompanied or separated child has been undertaken, with a view to identifying a durable solution for the child

International Legal Obligations:

- Return Directive, preamble 22, Articles 5(a) and 10(2)
- Trafficking Directive, Articles 13(1) and 16(2)
- CRC, Article 3 (1,2)

Authoritative Guidance:

- General Comment No 6, paragraphs 19 – 22, 27, 84, 92, 93
- CoE Guidelines on Forced Return, guideline 11
- SCEP Good Practice, sections B1, D9.1 and D15.3
- UNHCR BID Guidelines, pages 23, 26, 70, 72 and annex 9 soon to be supplemented by specific BID guidance for industrialised countries
- ExCom Conclusions, paragraphs g(i) and h(xv)

Indicators:

- There is a formal procedure to determine the best interests of the child which leads to a decision or informs decisions on outcomes
- A holistic and multi-disciplinary approach is applied, with relevant actors involved in the situation of the child consulted
- Information is available as regards the current situation of the child and relevant circumstances in the country of origin (see Section 3 below)
- The best interests determination identifies the options available which may include, but are not limited to:
    - Family reunification, return to a nominated guardian or return to adequate reception facilities in the child's country of origin
    - Family reunification in another country
    - Integration into the Member State where the child is living
- When considering family reunification the family has been assessed by a specialist childcare agency as suitable carers who will not harm the child and appropriate

[456] A best interests' determination describes the formal process designed to determine the child's best interests for particularly important decisions affecting the child, that require stricter procedural safeguards. Such process should ensure adequate child participation without discrimination. It should also allow the views of the child to be given due weight in accordance with age and maturity. It involves decision-makers with relevant areas of expertise, and balances all relevant factors in order to assess the best option. UNHCR Guidelines on Determining the Best Interests of the Child,2008, page 8

actors[457] have liaised with the child's family and are available to provide counselling to the family prior to the return

- Where efforts to trace the child's family have failed, or family have been traced but reunification is not appropriate at the current time, return to the care and custodial responsibility of a nominated guardian in the country of return may also be explored where it may be in the child's best interests. Identifying a suitable guardian should start with consideration of, but not necessarily limited to, the child's extended family
- Before deciding on return to a guardian, checks have been undertaken that have established that the guardian is a suitable person to ensure the best interests of the child and care for the child and they have been assessed by a specialist childcare agency as suitable carers who will be able to care for the child, support and protect the child from harm
- Where neither family reunification nor return to a nominated guardian is possible or appropriate, due consideration has been given to whether the needs and best interests of the child will be met by a residential placement, including family-based care. In this instance, appropriate consideration must be given to the purpose of the residential placement and the type, quality and monitoring of residential placement that is available and whether it will meet the needs and wishes of the individual child. The residential placement should be embedded in a functioning child protection system to ensure standards are met. An independent guardian in the country of origin must be assigned to act in the child's best interests. There must be a possibility to prepare an individual care plan which considers further attempts to trace the child's family and addresses long-term plans as well as immediate needs of the child,.
- Reintegration support for the child is available both prior to return and on return
- Due consideration is given to the views and wishes of the child, taking into account their age and maturity; the child's guardian and legal representative are involved but should not be responsible for making the best interests determination.

[457] Appropriate actors may include social workers, teachers, and other specialist professionals who have supported the child in the returning country

3.1 Decision making procedures regarding return take specific account of the situation of children, including children within families

International Legal Obligations:

- Return Directive, preamble paragraphs 6 and 8
- Trafficking Directive, Article 14.2

Authoritative Guidance:

- General Comment No 6, paragraphs 64, 66, 71 – 74, and 95
- SCEP Good Practice, sections D11 and D12
- UNHCR Guidelines on Unaccompanied Children, paragraphs 4.2, 8.1- 8.10, and 9.7
- UNHCR Guidelines on Child Asylum Claims, paragraphs 65, 66, 72-74

Indicators:

- Decision making processes reflect international legal standards and are:
  - Clear and transparent and include a right of appeal with suspensive effect and for which legal aid is available (see 3.3)
  - Decisions are always based on an assessment of each case
  - Specifically consider the circumstances of the children within the family
  - In the case of unaccompanied and separated children, they are based on, or informed by, a Best Interests Determination (see section 2.4 above)
  - Have processes to draw on and/or gather available information about conditions in the country of origin, especially with regards to the situation of children, as well as the circumstances of the children in the destination country (see 3.2 below)
  - Child appropriate in that they follow specific procedures for considering the views of children, for example, appropriately paced interviews with breaks, appropriately timed interviews (when children are not tired) support from guardians for unaccompanied children during interviews, interviews held in settings designed for children
  - Made with minimal delay whilst recognising the need to gather all relevant material and to undertake the procedure at a pace suitable for the child and sensitive to their particular needs
- All relevant actors and decision makers have received appropriate training and are qualified to fulfil their roles
- Actions that amount to child-specific persecution have been fully considered and decision makers have had training in recognising and understanding the implications of child-specific persecution

3.2 Information has been gathered to indicate that a child will not be at risk of harm, at risk of refoulement, or at risk of (re) trafficking or exploitation following their return

International Legal Obligations:

- Return Directive, Article 5
- CoE Trafficking, Article 16.7
- CRC, Articles 6, 19, 32, and 34 – 37,
- UN Refugee Convention, Article 33

Authoritative Guidance:

- General Comment No 6, paragraphs 26 - 28, 50 – 53 and 84
- UNHCR BID Guidelines, page 70

Indicators:

- A general risk and security assessment has been undertaken to guarantee that the child will not be at risk of torture, serious harm, persecution, trafficking, exposure to other forms of exploitation and violations or other inhuman or degrading treatments if returned to a country of origin
- An assessment of family's situation has been undertaken including their finances and whether they have outstanding debts to smugglers or traffickers, which confirms that it is safe for the child to return

3.3 Lawyers with special expertise are appointed to families with children and to unaccompanied children to represent the children throughout the decision-making process and all relevant appeals

International Legal Obligations:

- Return Directive, preamble paragraph 11 and article 13 (3,4)
- Trafficking Directive preamble 19
- CRC, Articles 12 and 22

Authoritative Guidance:

- General Comment No 6, paragraph 69
- General Comment No 12, paragraph 36
- SCEP Good Practice, section D10
- UNHCR Guidelines on Unaccompanied Children, paragraphs 4.2 and 8.3
- UNHCR Guidelines on Child Asylum Claims, paragraph 69
- ExCom Conclusions, paragraph b (iv)

Indicators:

- Before the decision to return a child has been taken the child is represented by a suitably qualified lawyer specialising in immigration law, including knowledge, or capability to access knowledge, of the child's country of origin, and international protection and skilled in working with children
- Legal aid is provided to an unaccompanied and separated child or to the family, or where circumstances require to a child within the family, at no cost to them
- If necessary, lawyers will use interpreters or work with a guardian to inform their clients of the possibility of an appeal

3.4 A prompt and effective remedy exists for children to appeal against the decision to return and such appeals have a suspensive effect on any return decision

International Legal Obligations:

- Return Directive, Article 13

Indicators:

- There is a procedure for lodging appeals against return decisions
- Return decisions are documented and given in written form to the individual(s) concerned and include information about how the decision can be appealed and noting the timeframe in which an appeal is to be made
- Children are informed about these procedures (with specific references to deadlines for their submission). They are supported, for example by a lawyer or a guardian, to understand the procedures. Where children have limited capacity to understand the procedures their guardian should be informed about the procedures
- The decision on the outcome of the appeal is informed by the Best Interests Determination
- The child has been consulted and supported, in the case of unaccompanied children, by their guardian and given appropriate opportunities to be heard
- Legal aid is available throughout the entire appeals procedure

4. Post decision and pre return phase

4.1 A voluntary departure period is afforded to returns of families with children to ensure minimal disruption to the child's situation

International Legal Obligations:

- Return Directive, Article 7(1) and 7(2)
- CRC, Articles 16, 24, 28 and 31

Authoritative Guidance:

- General Comment No 6, paragraphs 40 and 41
- CoE Guidelines on Forced Return, guideline 11

Indicators:

- A voluntary departure period is available which allows time for the child and family to adapt and prepare appropriately for return
- All relevant stakeholders (including the child's guardian) should be involved at this stage and good communication needs to be ensured between them
- Families with children are informed in writing about the possibilities to seek a voluntary departure period of a suitable period
- The grant of a voluntary departure period is notified to the family in writing
- The length of the voluntary departure period (or the availability if extensions to the voluntary departure period) is sufficient to allow children
    - To complete school examinations or reach other academic milestones, for example the end of term/semester, academic year
    - To receive medical treatment or other healthcare where this is necessary in the short term or unavailable following return
    - To acquire all necessary documentation such as birth certificate, education records and health records

4.2 Children have access to education, health and accommodation services pending return

International Legal Obligations:

- Return Directive, Article 14(1b), 14(1c) and 14(1d)
- Trafficking Directive, Article 14(1)
- CRC, Articles 24, 26, 28 and 31

Authoritative Guidance:

- General Comment No 6, paragraphs 40, 41,44, 46 and 49
- SCEP Good Practice, section D8.1- D8.4
- UNHCR Guidelines on Unaccompanied Children, paragraphs 7.2, 7.9, and 7.11-7.13

Indicators:

- The services provided to the child and their daily routines are maintained including
  - School attendance with reference to completing semesters, the academic year and the taking of exams
  - Remaining in their current accommodation
  - Access to healthcare services
  - Access to recreation and leisure services

4.3 Family unity is maintained throughout all stages of the return procedure

International Legal Obligations:

- Return Directive, Article 14 (1a)
- CRC, Articles 9 and 18

Indicators:

- Children are not separated from their family unless it is in their best interests, for example, if the child is being abused by a family member within the family
- Any decision to detain a family member considers the best interests of the child concerned and separation is avoided
- Alternatives to detention are considered fully (see 5.1 below)
- Where a parent is detained regular contact between the parent and child is arranged in a child-friendly setting that does not frighten or disturb a child

5. Detention

5.1 Alternatives to detention are in place and are fully considered in each case before a decision to detain is taken

International Legal Obligations:

- Return Directive, preamble paragraph 16 and Article 15 (1)
- CRC, Article 37(b)

Authoritative Guidance:

- General Comment No 6, paragraph 61
- SCEP Good Practice, section D6.1
- UNHCR Guidelines on Unaccompanied Children, paragraph 7.6

Indicators:

- Alternatives to detention of children and families with children are fully considered, including, for example
  - Regular reporting to the police or border guards as appropriate
  - Placement in reception centres or other accommodation where curfews are imposed
  - Provision of a bail, bond, surety or guarantee
  - Surrendering of documentation
  - Regular liaison with the family and coaching on return
- The reasons why alternatives to detention are judged to be inappropriate are documented

5.2 Detention is used only as a measure of last resort and for the shortest possible period, is regularly reviewed, and children have access to legal advisers and other actors as well as the possibility to challenge the detention decision

International Legal Obligations:

- Return Directive, Articles 15(3), 16(2), 16(4), and 17(1)
- CRC, Articles 37(b) and 37(d)

Authoritative Guidance:

- General Comment No 6, paragraph 61,
- UNHCR Guidelines on Unaccompanied Children, paragraph 7.7

Indicators:

- Detention of children is avoided
- Children are held in detention for the shortest possible period necessary to effect removal. To this end Member States should have actively taken steps to remove the family prior to detention, for example, flights to return the family are imminent
- Provisions on children within families should be in line with those for unaccompanied children to avoid discrimination
- Any decision to detain fully considers, and must be in line with, the best interests of the child in the individual circumstances of each case
- The decision to detain is documented and subject to judicial oversight and regular review. Children and families with children are advised that they can have access to legal advisers
- In detention, children and families with children are allowed to see their legal adviser, physician and other actors, for example, guardians, social workers, psychologists and NGOs, without being impeded
- The situation of children affected by detention is continuously monitored. The welfare of children and any changes in their health, mental health or behaviour is considered as part of the review of detention. The review considers any detrimental impact upon the children caused by their separation from parents or carers, or a decline in the health or mental health of the adults caring for them

5.3 Detention conditions are suitable for families with children

International Legal Obligations:

- Return Directive, preamble paragraph 17 and Articles 16(3), 17(2), 17(3) and 17(5)
- CRC, Article 37(c)

Authoritative Guidance:

- General Comment No 6, paragraph 63
- UNHCR Guidelines on Unaccompanied Children, paragraphs 7.7 and 7.8
- CoE Guidelines on Forced Return

Indicators:

- Families are detained in accommodation that is separate from single adults
- Family unity is maintained and families are accommodated together
- The accommodation provides privacy regarding toilets, bathrooms and sleeping areas which reflect age and gender
- Children have access to education and educational materials, books, paper and pencils
- Opportunities exist for open air recreation and exercise and children have access to toys and play areas
- Children are provided with nutritional meals and have an age appropriate diet
- The premises where children are detained are appropriate for this purpose
- The centres that are used to detain children have a child protection policy and all staff working in these centres are trained in child protection and in recognising the signs that may indicate that a child is being abused or is at risk of abuse. Centres are regulated and inspected/monitored by an external body and children's safeguarding should be part of the regulatory criteria
- Access to medical care is available in detention centres

5.4 Unaccompanied children are not detained in adult accommodation

International Legal Obligations:

- Return Directive, Articles 16(3), 17(4) and 17(5)
- CRC, Article 37(c)

Authoritative Guidance:

- General Comment No 6, paragraph 63
- UNHCR Guidelines on Unaccompanied Children, paragraphs 7.7

Indicators:

- Detention of unaccompanied children is avoided
- Unaccompanied children are never held in accommodation with adults and communal areas are monitored to ensure unaccompanied children are safe within them
- Conditions are suitable for children (see 5.3 above)

6 The return process

6.1 If, after appropriate consideration of all durable solutions, the return option is pursued, relevant information regarding the return procedure is given to the child concerned

International Legal Obligations:

- Return Directive, Article 12 (1,2)
- CRC, Article 17

Authoritative Guidance:

- General Comment No 6, paragraph 24
- SCEP Good Practice, sections B5
- ExCom Conclusions, paragraph h(xiv)
- JHA Council Conclusions, paragraph 28

Indicators:

- Where necessary families are supported in sharing information, throughout the process, with their children
- Information is given to all children throughout the process, either verbally or in writing that is:
    - Delivered by independent sources
    - In the child's mother tongue, or where necessary through an interpreter or in a language which the child fully understands
    - Simple, and appropriate to the level of maturity of the child
    - Delivered in a non-threatening environment, for example, in a community centre or where the child is living
- Children are afforded regular opportunities and are allowed to ask questions and check the information that has been given to them
- Mechanisms are in place to check that they have correctly understood the information that they have been given (for instance through asking the children to feedback what they have been told in their own words)

6.2 A plan is in place to assist the child with reintegration following their return

International Legal Obligations:

- Return Directive, Article 10(2)
- CRC, Articles, 24, 27-29, 31 and 39

Authoritative Guidance:

- SCEP Good Practice, sections D15.3
- ExCom Conclusions, paragraph h(xiv)

Indicators:

- A reintegration plan has been prepared which covers schooling, training and employment opportunities, access to appropriate health care, accommodation, and care and protection and reintroduction into the community
- An assessment has been undertaken regarding the provision of financial support necessary for the child and families with children to re-establish themselves within their community
- The family of unaccompanied children is involved and there is regular communication with the child and care givers

6.3 Practices for the removal of children are appropriate and proportionate

International Legal Obligations:

- Return Directive, Article 8(4)

Authoritative Guidance:

- General Comment No 6, paragraph 87

Indicators:

- Voluntary return has been fully explored and a voluntary departure period has been set to ensure that the family can return in a well organised way
- Children are given a chance to say “goodbye” to friends in the host country
- The use of force and physical restraint whether on adult family members or on children, is avoided
- Practices are sensitive to the needs of children, for example (they do not take place in the middle of the night nor are children ever removed directly from school)

6.4 Mechanisms allow for unaccompanied and separated children to be escorted on their journey of return

Authoritative Guidance:

- SCEP Good Practice, section D15.5

Indicators:

- Funds are available to allow guardians from the sending country or other actors who the child chooses to accompany them on their return journey and take part in the transfer of care and custodial responsibilities
- The child is actively engaged in the process of deciding which individual will fulfil the escort role

7. Arrival in country of return and post return phase

7.1 Procedures exist for the formal transfer of care and custodial responsibilities for the child

International Legal Obligations:

- Return Directive, Article 10(2)
- CRC, Articles 11 and 18

Authoritative Guidance:

- General Comment No 6, paragraph 85
- UNHCR Guidelines on Unaccompanied Children, paragraphs 9.4
- SCEP Good Practice, section D15.6

Indicators:

- Formal procedures exist for the transfer of the care and custodial responsibilities of a child
- All relevant actors involved in the return are familiar with these procedures
- The person or agency taking charge of the child will be notified in advance of the child's arrival and given sufficient notice to prepare for the taking of care and custodial responsibilities
- The person or agency to whom the care and custodial responsibilities are being transferred to has been identified and vetted and the procedures have established that the child will be cared for and protected whilst in their care

7.2 Appropriate reintegration support exists for returning children

International Legal Obligations:

- Return Directive, Article 10(2)
- CoE Trafficking Convention Article 16.5

Indicators:

- Proper and well resourced reintegration infrastructure exists to address the situation of returning children
- Access to education, training and job opportunities is ensured
- Support for reintegration for the family, including counselling services, is provided
- Local child protection actors are available to support and monitor the situation of the child

7.3 Formal procedures for monitoring the outcomes of the impact of return for children exist in countries of return

Authoritative Guidance:

- SCEP Good Practice, section D15.5

Indicators:

- Experienced actors provide monitoring in the country of return to ensure that what has been agreed as part of a reintegration plan is delivered
- The process for monitoring includes direct contact by those undertaking the monitoring with the child and their family
- A monitoring checklist has been drafted identifying appropriate indicators including indicators for registration (or civil status recognition), accommodation, education, employment, health care, reintegration into family and the community and considering whether the child is safe, and healthy
- Consideration is given to the particular vulnerabilities of girls and monitoring specifically considers the situation of girls and is alert to gender specific exploitation

SECTION 9. CONCLUSIONS

Returning children from Member States who no longer have the right to reside within the EU, whether they are unaccompanied or they are part of a family unit, is a complex and challenging task. Whilst Member States have legal obligations to promote and maintain the rights of children as set out in EU and international law, they also are concerned effectively to control the right of entry and residence in their countries. Member States have traditionally faced a number of challenges in considering the return of children, not least how to assess the situation and circumstances in both the Member State and the country of origin and how to assess the best interests of the child.

Several countries simply do not return unaccompanied children until they reach the age of majority or work towards the return of the child only when it is part of a wholly voluntary return process, rather than an outcome determined by a formal procedure. Several other countries are working to develop practices, which would allow for return of children but these tend still to be in development. In particular, many countries are still very concerned with a core element in the process, namely, how to take account of the best interests of children, what criteria should be used and what tools or process exist for establishing best interests. This position may change in the coming years as a result of efforts to implement the Return Directive and to pursue the EU Action Plan on Unaccompanied Minors, further guidance from national courts as well as the European Courts and the development of new guidance from UNHCR on best interests' determination procedures in industrialised countries.

When considering the many facets of the policies and processes associated with the return of children it is clear that there are many different stakeholders engaged in this arena. One of the interesting findings that can be drawn from the study is that information on this issue in each country is fairly fragmented and that this would be improved through further exchanges between these actors involved. Ultimately to improve the return process, there should be more systematic inter-agency cooperation. A common framework for considering the return process as a whole is necessary to facilitate such cooperation.

It is also clear that the general absence of clear transnational procedures between returning countries and countries of origin and return needs to be addressed.

Equally, whereas some countries are engaged with building projects and supporting capacity in the countries of return, in order to be both appropriate and sustainable, these projects will need carefully to consider how best they can fulfil international legal obligations in relation to these children, and in particular, the UN Convention of the Rights of the Child.

ANNEX 1: REGIONAL STAKEHOLDERS INTERVIEWED

Organisation/Institution
UNICEF (Brussels office)
ICRC (Brussels office)
Office of the UN High Commissioner for Human Rights (Regional Office for Europe)
IOM (Regional Mission to the EU)
Caritas Belgium
UNHCR Child Protection Unit
International Social Services, Swiss Foundation
Human Rights Watch (Children's Rights Division)
IOM Geneva (Migrant Assistance Division)
UNHCR Bureau for Europe
NIDOS
UNICEF Geneva (Child Rights Advocacy & Education Section)

ANNEX 2
NATIONAL STAKEHOLDERS INTERVIEWED

Member States

Country	Stakeholder interviewed
Austria	- Caritas Austria - Drehscheibe Vienna (Youth Welfare Agency) - Federal Ministry of Interior (BMI) - IOM Austria - Menschenrechtebeirat (Human Rights Council) - Verein Menschenrechte Osterreich (Association Human Rights Austria) - UNHCR
Belgium	- Caritas - CIRE (Coordination for Initiatives for Refugees and Foreigners) - Flemish Refugee Action - Foreigners Office, Ministry of Interior - Jesuit Refugee Service - IOM
Bulgaria	- Assistance Centre for Torture Survivors - IOM - Ministry of Interior, Migration Directorate - Red Cross- Bulgaria
Cyprus	- Ministry of Interior - Ministry of Education - Ministry of Labour and Social Insurance. - UNHCR, Project “Strengthening Asylum in Cyprus” - University professor
Czech Republic	- Aliens Police - Home for Foreign Children, Ministry of Education - IOM Prague - OPU (Organisation for Aid to Refugees) - Refugee Facilities Administration, Ministry of Interior
Denmark	- Danish Red Cross - Immigration Police - Police
Estonia	- IOM - Ministry of Social Affairs - Police and Border Guard Board
Finland	- Central Union for Child Welfare - Finnish Immigration Service - Ministry of the Interior, Police department - Refugee Advice Centre
France	- OFII (French Agency for Immigration and Integration) - Ordre de Malte France
Germany	- Central Aliens Authority, Dortmund - Central Return Counselling Office, Northern Bavaria - Diakonie Mainz-Bingen - Ministry of Interior, Lower Saxony

	- Refugee Council, lower Saxony - UNHCR Nuremberg
Greece	- IOM - Ombudsman for children - Police Division of Aliens – Attica prefecture - Legal expert - UNHCR
Hungary	- Hungarian Interchurch Aid, Unaccompanied Children's Home - Menedék - Association for Migrants - National Police Law Enforcement Directorate, Aliens Unit - Office of Immigration and Nationality (OIN), Aliens Directorate
Iceland	- Iceland National police - Institute of Foreigner Authority (UTL- Utlendingastofnun) - Ministry of the Interior
Ireland	- Health Service Executive, Social Work Team for Separated Children - Irish Naturalisation and Immigration Service - IOM - Refugee Legal Service of the Legal Aid Board
Italy	- ANCI (National Association of Italian Municipalities) - ASGI (Association for Legal Studies on Immigration) - Committee for Foreign Unaccompanied Minors - IOM - Ministry of Interior, Department for Civil Liberties and Immigration - SPRAR (Protection System for Refugees and Asylum seekers)
Latvia	- IOM - Office of Citizenship and Migration, Person's status control and Asylums Seekers departments - State Border Guard
Liechtenstein	- Flüchtlingshilfe Liechtenstein (Refugees Aid Liechtenstein) - Office for Aliens and Passports
Lithuania	- Foreigners' Reception Center - Migration department
Luxembourg	- Caritas, Solidarity and Integration Service - Ministry of Foreign Affairs, Direction of Immigration, Administration measures unit and detention centre unit - IOM - Red Cross
Malta	- Children and Young Persons Advisory Board - Commissioner for Children - Immigration Police - IOM - Jesuit Refugee Service - Office of the Refugee Commissioner
Netherlands	- IOM - Ministry of Interior and Kingdom Affairs, Immigration and Asylum section ; and Repatriation and Departure Service (DT&V) - Nidos - Perspective - Vluchtelingenwerk Nederland (Dutch Refugee Council)

Norway	- Immigration Directorate - Immigration Police - Ministry of Justice - Norwegian Organisation for Asylum Seekers - Norwegian People's Aid
Poland	- Border Guards - IOM - La Strada Foundation - Ministry of Interior and Administration - Nobody Kids Foundation - Office for Foreigners - Orphanage
Portugal	- Immigration and Borders Services - IOM
Romania	- JRS Romania - National Council for Refugees - Romanian Immigration Office
Slovakia	- Bureau of the Border and Aliens Police - Human Rights League - IOM Slovakia - Office of the Labour and Social Affairs, Trenčin
Slovenia	- IOM Slovenia - Jesuit Refugee Service Slovenia - Ministry of the Interior, Uniformed Police Directorate, Border Police Division and Aliens Centre - Slovene Philanthropy
Spain	- ACCEM, Voluntary Return Programme - Ministry of Labour and Immigration - Public prosecutor for Foreign Affairs - UNHCR - University Pontificia Comillas
Sweden	- Swedish Migration Board - Swedish Police Authority in Skåne, C I D, Border Police Unit - Swedsh Red Cross
Switzerland	- Cantonal Migration Office, Bern - Central Office for Unaccompanied Minors, Canton Zurich - Federal Office for Migration - Legal Advisory Service for Asylum Seekers, Bern - International Social Service Geneva (SSI) - Swiss Red Cross
United Kingdom	- Bail for Immigration Detainees - Immigration Law Practitioners' Association - UK Border Agency with input from Refugee Action

Countries of return

Country	Stakeholder interviewed
Afghanistan	- Afghanistan Independent Human Rights Commission (AIHRC) - ICRC (International Red Cross and Red Crescent) - Ministry of Labour and Social Affairs - Ministry of Refugees and Repatriation - Ministry of Foreign Affairs - UNICEF - UNHCR
Angola	- IOM Luanda - Ministry of Assistance and Social Reintegration (MINARS) - Mulemba Association - National Child Institute of Angola (INAC) - Save the Children Angola - UNICEF Angola
Kosovo	- Advocacy Training & Resources Centre (ATRC) - IOM Kosovo - ICMPD Kosovo - Ministry for Internal Affairs - Municipal Office for Communities and returns, Pizren - UNHCR Kosovo
Morocco	- Cardev - Project Catalunya Magrib - IOM - Project Mellal
Nigeria	- Federal Ministry of Justice, Abuja - Ministry of Women Affairs , Child Welfare Department:, Umuahia, Abia State - National Agency for the Prohibition of Trafficking in Persons (NAPTIP), Abuja National Office - Nigeria Immigration Service, State Office in Umuahi - UNICEF
Sri Lanka	- National Child Protection Authority. (NCPA) - Department of Probation and Child Care - Ministry of Resettlement - UNHCR
Ukraine	- Danish refugee Council Ukraine - State Border Guards Service - Ministry of Interior - UNHCR - IOM - Caritas Uzhgorod - NGO Child Protection Service

ANNEX 3
CLOSING CONFERENCE REPORT

On November 7, 2011, the closing conference of the project was held in Brussels.
All states involved in the study, as well as stakeholders, were invited to hear about the outcomes of the study and contribute to a further development of return policies in the best interests of the child.

Over 90 participants from 25 countries attended.

The main findings of the study and of some noteworthy practices were presented.
Participants were also invited to exchange their views in workshops on four core themes linked to the return of children.

The aim of the workshops was to discuss the 'checklist for supporting Member states in achieving good practices when returning children' and its implementation.

Good practices in the field of return of children
Closing conference

Brussels, 7 November 2011
Renaissance Hotel

PROGRAMME

09.00 -09.15 — **Welcome and opening comments**
Allan Leas, *Acting Secretary General, ECRE*
Olivia Lind, *Director, Save the Children EU Office*
Manfred Hahnel, *DG Home*

09.15-10.15 — **Presentation of the main findings of the study**
Terry Smith, *Project Manager*

10.15-10.45 — Coffee break

10.45-11.00 — **Introduction to the inventory of noteworthy practices**
Hélène David, *Project coordinator, ECRE*

11.00-12.40 — **Identified noteworthy practices: panel presentations**
Chair: Allan Leas, *ECRE*

- **Guardianship**: Hajo Visscher, *NIDOS*
- **Family Tracing**: Kristin Barstad, *Child Protection Advisor, ICRC*
- **Voluntary return and reintegration**: Andreu Camps i Figuerola, *Director, Catalunya Magrib project*
- **Post return and reintegration**: Zoran Simonovic, *Municipal Offices for Communities and Returns, Kosovo*

12.40-13.00 — **Introduction to the checklist for supporting Member states in achieving good practices when returning children**
Rebecca O'Donnell, *Save the Children EU Office*

13.00-14.00 — Lunch

14.00-15.15 — **Thematic workshops session 1**
Good practices and how to make the checklist work.

- Voluntary departure period, Chair: Irfan Qaiser, *Norwegian People's Aid*
- Independent assistance, Chair: Judith Dennis, *British Refugee Council*
- Pre return and detention, Chair: Valeria Illareva, *Legal Clinic for Refugees and Immigrants*
- Return and post-return, Chair: Christoph Braunschweig, *International Social Services*

15.15-15.45 — Coffee break

15.45-17.00 — **Thematic workshops session 2**

17.00-17.15 — **Report back from workshops**

17.15-17.30 — **Closing remarks and final comments**
Terry Smith, *Project Manager*

PRESENTATIONS

Guardianship, *Hajo Visscher, NIDOS*

Hajo Visscher gave a presentation on the experiences of NIDOS, the independent guardianship agency in the Netherlands. NIDOS currently is guardian to roughly 3000 children.

The guardian's role includes:

- Legal representation
- Ensuring that the unaccompanied child lives in an environment that is safe, in which the child feels protected and is able to develop properly

For those whose asylum claim has been rejected, they either stay irregularly in the Netherlands or return to their country of origin. NIDOS is in principle not against return and is in favour of return if this is in the best interests of the child. They believe the focus should be on supporting the child to reach a well-considered decision and the guardian should support the child in this process. It is also important to ensure that the child has not at risk of persecution or cruel and inhuman treatment upon return.

When looking at whether return is in the best interests of the child, other elements should also be considered:

- The safety of the child
- The involvement of the authorities especially in the country of return
- Durable return and reintegration possibilities

Return should be tailored to the individual's needs and situation. A return and reintegration plan should ensure that:

- The place of relocation that provides security and appropriate conditions to the child
- Investments are made in providing tools, knowledge and resources which support return
- Where possible the family is involved as soon as possible
- There is a durable perspective
- After return, counselling is provided in the country of origin by a reliable organisation;

Some countries also consider return to orphanages. Hajo Visscher highlighted that orphanages are increasingly considered as an outdated concept, not in the best interests of a child. International research has shown that placement in an orphanage leads to serious development threats in the cognitive, social and emotional fields. There are also questions about security, coaching, durability, medical care etc.

The family involvement as early as possible is perceived as key for successful return:

- Efforts to trace the family in country of return must be done at an as early as possible stage
- The situation of the family should be assessed
- The family can be made co-responsible for the situation of the child
- The child should be able to return without shame

Finally, return can only be successful if the child is committed and involved. However, the child's agreement may be lost during the procedure.

The Comprehensive Approach to Family Involvement (CAFI)

- Each unaccompanied child is appointed a guardian. One person is responsible of taking care of the child.
- Education and resources invested for the child to reintegrate successfully
- Assessment of the family and conditions of return by independent organisations
- Efforts to have the unaccompanied child return to their family instead of to an orphanage. If family cannot be found, then the option of family based care should be considered.
- Investment in education in the country of origin
- Investment in monitoring

Results of CAFI:

- Safety
- Trust
- Commitment
- Reunited family ties (if possible and in the interests of the individual child)
- Support from family
- Reintegration
- Durable
- Education
- Perspective
- Future
- Knowing how it turns out in the post-return phase
- Success stories of former returnees

Tracing Family, *Kristin Barstad, ICRC*

The International Red Cross and Red Crescent Movement has longstanding experience and expertise in the area of restoring family links between family members separated as a result of war, conflict, disasters or migration.

Tracing families is a right for the child and an obligation under international humanitarian law and the duty does not fall on the child. ICRC underlined that tracing families is not a tool for returning people even if this hypothesis cannot be excluded.

The point of departure is the fact that everyone has the right to be in touch with their family or to be able to trace them. The request must however come from the child and stem from a genuine wish to find family members. The ICRC or any Red Cross society will not act upon request from a state to initiate tracing activities.
So far, most of the tracing requests from Europe were concerning Afghan children. From 2009 to May 2011, 659 cases were opened by the ICRC delegation in Kabul. The main countries opening cases are Great Britain, Denmark and Sweden. Out of a total of 659 cases, only 25% were closed successfully, as tracing usually takes places in a hostile environment.

There is a link between tracing and return, however, tracing the family does not always lead to the reunion of the family. In many cases the Red Cross just support the *restoring of the* contacts between the family members. Reunification with family is sometimes postponed or cancelled when the child could get in a dangerous situation.

A person also has the right not to be found. ICRC respects confidentiality when tracing people and gathering and storing information. The results of these searches will primarily be shared with the child or the care taker. *They* will decide on what to share with others.

The traditional nuclear family does not always correspond exactly to what a family is today: problem of identification of families. ICRC maintains a wide definition of what constitutes a family and is not in favour of DNA testing prior to family tracing.

The Movement has also an extranet database called the Tracing Activities Extranet. On this database, a National Society in Europe or abroad can see whether tracing is undertaken by the National Society (or the ICRC) in the country of origin of a child.
In addition to this, the Belgian Red Cross has set up a database called Red Cross EU Tracing Application, facilitating tracing of family members who for example have been split when arriving in Europe.

To sum up, the International Red Cross and Red Crescent Movement is ready to assist children in Europe who are looking for their family members abroad. This is done on the following principles:

- Respect for the wish of the child
- Respect for the wish of the person sought
- Respect for data protection principles.

Voluntary return and reintegration, *Andreu Camps i Figuerola, Programme Catalunya Magrib*

The Programme Catalunya Magrib (PCM) is a joint initiative of the Catalan and Moroccan government. It aims to help and support Moroccan children present in Catalonia who wish to return to Morocco and it also aims to offer alternatives to young people who wish to migrate (irregularly) from Morocco.
The programme has 4 components:

- Professional/vocational training and access to the labour market of vulnerable youth
- Counselling and individual monitoring of each chid and support to the families
- Capacity building of local social actors
- Awareness raisings in the communities

Prior to taking part in the programme (in Morocco), potential candidates are identified (children at risk) and then their file goes through a pre-selection phase based on family, health and psycho-pedagogical assessment.
Profile of targeted children within Morocco:

- Difficult social and economic situation
- High percentage drop out from school
- Child has migrated in the past or has family that already migrated

When pre-selected, the child then undertakes a personal interview where information about alternatives to migration (potential jobs and traineeships) are presented. Important factors in preventing dangerous irregular migration consist of the personal commitment of the child, the involvement of the family and the development of a pedagogical plan. Training is provided by PCM in a pilot “Liceu” in Safra.

For a successful process, it is important to work with the government. In 2007, a partnership agreement was signed with the Moroccan government (an important achievement as the Moroccan government does not usually get involved in this type of project).

Tangier has a 13% economic growth every year. Many European companies are moving to Tangier, increasing the number of available jobs. Companies in Tangier collaborate with the PCM by offering traineeships and jobs. PCM monitors children placed in those companied until they are 21 (instead of 18).

PCM has a database of 598 companies of which in 263 have already offered work to the students of the Liceu. 391 young people have graduated from the Liceu since its creation, and currently there are 87 students in the training programme.

PCM also carries out information visits to families of children present in Catalonia. The cases are first referred to PCM by the Catalan Child Protection Authorities. Since the beginning of the programme, PCM's team performed 779 family visits. This led to 29 voluntary returns of unaccompanied children and 5 voluntary returns of aged out unaccompanied children.

Protocol for the return of children from Catalonia:

1. The children who want to return are identified in Catalonia and the Moroccan Consulate is contacted
2. A family assessment is made based on procedures used in Spain and other European states. If the assessment is favourable and the family accepts the return, the return is prepared by PCM in collaboration with the Catalan and Moroccan authorities
3. The Catalan Child Protection Authority informs PCM of the arrival of the child
4. Preparation of the return by the different actors
5. Information to the family
6. Management of the arrival at the airport with the authorities
7. Reception at the airport's border of the child and their guardian by the staff of PCM. Transfer to the family
8. Reception of the child in Tangier
9. Formal transfer of care between the guardian and the PCM staff
10. Monitoring of the child's reintegration in their family and community
11. Inclusion of the child in the PCM training programme (not systematic)
12. Meeting with the Directorate if the Liceu
13. Approval of the Individual Education Plan and Action Plan of the child in collaboration with the different teams involved

Post-return and Reintegration, *Zoran Simonovic, MOCR, Gnjilane-Kosovo*

The Municipal Offices for Communities and Return's work include:

- Protecting and promoting the rights of communities (through implementation and monitoring of policies, programmes and activities), and the equal access of all communities to public services
- Creating conditions for the sustainable return of refugees, displaced persons and repatriated persons

There is an Office for Communities and Return in each municipality of Kosovo and they are integrated in the municipal administration. They work in collaboration with relevant Ministries, municipal services and international and local organisations, including civil society organisations. This is a complex network of partners and actors at various levels.

Procedure and activities for returns/repatriations:

1. Development and maintenance of contacts with all categories of beneficiaries
2. Coordination and cooperation with stakeholders
3. Assessment of beneficiaries' needs
4. Project development, monitoring and evaluation
5. Monitoring of the implementation of policies at the municipal level
6. Provision of advice to municipal executive and representative bodies
7. Reporting
8. Public awareness
9. Office planning and budgeting
10. Maintenance of beneficiary database

Statistics of Kosovo nationals returning:

- 70% are ethnic Albanians (353 people)
- 17% are ethnic Serbs (82 people)
- 13% are ethnic Roma (67 people)

It is expected that these numbers will increase in the coming years.

WORKSHOPS

A total of 8 workshops were held on four topics:

- Independent assistance
- Voluntary departure period
- Detention and pre return phase
- Return and post return

Independent Assistance

Types of assistance (checklist 2.2)

The opinion was expressed that social services are not completely independent from the state but are independent of the immigration authorities:

- In the **Netherlands**, NIDOS, an independent guardianship agency, provides guardians for unaccompanied asylum seeking children. Each guardian is actively involved in the child's development and for the identification of durable solutions, including return. The agreement from the guardian is necessary in voluntary return cases.
- In **Michigan** (USA), there is a specific program of voluntary assistance for unaccompanied children. The US government funds this program.
- In **Denmark**, guardians are volunteers trained by the Red Cross. This system has been criticised due to a lack of a clear mandate and because guardians are not really involved in a best interests determination procedure.
- In the **United Kingdom**, social workers act as guardians of unaccompanied asylum seeking children but they consider that UKBA is solely responsible when it comes to return. In practice, children are not returned until they turn 18. Only children in the asylum system are entitled to a guardian.
- In **France**, unaccompanied children receive legal assistance and within hours after their arrival they are appointed a guardian/representative, usually a social worker. Previously, there were some problems getting enough people to perform these tasks but numbers of incoming children are currently decreasing. Prior to return, contact has to be made with the family. The final decision, including assessment of the family, will be made by a judge.
- In **Liechtenstein**, both asylum seeking and other migrant children get legal assistance from a lawyer and they get support from a social worker (this is a new process).
- In **Italy**, municipalities are required to provide health care and education access to unaccompanied children. Municipalities either sub-contract or directly provide those services. ANCI (the Association of National Municipalities) runs a programme for the protection of unaccompanied children funded by the Ministry of Labour, but their funding might be cut at the

end of the year. This should however not affect the provision of independent assistance as generally the responsibility stays with the municipality and the funding is centralised. In addition, children are appointed a guardian, who is also within the municipality structure but in a different section. Assistance is also provided by NGOs independent from the state. Children can also receive assistance from lawyers. Sometimes the lawyers cover the role of the guardian but there are concerns that, as they get legal assistance funded by the state, they may not be independent.

- As an autonomous state, **Catalonia** has responsibility for the protection of children within its territory. The 2010 Child Protection Law states that two different actors should be involved in child protection, both for Spanish and foreign children: the children's ombudsman and the lawyers association.

Role of guardians and other independent actors in the return procedure

It was mentioned that a panel of experts should determine the best interests of the child. This could be done through existing national structures, especially those who have a view of the situation in the country of origin. However, it was also noted that some child rights experts might not have enough experience regarding migration to be the best placed to assess the best interests of the child in a return procedure.

It was noted that the mandate of social workers is generally limited to their own country so they do not necessarily have the possibility to analyse the situation in the return country:

- For instance, in **Norway**, it is planned that assessments will be made by social services in Morocco.
- In the **United Kingdom**, social workers can receive training by UNHCR.
- In **Italy** according to policy and practice, children may only return if it is truly voluntary. Once a child expresses a wish to return then the possibilities for their return will be assessed: that is why there are so few cases of return. The local authorities do not know of the conditions in the country of origin and IOM is often asked to assess the condition there.

A discussion on the role of the guardian in the return procedure took place. Should the guardian only inform the child about the process? Or should they inform the decision making process with the elements they know regarding the situation of the child? For some, it seems difficult for a guardian to have such a role in the decision making process. It was mentioned that conflict of interest should be prevented but that guardians can contribute to the assessment.

There was a concern that participating in the return procedure may hinder the independence of the actors. A participant stated that it should not be the role of a legal adviser to intervene in the decision.

There was also a discussion on whether having social workers as guardian is a good solution. Some participants did not think so.

Children outside the asylum system

- In **Spain**, most unaccompanied children do not seek asylum. Returns of unaccompanied children are currently halted because of court decisions but this might change in the near future, especially following the change of government. The view was expressed that there appears not to be a good understanding of the grounds for asylum regarding children, as they are usually not at risk because of their political activities.
- In **Italy**, there has been an increase in the number of unaccompanied children seeking asylum. However, unaccompanied children are placed under the protection of the child protection system and therefore often apply for asylum only after they turn 18. ANCI encourages children to submit their asylum claim as soon as possible and not only once they are adults. They organise information meetings on the asylum system. In addition, some children close to turning 18 and who wanted to return to their country of origin contacted their embassy directly because they felt that the authority in charge of return was too slow and that the formal return process would be too long. Most of them were from Tunisia and they did return. This was even before they were accommodated in childcare centres. This example relates to the specific situation of Tunisian children who fled during the uprising and knew they would be sent back
- In the **United Kingdom** children are sometimes turned back at the border: If they are from Afghanistan the border guards will probably think they will be claiming asylum but if they come from other countries (e.g. Morocco), they may be turned back.

It was suggested that for children who have not sought asylum, or are not believed to be trafficked, there could be an exchange of information with the country of origin in order to assess the age, instead of going through an age determination procedure.

Children from EU Member States

- In **Belgium**, children from within the EU are not covered by the guardianship system for unaccompanied children.
- In **Catalonia**, there is no assistance provided for returns within the EU.

This was considered to be discriminatory by a participant and it was mentioned that assistance should apply to all types and forms of removals and return.

General comments and the checklist

It was mentioned that the return procedure and process may be hindered by the lack of cooperation from the countries of origin. Therefore, in practice, it might be difficult to apply the checklist.

- In **Italy** there is a procedure in place to do family tracing, but neither Morocco nor Egypt have allowed family tracing to take place.
- A participant explained that returning to **Morocco** after migrating illegally is a crime. In 2007, the result was that children from Morocco who returned voluntarily were detained for several days and then sent to court. There were cases of 18 years olds obliged to stand for long periods and not being able to visit the toilet in the police station. Now, there are some agreements on voluntary return but the law did not change. It shows the need to cooperate with the countries of return, in addition to having good procedures within the EU.

It was agreed that there is still a great discrepancy between EU rules and the practice of individual states. It was mentioned that the only way to safeguard children across Europe is to ensure practices are harmonised across the countries: as long as individual states have their own bilateral agreements with countries of return, then the practice will remain different. So the type of independent assistance should not be left to the determination of the individual state.

Conclusions

1. There are generally **better provisions for children in the asylum system** than for those who do not claim asylum.
2. Immigration and child welfare bodies need to have **greater understanding** of each other's work and work towards greater cooperation.
3. Best interests determinations regarding children should be **informed** by the view of the guardian or other provider of independent assistance but these people should **not be responsible for making the best interests determination**.
4. It was difficult for some participants to engage with the discussion as returns are not currently being implemented in their countries.
5. Some participants were of the view that the elements of the Returns Directive, including independent assistance, should also be **available when the return is within the EU.**

Voluntary Departure Period

Definition of "voluntary departure period"

The Return Directive defines the term "voluntary departure" and provides for a period from 7 to 30 days. However, different terms are used for this process in different Member States, and voluntary departure is sometimes called voluntary return.

- In **Spain**, in case of voluntary returns, the returnees can choose when they want to return: it's totally up to them.
- In **Norway**, if a person leaves before they get a final decision they get more financial assistance than if they wait and leave at a later stage.
- In the **Netherlands**, asylum seekers are granted 28 days to leave voluntarily. Those who are apprehended while living illegally in the country have to leave in a shorter time period or are removed immediately.

Criteria for extension: standard or case-by-case

Most countries make assessments on a case-by-case basis, taking the individual circumstances into account. It was noted that an individual's situation may change from the time the return decision was made and the moment of the return. The situation (family situation, security, etc) should be taken into account prior to the actual departure.

- In **Spain**, when it comes to the voluntary return of families, some ask that their children finish the school term first. The lack of pressure is very important in these cases. It has to be noted however, that contexts differ very much throughout Europe, and also between countries of origin. In Spain, most persons returning voluntarily are not those in need of protection, but rather economic migrants.
- In **Luxembourg**, it has to be emphasised that the situation of migrants and asylum seekers differs very much.
- In **France**, extensions of the voluntary departure period up to one month may be granted if the person applying for the extension justifies their request. An extension can be granted even for reasons such as selling belongings. France takes the view that the person should feel that their departure has been voluntary and fair.
- In **Latvia**, decision-makers prefer to examine each case carefully before making a return decision as the Return Directive does not specify a time period within which a decision should be taken.
- In **Romania**, extensions have also been granted on a case-by-case basis but there are some concerns about possible abuses.

- In **Norway**, children do not get extensions for education: education is provided in the asylum centres.

Actors involved in the assessment and granting of extensions

A participant was of the view that legal guardians should be involved in the process of setting up or extending the voluntary departure period and that they should be informed about everything.

It was noted that problems may arise if an unaccompanied child has to move within the host country because of changes in their legal status. Communication between all stakeholders is therefore necessary. In addition, a holistic approach should be applied: other aspects, such as providing information, are also important in this period.

The issue of assessing the child's best interests was discussed. Some participants mentioned that some children might be influenced by their parents and might be expressing their parents' views rather than their personal opinion.

One participant felt that the indicators in the checklist concerning voluntary departure period (4.1.) do not adequately reflect the most serious difficulties they face when making a return decision about an unaccompanied child, namely contact with the family in the returning state. It may take a very long time to make sure that return is indeed voluntary and safe.

Conclusions

1. Voluntary departure period is mostly decided on **a case by case** basis:
    a. Cases **differ** so much, so it is impossible to apply one approach to every child
    b. Decisions are made in **different contexts** (different countries of origin, different patterns of migration – e.g. persons in need of international protection/economic migrants)
    c. **Numbers** of returning unaccompanied children **are low**, so it is hard to talk about patterns and formalised procedures for addressing the use of voluntary departure period and extensions. The need to develop procedures can also be questioned.
2. The **situation in the country of return** at the moment of return might be relevant when assessing an extension of the voluntary departure period (but who should assess this if the decision on return has already been made?)
3. Many participants emphasised the need for **involvement of all relevant stakeholders** at this stage (including the guardian) and good communication between them.

Pre Return Phase and Detention

The session started with a focus on post-decision and pre-return phase due to its relevance for detention, especially in cases of non-compliance with a return decision.

It was highlighted that determining the best interests of the child can prove difficult in practice. One participant mentioned that it is even more difficult when the case is not about a 5 year old child, for example, but as is more often the case of 17 year old boys who look like adults. Therefore, it can be hard for officials and authorities to treat them as 'children'. In addition, some 17 year olds do not necessarily want to be treated as children.
It was suggested that training could be set up to help working with older children to ensure they are treated properly.

Access to services pending return (checklist 4.2)

- In the **Netherlands**, access to services depends on whether people are in reception centres or in detention centres. There are some restrictions for adults' access to healthcare in the latter, but not for children.
- In theory, in **Denmark**, children have the right to education, but in practice, it can be difficult to access (e.g. ID issues).
- In **Estonia**, some difficulty may arise because the mainstream education system cannot offer specific support to people who do not speak the language.

It was mentioned that it is important to distinguish between different types of migrants: some people become illegal when a visa expires, while some have never registered their presence with the authorities. It was asked whether there could be different approaches depending on the person's status. For example, a child in the asylum process will have had access to schooling during that time and will be more integrated than those who are leaving irregularly.

Family unity during the return procedure (checklist 4.3)

- In the **Netherlands**, it is possible that only one parent is detained and contact between the parent and the child(ren) would be conducted during normal visit hours. However, this is not very much used in practice
- In **Denmark**, it is common to detain only one parent. In case of single mothers with children, however, detention is not imposed at all.
- In **Ireland**, deportations may be staggered and this could lead to a family being separated. Families and unaccompanied children are rarely detained in Ireland and families can be in the returns process for years.

Alternatives to detention (checklist point 5.1)

- The positive example of **Belgium** mentioned in the noteworthy practices (return houses) was highlighted.
- The **United Kingdom** has just started operating a new scheme of pre-departure accommodation, coordinated by the NGO Barnardo's, under which families will be provided with overnight accommodation 48 hours before departure, once all travel arrangements have been made. The United Kingdom authorities hope it will be a better experience than the previous scheme they run which was "like a hotel": people were free to leave and it was not seen as effective. In addition, the United Kingdom reported good experience with reporting centres as alternatives to detention. They ask people to come and report on certain dates. However, there are still some issues to be resolved with the new 48 hours pre-departure family accommodation.
- In **Norway**, detention is always a last resort.
- In **Poland**, unaccompanied children are rarely detained and are tend to be placed in an Education and Care Centre (orphanage). There have been many cases of disappearances from these centres. Causes of disappearances may be to search for family members in other countries or because Poland was not their initial country of destination.
- In **Latvia**, detention is at last resort, following an assessment of all other options, including staying at a fixed address or surrendering travel documents. It was felt that the latter alternative to detention may be problematic as the child (or adult) is not given any document to ascertain their identity and thus are again facing the risk of detention.

Reporting as an alternative was discussed. One participant mentioned that this obligation might be disruptive for children enrolled in school as the schedule for reporting will probably clash with classes. It was mentioned that in some countries, children do not have to report as frequently as adults (e.g. once a month). It was suggested that the law could provide for different intervals for reporting. It was also suggested that reporting takes place at the person's place of residence rather than at the police or immigration office. This could be easily done where people are accommodated in reception centres.

Surrendering of documents:

- In **Ireland** the surrendering of documentation tends to happen at the beginning of the asylum process so these will not be available to people anyway. Surrendering of documents may pose problems when the people want to access some services such as higher education or driving tests. It is possible to get a document from the immigration authorities but few asylum seekers know how to proceed with this.
- In **Norway** the asylum card cannot be used as an official ID (stated on the card) so this poses some barriers (e.g. the person cannot open a bank account).

- The **Netherlands** give their documents back to the migrants. However, this practice is being reviewed as there have been cases of people claiming documents have been lost once they are asked to provide them again. In addition, asylum seekers do not get any documents after their asylum process is over which can be problematic for people if they are stopped by the police. There is discussion about changing this for rejected asylum seeking children as they will not be returned until they are 18.
- **Denmark** does not take identification documents from asylum seekers which is helpful for the authorities as well as the individuals.

Some of the alternatives to detention suggested in the indicators of the checklist could be considered problematic such as the surrendering of documentation and reporting obligations because they are not defined and their application may not always be a good practice (e.g. Daily reporting and surrendering of documents may prevent people from accessing services or face being arrested).

The ECHR will be addressing the case[458] of lack of documentation and access to basic rights of a person who has been released from detention: the complaint states that being left in a legal limbo amounts to inhuman and degrading treatment.

Short detention and reviews (checklist 5.2)

It was mentioned that the principles of the shortest detention possible and regular review should not apply only to families or children, but also to all third country nationals. One participant noted that the concept of "the shortest possible period" is vague as one could say that 18 months was the shortest time possible if the detainee did not cooperate.

- In **Ireland**, where a family is being detained pre-removal, the child may be placed in the care of the social services (Health Service Executive) during that period and reunited with the family at the airport immediately before departure.
- In **Estonia**, every detention decision is approved by the court. In the cases of family, detention will only be authorised if a date is scheduled for removal, and only until that date. In addition, the administration has to show that all other possibilities have been exhausted. It was however noted that this system might be possible only when few cases are being brought in front of the courts, ensuring a rapid review.

A concern was raised that in countries where there are different maximum detention periods for adults and unaccompanied children, this might put children in families at a disadvantage. They might have to spend up to 18 months in detention if it is deemed in their best interests to be with their parents in

[458] Pending case: ECtHR, Fith section, *Kadzoev v Bulgaria*, Application n^{0} 56437/07

detention. Some countries have established distinct detention period for families to avoid this discrepancy between children.

- In **Hungary**, the detention period for families is 30 days while single adults can be detained up to 12 months.

- In the **Netherlands**, the maximum detention period is 2 weeks for children and families.

Detention conditions (checklist 5.3)

- A new detention centre in the **Netherlands** opened recently. It includes separate facilities for families with spaces to play. As the detention is only supposed to be for 14 days, there are no in house education facilities. When the rooms are too small for the whole family, they are accommodated in adjacent communicating rooms.

  Unaccompanied children are placed in centres for juvenile offenders but they are kept separated and appointed mentors, from the centre staff, in charge of their day to day care.
- In **Norway**, children under 15 are not detained: they are placed in the care of child services. There are separate sections in the detention centres based on age and gender. Therefore families might be separated within the detention facility.

General comments and Indicators of the checklist

There was a discussion on the differences between criminal and administrative (immigration) detention, as they serve different purposes. It was mentioned that they should have at least the same guarantees under law. Often the remedies in criminal detention are more developed in comparison to administrative detention. Therefore, the legal guarantees applicable for criminal detention should apply as minimum standards in administrative detention.

It was mentioned that most of the checklist on detention could be applied as most indicators reflect obligations provided in the Returns Directive. Participants agreed that the list of requirements for detention conditions seems good and many representatives from various countries thought they meet the requirements already.

The need to carry out deeper research with regard to children who approach adulthood, (e.g. children aged 17 years) was raised. Research and respective training is needed in order to address the presumptions about the maturity of these children and to provide answers as to which parts of the presumptions are true and which are not true.

Conclusions

1. With regard to **access to services in the pre-return phase**, it would be useful to develop and differentiate the check-list indicators in view of the type of school in question (special school or mainstream).
2. With regard to **alternatives to detention**, some participants questioned if surrendering of documentation is an alternative to detention or if it is done anyway, even at the time of detention. Others pointed out that surrendering of documentation might not be a good practice as it leaves the child undocumented.
3. With regard to **detention** the following issues have been raised:
    a. Criminal detention and administrative (immigration) detention have different purposes, but should have at least the same guarantees under law.

    b. There should be a common time limit to detention that sets equal standards for unaccompanied children and children within families to avoid discrimination.

4. There is a need to carry out specific **research** with regard to children close to turning 18, e.g. on presumption of maturity.
5. Regarding the checklist in general, the reactions have been that it is not difficult to apply it as it follows mainly legal obligations under the Return Directive and international law. The main issue in implementing the checklist is the development of **a common framework to determine the best interests of the child**.

Post Return

National experiences on return of children

- In the **United Kingdom**, there was a case of a 17 years old Pakistani asylum seeker who applied for voluntary return. He had an uncle in United Kingdom with whom he lived. He returned, accompanied by the uncle and reintegration assistance was used for education. A good thing was that there were 3 months of preparation prior to return.
- In **Sweden**, the authorities are working with lawyers linked to the Swedish embassy in Iraq in order to trace the family.

- The **ICRC** noted that they cannot trace family in all the countries so it is necessary for government to imagine new forms of family tracing.

- A representative from **ISS** mentioned the case of two unaccompanied boys returned to Angola. It took 19 months to organise the return because the situation was very complex, especially as the children were very young (10 and 12). They were first returned to the Mulemba centre, as it was not clear whether their mother would be able to take care of them. They only stayed there for 10 days, until their father claimed custody of them. Many persons

and institutions were involved in Switzerland and in the country of origin. Informing each other and establishing common grounds for cooperation is very important.

Relations between country of origin and return and actors within the host country

It was mentioned that is crucial to work closely with NGOs and develop transnational contacts. However, it was noted that it poses problems in North African countries, because it is difficult to find partner organisations. It was highlighted that it is important for local partners to have financial means to work in the field. In addition, when choosing local partners it is necessary to have a good knowledge about the country of return.

The link between actors in the host and return country is also crucial in order to arrange the transfer of care and custodial responsibilities, as well as the reintegration process. It was noted that the 1996 Hague Convention[459] could be a relevant tool for those questions.

- In the case of returns of unaccompanied children from the **United Kingdom**, the parents have to sign a paper at the arrival for the transfer of custody. However in some situations, the children may be considered as adult in their country, which would modify the issue of responsibility.

It was also noted that it can be a big challenge to be able to cooperate with the local child protection system in some countries of return, especially when they are not used to dealing with returned children. On participant mentioned that, in some instances, agencies are not reliable, for example because they are perceived as being corrupt.

- **ISS** has implemented successful follow-up measures during a 2 year project in West Africa, with strong cooperation and confidence between all stakeholders.

The cooperation between guardians and authorities was discussed. It was felt to often be difficult because they may have different opinions on whether return is in the child's best interests. Therefore, it was deemed necessary to have clear best interests determination procedures and objective criteria that all actors would agree on.

Regarding, the issue of communication with family members prior to return, it was mentioned that in some cases, children may prefer that third parties initiate the dialogue with the family so that the family understands that the child is not to be blamed for their return but that it is the "fault" of the host country.

It was however pointed out that the child does need regular phone or letter contact with his or her family before return actually takes place.

[459] "*Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*"

Prior to actual return

It was mentioned that before return take place the actors involved should ensure that the children have the time to say goodbye to their friends and other people they have interacted with. It was suggested that farewell parties or ceremonies at schools could be organised. This could ease the process and ensure the child can keep in contact with their friends.

Participants agreed that children should be properly informed about the return process and what will happen immediately after their arrival. It was noted that this ensures they do not feel having "failed" and that they are not too worried about the return and post arrival phase. In addition, it has been mentioned that many children are very anxious and even scared of the questions they might be asked by border guards upon arrival. It was suggested that the child could be prepared in answering possible questions.

- **NIDOS** organises group seminars to explain what will happen after return.

Return of children close to majority

- In the **United Kingdom**, if a child is 17 and the procedure takes longer than a year, then there is a danger that he or she turns 18 and is removed as an adult.
- A lot of unaccompanied children arriving in **Italy** are around 17. It often means that by the time all the procedures are carried out (family tracing, collecting country of origin information, etc.) they are already adults. The solution would be to prolong the best interests assessment for those who recently turned 18.
- **IOM** Brussels try to apply the same approach to children and to young adults until they reach 21.

Reintegration and monitoring

It was agreed that sustainability is a core factor for reintegration. It was mentioned that reintegration should look at education opportunities for the child, and also at creating some new possibilities for the parents (e.g. to set up a small business).

- IOM mentions that sustainability is the most important factor. They had the case of a Roma girl returning to Kosovo who wanted to be a doctor, but had no education to date. She took part in a vocational course, and works now in the medical sector in her community.

There was a discussion on how to assess the success of reintegration. Should the child or the parents be evaluating success?
A participant noted that the checklist indicators on monitoring are clear and helpful. Monitoring can be a challenge because of financial constraints. It was also noted that monitoring should be combined with continued assistance.

- **IOM** monitors the reintegration process up to one year after return. However, because of time and financial constraints, they cannot follow the child on a day to day basis.
- In **Italy,** there was a case of return of trafficked persons to Moldova. Insufficient financial resources made it impossible to visit the returnees.

Another important factor for reintegration is language skills, especially if children stayed in a host country for a long time. In those cases, a multidisciplinary approach should be applied. The example of a child returned to Vietnam who was not able to communicate with their parents was mentioned.

The Project Manager of the European Return Platform for Unaccompanied Minors (ERPUM) gave an update of the project. Sweden, Norway, the UK and the Netherlands are partners. The project plans to establish cooperation with Iraq and Afghanistan (tracing is an important component of the project). Until now, a couple of field visits to Afghanistan have taken place and negotiations with different actors are being carried out: the Afghan government, international organisations, and NGOs.
The target group is unaccompanied children whose asylum applications were rejected. The scheme is intended to be based on voluntary return. Reintegration plans involve education for children, and help for parents to start a small business. Legal guardianship is an issue that was discussed for a very long time with the Afghan government and they recently agreed to take full responsibility for returning unaccompanied children. In this regard, the project manager underlined the fact that Western actors tend to apply Western standards to the countries of return, but family structures and understanding of care are very different.

Conclusions

1. **Interagency cooperation** is important in order to assure the transfer of care and custodial responsibilities and the whole reintegration process after return. The agency in the country of return needs to be fully reliable.
2. Everybody agreed that adequate **direct communication with family** members of the child prior to return is crucial.
3. There needs to be a proper **cooperation and exchange between guardians and Immigration Services**. This cooperation can be strengthened if objective criteria to determine best interests are established.
4. **Preparation and information** on the return itself and situation after arrival should be provided to avoid stress and negative psychological effects.
5. "**Ceremony**" before the actual return: children need to have the opportunity to say "Goodbye" to friends in the host country before return takes place.

ANNEX 4: MEMBER STATESCOUNTRY FICHES

AUSTRIA

Background information	
Law(s) applicable to the return process	-Federal Act on Settlement and Residence in Austria, 2005 -Federal Act on Aliens' Police, Issuance of Documents for Aliens and Legal for Entry, 2005 -Federal Act on Granting Asylum, 2005 -Basic Welfare Act, 2005 -Basic Welfare Agreement between the Federal State and Federal Provinces setting common standards for providing basic welfare to Aliens in need of assistance and protection in Austria, 2004
Are Children returned?	-Children (unaccompanied and in families) can be returned forcefully. They can also access voluntary return schemes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children and Children within families	- A time limit is established in the decision to leave the territory is set in the return decision. -The voluntary departure period can be extended for up to 3 months. The decision on granting such period is discretionary and should balance public and individual interests.	-Extension to obtain travel documents is common. There have been cases where children were allowed to finish a school term.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Every unaccompanied child shall be appointed a guardian by the court. If no close relative or other appropriate person can be found, the youth welfare authorities are given custody of the child.	-Usually, employees of the Youth Welfare Authority are appointed as guardians.
	-Children under 16 should have legal representation in return procedures. Children above 16 have legal capacity to act in procedures related to return. They have however a right to be accompanied by a legal representative and a "person of confidence".	-In the asylum procedure, a guardian is appointed after the admission to the procedure and would continue to represent the child in the return procedure if necessary. Unaccompanied children who already turned 16 are not represented by guardians in the return procedure, but they can receive other support (from the Youth welfare authority or reception centre staff) and assistance of the guardians.
	-Guardianship involves care, education, property administration and legal representation.	-The involvement of guardians on varies among Federal provinces. It depends also on their personal involvement and availability of financial resources.
	-There are no legal requirements regarding qualifications or training of guardians.	-In Vienna guardians working for the Youth Welfare Authority are qualified social workers or social pedagogues. No specific training is provided. The numbers of children that guardians take care of vary throughout the country.
	-Children above 16 should be informed about the possibility to call their legal	-Children do not usually make use of this possibility and often claim they were not

	representative and a person of confidence to take part in the oral proceedings. -Interpreter must be appointed if necessary. -Unaccompanied children should be accommodated in facilities for persons where persons to whom more" lenient measures" apply.	appropriately informed about this right or the right to make an appeal. -No common systematic approach exists regarding family tracing. In some cases, child welfare authorities in country of origin are contacted directly. Within its assisted return projects IOM carries out family tracing according to its own standards in cooperation with its offices in countries of origin. -In general, no best interests assessment takes place during the return procedure. -Unaccompanied children are accommodated in specialised facilities, partly as application of more lenient measures. In Vienna those who have no legal status are usually accommodated in a facility led by the local youth welfare authorities.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children have access to education on the same grounds as nationals until the age of 16. -Access to health care varies depending on the legal situation and federal province.[460] -Unaccompanied children who did not apply for asylum are accommodated in youth welfare institutions, but also in guesthouses without any child specific support. -Information on voluntary return is provided within the framework of return counselling.	-Unless detained, children attend schools during this phase. They can also engage in social, sporting, recreational and leisure activities. -Children who are entitled to the "Basic welfare" benefits have full access to health care. Children accommodated in the specialized facility in Vienna (Drehscheibe) have unlimited access to healthcare until departure. -Unaccompanied children whose asylum application was rejected can stay in the same accommodation until return. Others are either placed in specialised facilities or detained.
Children within families	-Access to health care varies depending on the legal situation and federal province.[460]	-A family is usually understood as the parents and their minor children -Unless detained, children attend schools during this phase. They can also engage in social, sporting, recreational and leisure activities. -Children who are entitled to the "Basic welfare" benefits have full access to health care. -In some provinces, families have to move out of the asylum reception centre after their application is rejected. Moving may disrupt

[460] In case of rejected asylum seekers access to Basic Welfare benefits, including healthcare, in some provinces depends on the agreement to return voluntarily, while in the others is granted until departure.

	-Information on voluntary return is provided within the framework of return counselling.	the schooling of children. -Within the voluntary return schemes accommodation can be provided for two to three days before departure and in exceptional cases up to three weeks. The costs are covered by the Ministry of Interior.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Children above 14 can be detained as a measure of last resort. Unaccompanied children can be detained for 24 hours. This period can be extended once for another 24 hours. -Decisions on detention can be appealed before the competent Independent Administrative Senate, and at a second stage before the Administrative Court. -Legal representation in issues relating to detention of unaccompanied children is safeguarded only until the age of 16. -Children between 14 and 16 can be detained only if special premises, separated from adults and where appropriate care is provided, are available. -Necessary medical treatment shall be ensured and provided without unnecessary delay. -Alternatives are available for unaccompanied children (reporting obligation or accommodation in specialised facilities)	-Detention is not always applied as a measure of last resort, although detention of unaccompanied children is not systematic. -Children above 16 are facing difficulties in submitting an appeal against a detention decision.[461] -Foreigners are detained in the premises of police, which are not reserved to foreigners awaiting expulsion. Unaccompanied children are accommodated separately from adults. Unaccompanied children over 16 are housed in "open stations" of the police detention centres. -Detained children do not attend school and access to leisure facilities is limited. -Only essential medical treatment is provided. -Alternatives are not always applied in practice, but the number of detained unaccompanied children is decreasing.
Children within families	-Children above 14 can be detained as a measure of last resort, for 2 months. This period can be extended for a maximum of 10 months within 2 years. -Parents can decide to have their children younger than 14 to be detained together with them or accommodated in open facilities by the Youth Welfare Authorities. -Decisions on detention can be appealed before the competent Independent Administrative Senate, whose decisions can then be appealed before the Administrative Court. -Families are detained in specific units.	-In practice families with children are usually not detained. Sometimes only the father is detained, while more lenient measures are applied to the mother and children. -Access to legal assistance for detained families is limited. -There are some dedicated facilities for families in some detention centres. These centres are however not always used in

[461] NGOs have a restricted access to detention facilities and limited resources to provide legal assistance to detained foreigners, therefore legal assistance is hardly available.

	-Necessary medical treatment shall be ensured and provided without unnecessary delay. -Alternatives to detention (reporting obligation or stay in assigned accommodation) are available.	practice. -Detained children do not attend school and access to leisure facilities is limited. -Only essential medical treatment is provided.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children can be returned to family members, a guardian or reception facilities. -Children can be subject to re-entry bans under the same conditions as adults. A re-entry ban of 18 months is imposed on all rejected asylum seekers, including those returning voluntarily. In Aliens Police procedures a residence ban of up to 10 years (and in particular cases for an unlimited period of time) can also be applied.	- Children are usually returned to their parents, or grandparents, adult siblings or other close relatives. Return to reception facilities is possible if no family can be traced and in cases of trafficking or a suspicion of trafficking. -Care and assistance have to be ensured before an unaccompanied child can be returned.
Children within families	-Separation of families is admissible only when it is proportionate and necessary in compliance with Art. 8.2 ECHR. -Children can be subject to re-entry bans under the same conditions as adults. A re-entry ban of 18 months is imposed on all rejected asylum seekers, including those returning voluntarily. In Aliens Police procedures a residence ban of up to 10 years (and in particular cases for an unlimited period of time) can also be applied.	-Separation of families happens in practice. In such a case, children stay as a rule with one of the parents.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	Amendments to the Settlement and Residence Act, Aliens' Police Act, Asylum Act, Basic Welfare Act and Citizenship Act, aiming at transposition of Returns Directive, were accepted by the National Council on 29 April 2011 and the Federal Council on 12 May 2011. They came into force on 1 July 2011.
Expected changes to practice as it impacts on the return of children:	Changes in practice are expected following the entry into force of the legislation amendments.

Data / statistics (2010)	
- Nb of children returned	672 children (among which 11 unaccompanied) returned voluntarily with the assistance of IOM.

BELGIUM

Law(s) applicable to the return process	- Aliens Act (1980) -Guardianship Act (2001) -Asylum Law (2007) -Royal Decree on irregularly staying children in families (2004) -Circular on the stay of unaccompanied children
Are Children Returned?	-Unaccompanied children are currently not forcibly returned even if a return decision has been issued. -Children in families are forcibly returns -All children can benefit from voluntary return schemes

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-There is currently no distinction between voluntary schemes and voluntary compliance with return decisions.	-Unaccompanied children are permitted to apply for voluntary return programmes. -The voluntary return period can be extended in certain circumstances.
Children within families		-Extensions can be granted in relation to a child's schooling.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-An unaccompanied child is entitled to have a guardian, who is appointed by the Guardianship Service. -Guardians may be employed by an NGO, or may be independent, or volunteers. -Tasks for the guardian are laid out in legislation (The Guardianship Act) and the Guardianship Service is part of the Ministry of Justice. -There are 3 possibilities to find a durable solution for children without status: family reunification in Belgium or abroad, return to country of origin or another country with a	-During the decision-making procedure, support to children is provided by their guardian and a legal representative. All unaccompanied children have the right to a lawyer, for all procedures. It is the guardian's responsibility to appoint a lawyer. -The main tasks and responsibilities of the guardian in relation to return are contributing to, and making proposals for a durable solution in coherence with the child's best interests and exploring the possibility of family tracing and reunification. -Actors involved in the return of children are: the guardian, the reception centre, social workers, lawyer, IOM, Fedasil, reintegration services, and the child's family. -On a case-by-case basis, other actors can be involved: local social institutions, national authorities, law enforcement agencies (trafficking cases, Interpol facilitation). -In relation to voluntary return, all relevant documents have to be drafted in close coordination with the child. -Family tracing is conducted by the Red Cross in collaboration with IOM. -If (one of) the parents are still alive, the migration authorities will often conclude that

	right of residence, unlimited stay or settlement in Belgium	the best interests of the child is to return, without necessarily verifying if the return conditions are suitable and are indeed consistent with the best interests of the child.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children have the right (and obligation after 3 months of residence) to go to school and the right to receive health care	-Unaccompanied children remain under the responsibility of the guardian in the pre-return phase and live in reception facilities where they have access to school and health care.
Children within families	-Children have the right (and obligation after 3 months of residence) to go to school -There is an obligation to ensure the health of every family arriving at the return-houses. The Foreigners Office covers the costs for examinations by doctors.	-Families with children are entitled to accommodation in the return-houses but do not receive financial assistance. -Families are rarely separated though there is no specific legal provision on family unity. Families have been separated if one of the parents has been convicted for criminal offence.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-An unaccompanied child would only be detained when there is doubt about their age. Persons who claim to be children at the border are detained for a maximum of 3 working days, renewable for 3 more working days until the end of the age assessment procedure.	In practice, if there are weekends and/or holidays within that period children can be detained up to 9 days.
Children within families		-Families with children are generally no longer detained in detention centres. They are placed in open housing units. -If the families do not comply with procedures, or disappear and are re-apprehended, they can be placed in a detention centre.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children		-In relation to voluntary return of children, on the day of return to the country of origin, the parents are asked to come to the airport to pick up the child, otherwise, they have to explain why they cannot come and have to nominate someone else to come. If the child lives far away from the airport, the child is escorted home. The parents have to sign the document given by the local IOM office which as a 'handover notification' - this document outlines the end of IOM's role.

	Those who are removed are not subject to re-entry bans.	The guardian in Belgium will ask for this document to close the guardianship of the child. -In cases where there has been reintegration assistance there is a follow up for the first 6 months after return; after one year, contact ceases.
Children within families	Those who are removed are not subject to re-entry	

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	None

Noteworthy practices

- The NGO, Minors in Exiles Platform, has produced a brochure comprising 14 information sheets, including two relevant to return (family tracing and voluntary return), intended for all unaccompanied children present in the Belgian territory. The goal of the brochure is to offer a comprehensive range of information on the main actors involved and the main stages of the immigration and asylum process for unaccompanied children
- Guardians must be appointed to all unaccompanied children. Guardians may be either professional guardians or volunteers. The guardian, as part of his or her role, makes a proposal for a durable solution to the immigration authorities and the authorities then make the final decision. Guardians can challenge the decision in court if they disagree with it.
- Since October 2008, families with children who are required to leave Belgium are no longer held in closed detention centres, but are placed in individual open housing units, called “return-houses”. There are two categories of family in the return-houses: the families who were arrested on the territory and the families who asked for asylum at the border. Family unity is maintained even when children have turned 18 years old. Family members are allowed to exit the house, providing that one adult member of the family remains present in the unit. Children are allowed to attend school, even though it is sometimes difficult to ensure in practice (due to lack of available places in schools, short period prior to the return, etc). Families have access to health care in addition to an obligation to a medical check when entering the return-houses and to a “fit-to fly” examination before return.
- There is no detention of unaccompanied children
- Unaccompanied children under 15 years old are systematically accompanied to their country of origin. For those that are older, the need for an escort is assessed individually.

Data / statistics (2010)	
- Nb of separated children returned	9 voluntary returns with IOM (to Brazil, Canada, Kosovo, Macedonia, Madagascar, Moldova, Morocco, and Tunisia.)
- Nb of children within families returned	557 children returned with their families (435 between the age of 0 and 11 and 122 between the age of 12 and 17).

BULGARIA

Background information	
Law(s) applicable to the return process	-Law on Foreigners; -Law on Asylum and Refugees
Are Children returned?	-Unaccompanied children are not officialy forcibly returned and cannot benefit from voluntary return schemes -Children in family can be subject to forced return and benefit from voluntary return schemes

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-Departure within the period specified on a deportation order is 7-30 days. -Extensions up to one year can be granted on a discretionary basis, depending on the length of stay, health conditions, needs of vulnerable groups, existence of children going to school and other family and social connections	There has not been any return of unaccompanied children under the formal procedure.
Children within families		-No extensions of the voluntary departure period have been granted to families to date.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Children in the asylum procedure must be represented either by a guardian or a person from the Social Assistance Agency. -Guardians are unpaid and need no special qualifications. -If a child is in state institutional care, the director is the guardian of the child; otherwise, the mayor of the municipality where the child resides appoints a guardian from among the adult relatives of the child. -The guardian must take care of all aspects related to the child's well-being. -Children or their representatives can apply for free legal assistance during the judicial stage of the return. -The State Agency for Refugees is responsible for protecting child asylum seekers. The State Agency for Child Protection is only responsible for those unaccompanied children who entered the country legally or those who entered as accompanied but were abandoned later and did not claim asylum. The agency provides necessary support and care for meeting their basic needs, medical care and access to education. -Unaccompanied children should be accommodated together with relatives or other close persons, or in foster families, specialised institutions or other	-The system of guardianship does not function well. In practice, legal assistance and representation is provided by the Bulgarian Helsinki Committee and other NGOs. -The lack of guardians impedes the children's access to medical services and schools. -Despite provisions in law, there are no legal grounds to issue a residence permit to a child, - this prevents them from accessing medical services and school. -Unaccompanied children are accommodated in separate rooms in reception centres for asylum seekers.

	accommodation centres with special facilities for children. -There are no specific provisions concerning children during the return procedure but the principle of the best interests of the child would apply. Children have the right to be heard in all procedures affecting their interests. A return decision may be challenged within 14 days of issue	

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	- There is no definition of family for the purpose of return. -Children have access to school and emergency health care. -Those seeking asylum are not entitled to live in the reception centre after their claim is refused. -Those who entered legally or those who entered as accompanied but were abandoned later and did not claim asylum are entitled to state care until they turn 18.	-In practice unaccompanied children may be 'attached' to an adult member of a group in which they are travelling. It is unclear what criteria are used to determine whether this person is related to the child. -Children must pay fees to access school during this phase resulting in many dropping out. -Accommodation is resolved on an ad-hoc basis: some children may be allowed to stay in the reception centre while others may be transferred into state care. Information, where available, is insufficient.
Children within families		-In most cases, families must find their own accommodation unless they are detained. -They receive no documents or state assistance during this phase

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-In exceptional cases, unaccompanied children can be detained for up to 3 months[462] on the same grounds as adults -Appeals must be lodged within 7 days of detention. There is no possibility to review detention before the first 3 months expire or to release the person before this. -Legal aid may be applied for. -Detention centres must have appropriate conditions suitable for the children's age and needs.	- There is no provision on how the detention of children should be reviewed or whether they can be released before the 3 months expire. -The conditions in the two detention centres vary. Unaccompanied children are accommodated in separate rooms but have complained about the lack of Internet or library access and limited leisure facilities. The recently built detention centre close to the Turkish border has better facilities but in both centres the personnel lack language skills.

[462] Detention for the purpose of removal is likely to be delayed, when the person's identity is unknown, the person obstructs the return process or there is a danger of absconding.

	-The alternative to detention is daily police reporting.	-Medical treatment is sometimes inadequate.
Children within families	-Children in families may spend up to 18 months in detention (the maximum period of detention envisaged for adults). -Appeals must be lodged within 7 days of detention. There is no possibility to review detention before the first 3 months expire or to release the person before this. -Legal aid may be applied for. -Detention centres must have appropriate conditions suitable for the children's age and needs. -The alternative to detention is daily police reporting.	-It is considered to be in their best interests to stay with their family. -Many people do not manage to lodge an appeal on time due to the 7-day period, which starts from the moment the person is detained and not from the moment when the detention order has been properly served. -It is unlikely that a third country national would be able to apply for legal aid without assistance. NGOs provide free legal assistance but cannot take the cases of all detainees. -Families are accommodated in separate rooms but sometimes have to share common premises with other detainees. -Alternatives to detention are rarely taken into account.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Safeguards apply to unaccompanied children who entered the country legally or those who entered as accompanied but were abandoned later and did not claim asylum. They can be returned to a member of their family, a guardian or a suitable reception centre on condition that their life and freedom are not at risk -Entry bans apply to everyone and may be imposed for a period of up to 5 years (10 years in exceptional cases)	No practice exists
Children within families	-When a return decision is made, the specific conditions of vulnerability, family situation, and family, cultural and social connections in the country of origin must be taken into account.	-No cases of family separation have been identified.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	Changes with regard to the appointment of guardians and the issue of residence permits to unaccompanied children are being discussed
Proposed changes to practice as it impacts on the return of children:	Voluntary returns of unaccompanied minors may take place under recently introduced voluntary return programs which also have a re-integration and monitoring component

Data / statistics (2010)	
Nb of separated children Nb of families with children Nb of separated children returned	20 (Iraq, Afghanistan) 100 (estimate) 0

CYPRUS

Background information	
Law(s) applicable to the return process	-Refugee Law (2000); -Combating of Trafficking and Exploitation of Human Beings and Protection of Victims Law [L.87/ (I)/2007]; -Immigration Law
Are Children Returned?	-The forced return of unaccompanied children is legally possible but not applied in practice. There are also no voluntary return schemes for unaccompanied children -Families with children are returned forcefully and can also benefit from assisted voluntary return programmes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	The Refugee Law provides that "*the Asylum Service shall take all necessary measures, as those are defined by Regulations, to make possible the voluntary return of persons enjoying temporary protection or whose temporary protection has ended, which shall facilitate their return with respect for human dignity*"	Unaccompanied children are not issued return decisions.
Children within families	*See above.* The Refugee Law states that deportation order shall not be issued against "*families with minor children, which enroll in any school in the Republic, until the current academic year shall be completed*"	

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-As soon as the child is identified by the authorities, they are referred to the Social Welfare Services, where the Director is considered by the Law to be the legal guardian of the child - The Social Welfare Services provide the child with accommodation either in shelters or in fosters families. -The child has the right to free public education or special education, free medical care, and welfare allowance.	-In some cases the children are placed in apartments with other adult asylum seekers which are not legally assigned as their legal guardians.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children		-Usually the authorities wait for children to turn 18 to return them as adults. -There is no evidence for a formalised process for identification of durable solutions based on best interests determination, including risk and security assessment prior to possible return of the child.
Children within families	-There is no participation of the child in the decision-making/obligatory hearing in all the relevant legal procedures.	

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children *and* *Children within families*	-Children can be detained in detention centre. The law provides that they are "kept in cells separate from the rest of the detainees". -Regarding asylum seekers, Cypriot Refugee Law forbids the detention of child asylum seekers. -There is no maximum limit for detention	-In practice, children can be held in closed centers and are not separated from adults. -Women migrants who are detained can keep their baby with them but they must support the babies basic needs. -The staff is not trained in, or are made aware of, the identification of vulnerable persons. The specific needs of vulnerable persons such as children are not taken into account. -The unrestricted duration of detention means that detention can last sometimes over 36 months.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	*Not applicable*	*Not applicable*
Children within families	*N/A*	*N/A*

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	None

Noteworthy practice
Unaccompanied children are not detained

CZECH REPUBLIC

Background information	
Law(s) applicable to the return process	-Act No. 326/1999 Coll. on Residence of Aliens in the Territory of the Czech Republic -Act No. 325/1999 Coll. on Asylum -Act No. 359/1999 Coll. on Social-legal Protection of Children
Are Children returned?	- Unaccompanied children are not forcibly returned and voluntary returns are very rare. -Children in families can be forcibly returned and can benefit from voluntary return schemes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-No definition of voluntary return under the law.	
Children within families	-A departure order can be issued by the Aliens Police for a period necessary to perform any unavoidable acts and depart from the Territory, for the maximum period of 60 days. Afterwards the police can issue a new departure order in case of special circumstances, which are not defined by law.	-Voluntary departure is understood as compliance with the obligation to leave the country within time limit provided in the departure order. -Departure orders are issued to returnees (with exception of detained persons) on discretionary basis. Medical reasons and problems in obtaining travel documents are taken into account. Reasons related to education of children are not considered.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Since 1 January 2011 a special guardian for the administrative expulsion procedure must be appointed without delay. -Altogether four types of guardians can be appointed: 1. Guardian for stay 2. Guardian for asylum procedure 3. Guardian for detention procedure 4. Guardian for administrative expulsion procedure. --The guardian's task is to safeguard child's rights and ensure that child's best interests are protected – in all spheres of child's life (guardian for stay) or in a specified procedure (other guardians). The guardian for stay is appointed for every child and has no or limited legal capacity. The guardian for the procedure acts to protect the child's rights and interests related to their stay in the territory. The guardian for expulsion procedure and guardian for detention procedure do not have their role specified by the Aliens Act. -Legal representation shall be provided by the respective guardian, depending on child's situation. -Children above 15 have legal capacity to	-Unaccompanied children have as a rule two guardians: guardian for stay and another one responsible for the respective legal procedure. -Municipal child protection officers (who usually request an NGO guardian to execute thier function) are in most cases appointed as guardians for stay and NGO workers – as guardians for specific legal procedures. -The guardian's task is to safeguard child's rights and ensure that child's best interests are protected – in all spheres of child's life (guardian for stay) or in a specified procedure (other guardians). -The municipality guardian must always be a qualified social worker (higher education required), as provided by the Social Service Act. -NGO lawyers specialised in children's issues provide legal representation during the entire stay of the child, including during the return procedure. -A child assisted by the guardian makes the decision to return. There are no procedures in place for assessing the best interests of the child. The only important safeguard is

	act in return procedures. They must however be accompanied by a guardian. -Children shall have support in accessing services and accessing accommodation – the compliance of which shall be overseen by guardians.	the condition that proper reception must be available in the country of return if the child is to be returned.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children shall have access to education on the same conditions as citizens (primary school is compulsory). -Unaccompanied children accommodated in the Home for Foreign Children have access to health care on the same conditions as citizens during the whole stay.	-Unaccompanied children remain in the Home for Foreign Children and can attend school at all levels in this phase. -Unaccompanied children can take part in all kinds of leisure activities. -Children above 15 take active part in all the procedural aspects and are informed about all the steps by the authorities. Information is also provided by the guardian.
Children within families	-Maintaining family unity is an obligation under the Czech Charter of Fundamental Rights though no definition of family for the purpose of return is provided. -Elementary education is compulsory for all children - Only access to emergency health care is ensured. Rejected asylum seekers who opted for voluntary return continue to receive health care on the same conditions as citizens. -Asylum seeking families with children are entitled to live in reception facilities or receive assistance to live in private accommodation. Families with children not seeking asylum are not entitled to accommodation.	-Families are not separated in this phase. Parents and their children are considered to constitute family. Children follow the procedure of their parents. -Elementary education is compulsory and ensured, secondary education is optional, but children can in practice attend secondary school. -If not asylum seekers (including rejected asylum seekers awaiting voluntary return) in the asylum facilities, access to healthcare is not ensured. -Families with children whose asylum application was finally rejected and who opt for voluntary return are entitled to stay in reception centres. Otherwise families are either detained or receive no assistance regarding accommodation.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children older than 15 can be detained on the same grounds as adults. Detention of unaccompanied children younger than 15 is prohibited. -There is no legal requirement to carry out a best interests assessment in relation to detention. -Unaccompanied children can be detained for no longer than 90 days (adults – for 540 days)	-Unaccompanied children are rarely detained and in rare instances where detention is used it is for a short period of time. Detention is more likely if the age of the child is disputed.

	-The decision to detain can be appealed to the respective regional court within 7 days. State-financed legal assistance can be granted by the court upon request of a person who has no sufficient financial means, but only for the court procedures. -Unaccompanied children shall be detained separately from adults. -The operator of the detention facility is required to provide every detained child who is subject to mandatory school attendance with the opportunity to fulfil this obligation. However there is no legal requirement to provide access to schools for children older than 15. -The Operator shall establish a selection of cultural, sporting, and other activities designed specifically for various age groups. -Access to health care including any required diagnostic and laboratory tests, vaccinations, and other protective measures are ensured by the Refugee Facilities Administration under the Ministry of Interior.	-Legal representation is provided by guardians for detention (NGO lawyers). -Unaccompanied children are detained in the centre in Bela-Jezova, where they are held in a special part separated from adult detainees. -Children in detention attend only primary school. Tutoring after classes is provided in by Refugee Facilities Administration. -There is also a children center with games and a playground for football and basketball. -Access to necessary medical care is provided.
Children within families	Children in families are detained on the basis of the decision issued to one of their parents. -There is no legal requirement to carry out a best interests assessment in relation to detention and families with children can be detained for no longer than 90 days.	-Children are systematically detained together with their parents. The starting point is that the adults must be placed in detention and children should not be separated from their parents. -Legal assistance is provided free of charge by NGOs visiting detention centres and depends on availability of funds. -Families with children are accommodated separately from other detainees in a special unit in the Bela-Jezova detention centre.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-An unaccompanied child can be returned only after the receiving state provides information that appropriate reception corresponding to age of the child will be ensured. -Re-entry bans are an obligatory part of decision on administrative expulsion and are imposed for a period of 3, 5 or 10 years.	-Unaccompanied children are as a rule not returned. In some cases the return is postponed and confirmation of proper reception in the receiving state is not sought. -In case of return to a family member family relationship has to be proved. -As unaccompanied children are in principle not forcibly returned, re-entry bans are not applied.
Children within families	-Re-entry bans are an obligatory part of decision on administrative expulsion and are imposed for a period of 3, 5 or 10 years.	-Children are returned together with their parents, families are not separated. -Children are covered by the return decision issued to one of their parents and the same re-entry bans apply.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Expected changes to practice as it impacts on the return of children:	None

Noteworthy practices
In the Bela-Jezova detention centre, children in families and unaccompanied children must be accepted at the nearest primary school and the detention centre has to provide transport to and from the school. In addition the Refugee Facilities Administration provides tutoring classes inside the detention centre.

Data / statistics (2010)	
Nb of separated children returned	6 unaccompanied children returned voluntarily with IOM

DENMARK

Background information	
Law(s) applicable to the return process	-L107 (2011): implementation of the Return Directive. -L37 (2010): Revision of rules concerning unaccompanied minors
Are children returned?	-All children can be returned forcibly and benefit from voluntary return schemes. Very few unaccompanied children are returned forcibly in practice.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-The voluntary departure period is set at 7 days (30 days for victims of trafficking). -Returning voluntarily implies that the child has chosen to return within the deadline for departure given in the return decision. -If an application for a residence permit is turned down, the case can be appealed to the Ministry of Integration. If the appeal is submitted less than 7 days after the decision is announced to the child, they may stay in Denmark during the appeal process. However, if the appeal is submitted after 7 days, the appeal is not suspensive. -Extensions (70 days) can be given to victims of trafficking for a ”reflection period” or if they cooperate with the police.	-Unaccompanied children are generally not forcibly returned, but if they are to be returned it usually takes longer than 7 days to arrange the return. -Children are usually granted a temporary residence permit until their 18th birthday. -No extensions are granted for the child to finish the school year. The return can be postponed if the child suffers from health issues that need medical attention. This is decided on a case-by-case basis. -The period of voluntary departure may also be extended because of technical reasons (lacking ID-documents). -The 70 days extension is granted only if the person agrees to cooperate with the authorities for the preparation of their return or if there is special circumstances.
Children within families	- Extensions can be given to victims of trafficking as noted above.	- No extensions are granted to finish the school year. - The period of voluntary departure may be extended because of illness or for technical reasons (lacking ID-documents and other). -In practice it usually takes longer than 7 days for a family to prepare their return: if they cooperate with the authorities, families will not be forcibly removed even if the 7 days delay has lapsed.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-A guardian must be appointed to each unaccompanied child after their arrival. -The guardian acts as the contact person for the chid during the residence permit application . -Guardians should have a criminal record clearance (carried out by the police).	-The Danish Red Cross recruits and trains volunteer guardians. Relevant education and experience is required. A clear criminal record must be shown to the Red Cross. -Guardians are not paid for their work. -The guardian must always consider the best interests of the child. The guardian

	-Legal representatives are appointed to each unaccompanied child if their asylum application is rejected at first instance decision is a rejection of the application. -The parents of unaccompanied children will be searched for in all cases –also including if the child does not consent – if this will be in the best interests of the child.[463]	helps the child access welfare and support services. -The Danish Red Cross in the reception centres, the Danish Refugee Council and the Danish Immigration services all have a role in the provision of information (e.g. about services) to unaccompanied children. -The Danish Refugee Council provides legal counselling to all asylum seekers and to guardians of unaccompanied children. -Every child will have two contact persons from the Danish Red Cross immediately after their arrival at a children´s centre. Staff at the centres are responsible for the daily care of the child. A person from the Red Cross will also be present during interviews with Immigration authorities and provide information about procedures to the child. -Unaccompanied children who stayed at the Danish Red Cross Children´s Centres during consideration of their asylum case may be moved to a departure centre prior to return. -The Centre produces a social report on each child before a return decision is made. The guardian helps the child understand the content and conclusions of the report. In case of disagreement, the child's view will be included in the report. -Denmark carries out tracing via the Danish Red Cross Tracing Service and embassies in the country of origin.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-An unaccompanied child with other siblings can remain with them. -Family includes parents, siblings, and other relatives.	-If a child has extended family in Denmark it may be possible for the child to live with them if it is considered safe. The Danish Red Cross acts as supervisor in this case and the guardianship provisions may remain to protect the child's interests at all times. -For extended family members to be considered as adequate caregivers or nominated guardians an assessment will be carried out prior to return. -Children are allowed to access services during this phase. There will be practical difficulties if the child is relocated to a different departure centre. Generally, children are housed in special departure and reception accommodation where a range of activities are available including education, leisure, health and social activities.

[463] However, if the parents of the child have been involved in the trafficking, they will not be searched for with the intention of reuniting them with the child, and information about their involvement will be forwarded to the authorities in their home country.

Children within families	-Maintenance of family unity should be a primary consideration but family members may be separated during the return process. -Children have access to the same services as Danish children. -Children within families can be subject to a relocation order and moved to a departure centre with their parents.	-Family members are kept together as far as possible. There are, however, cases where a child is separated from a parent. -The family does not receive special assistance to access services. Children are allowed to access the services available at the reception centre they are housed at (may be limited availability). -Families with children are entitled to accommodation and financial assistance. However, families who do not cooperate with the authorities can be placed on special food programs and have social benefits reduced. -Families can be placed in special departure centres.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children between 14 and 18 should only be detained as an exception. -The best interests of the child should be taken into account and alternatives should be considered. -The initial detention period is 3 days. Extension of up to 4 weeks at a time can be granted by the court. -Alternative to detention include: confiscation of passports, payment of a bail, residence at "an address determined by the police", reporting to the police at specified times and at last resort, wearing an electronic monitoring device	-Very few unaccompanied children are detained: when there is no alternative and a risk of absconding. -Courts have previously allowed for cumulative detention for many months. -A public counsel is appointed immediately after it is decided that a child is detained. The decision can be appealed to the Courts and Court of Appeal, but since the child is in detention for a short period of time, the decision is normally not altered. -The Ellebaek detention centre has a special wing for unaccompanied children. -Generally unaccompanied children are not placed in administrative detention but they are relocated to specific departure centres. - Reporting to the police as an alternative can be applied.
Children within families	-The Aliens Act stipulates that the child must not be separated from both parents. - Families detained should have separate accommodation. -The initial detention period is 3 days. Extension of up to 4 weeks at a time can be granted by the court. There is no maximum limit for detention in the Danish Aliens Act. - The decision can be appealed to the Migration Court and the Migration Court of Appeal. -Alternative to detention include: confiscation of passports, payment of a bail, residence at "an address determined by the police", reporting to the police at specified times and at last resort, wearing an electronic monitoring device	-As a last resort children in families may be detained along with their parents for as short a period as possible. -Families can be put in detention but it is more common that one parent is detained. -A public legal counsel is immediately appointed when a person is put in detention.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Under the new rules, children can be returned to reception facilities. -The child's situation in the country of origin is taken into account in the return decision as is information on the child's health and need for particular care or support -Entry ban ranging from 2 to 5 years[464] may be applied. For children under 14, a ban can be imposed only if they have committed an immigration offense or crime. For those above 14, if they do not comply with a return decision.	
Children within families	-Re-entry bans applied as above. -An entry ban can be revoked in special cases.	-Families are usually returned together. If one parent absconds prior to removal, the rest of the family can be returned separately. -Re-entry bans are applied.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	Persons whose return cannot be enforced will be able to receive a tolerated status in Denmark. They will have a daily reporting duty to the police and will receive some financial support. The courts will not be required to assess the consequences of return on family links and ties anymore.
Proposed changes to practice as it impacts on the return of children:	Following the transposition of the Return Directive in January 2011, new rules apply to all third country nationals, including unaccompanied children.

Noteworthy practices
Rejected asylum-seeking children and families remain in the Danish Red Cross reception centres, though they might be transferred from one centre to another. In those centres, children are offered a range of services. Employees at the centres aim to establish daily meaningful social activities for children, which typically take place in the afternoon after normal school hours. Additional activities are also organised during the school holidays. The Danish Red Cross also have projects which aim to integrate asylum seeking children into activities in the local communities such as sports, dance, music and other creative activities.

Data / statistics (2010)	
Nb of separated children returned	0
Nb of families with children returned	N/A

[464] Rejected asylum seekers who do not leave Denmark with the voluntary return period can be applied a two-year entry ban. In case of repetition, a five-year entry ban can be applied.

ESTONIA

Background information	
Law(s) applicable to the return process	-Obligation to Leave and Prohibition of Entry Act; -Act on Granting International Protection to Aliens
Are children returned?	-Children and families can be forcibly returned according to the law but are not in practice. -Voluntary return schemes are accessible but no family has made use if it so far

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *And* *Children within families*	-Voluntary departure is defined as the voluntary compliance with an obligation to leave within the prescribed period (7-30 days). -Extensions of 30 days at a time are possible, if compliance during the term specified is disproportionately burdensome, taking into account the duration of the person's stay, the impact on the child attending a school, the family and social ties and other relevant circumstances. -Appeals against refusal are possible but not suspensive	-Decisions are taken on case-by-case basis, within the limits of the law and with the best interests of the child as a primary consideration. -Extensions on medical grounds or school attendance have been granted.

Provision of independent assistance to unaccompanied children		
	Legislation	Practice
Unaccompanied children	-Guardians are appointed by the court, upon an application from the guardianship authority. -Guardians can be individuals, public institutions, foster carers or any other body approved by social affairs. No special qualifications are required. -They are responsible for the representation and welfare of the child. -Free legal assistance is available but this must be applied for. -There are no clear provisions regarding family tracing of a child who is returned	-There are very few unaccompanied children arriving in Estonia -Depending on the child's placement, guardians are appointed from asylum reception centres or local municipalities. -Guardians are specialised in child protection and assist in all aspects of the child's life. -Psychologists and NGOs are involved depending on the case or specific project, respectively. -Legal assistance is provided if the child applies for it. -There is no uniform practice of family tracing but the Police and Border Guard Board (PBGB) contact child welfare organisations and social services in the country of origin and liaison officers of third countries, if necessary. -Children are accommodated in reception centres or childcare homes, depending on their age and best interests assessment. -Due to the small number of children arriving,

	-All actors involved in making the return decision have to act in accordance with the best interests of the child. Children can be expelled if guardianship is organised and the protection of their rights and interests is ensured in the receiving country. -Return decisions may be challenged in court within 10 days.	reception centres are not well equipped to receive them. Asylum reception centres have no social workers or counsellors and visits by psychologist are sporadic. -The opinion of the child, guardianship authority, Ministry of Social Affairs, and NGOs is taken into consideration by the PBGB. Return is organised in cooperation with the country of origin, including social services. -There is insufficient practice to determine how procedure works.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-There is no definition of family for the purpose of return. In cases of unaccompanied children who are siblings, they should not be separated if possible. -Access to services is not limited. All children are covered by health insurance during their stay and are entitled to go to school. -There is no requirement to move to special accommodation	-Parents are seen as family
Children within families	-Children cannot be separated from their families, unless it is in their best interests. -There is no requirement to move to special accommodation, unless the family is detained.	-Families are not separated -Access to services for children is not limited. -If accommodation is necessary, an ad-hoc solution is found, e.g. accommodation in 'safe house' or the family is allowed to remain in the reception centre until return.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Children can be detained on the same basis as adults, if a basis for removal exists (e.g. non-compliance with an obligation to leave). -If removal cannot be completed within 48 hours, the court can prolong the detention, on the request of the PBGB, by two months at a time, up to a maximum of 18 months. The legality of detention is reviewed before a person is detained. -They may apply for legal aid. -Appeals are made under general administrative procedure rules. -Males and females are accommodated separately. Children are accommodated separately from adults, except if it is in clear contradiction of their rights and interests. - If detention in the return centre is	-There have been very few cases of unaccompanied children being detained and detention normally lasts less than 48 hours. -Border Guards follow rules and guidelines for treatment of children who have committed an offence or need help. -A best interests assessment is not explicitly specified for detention but general child protection rules and procedures for dealing with detained national children would apply. -Legal aid is available if the child is eligible under the provisions on state legal aid or, in case of voluntary return, under cooperation agreement with IOM. -An alternative to detention is the Tallinn

	impossible on health or safety grounds, accommodation may be provided elsewhere under supervision. There are no other alternatives to detention but measures may be imposed to ensure compliance with return decision: living in a fixed place; reporting to the police; deposit of travel document.	Children's Safe House.
Children within families	-If possible, family members are accommodated together.	-Very few cases of family detention. -Family rooms are available. -Medical care is available on-site and further treatment can be arranged. -Children can attend school outside the detention centre but so far there has been no practice.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children can be returned if guardianship and the protection of their rights and interests is ensured in the receiving country. -The expulsion of a child shall be organised in co-ordination with the competent state agencies of the receiving country and protection of the rights of the child shall be ensured. -Entry bans (of up to 10 years) may be imposed only on children above 13 and they have to take into account the specific family situation, the age of the person and the consequences of the ban.	-No procedure exists to assess care. There is very little practice but so far no child has been returned to a reception facility.
Children within families		-Families are not separated on return.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	The Ministry of Social Affairs plans to appoint trained experts of an NGO, Omapäi, specialising on the issues of unaccompanied children, to act as guardians. In that case they would be the representatives of unaccompanied children and deal with all matters pertaining to their welfare but would not provide legal advice or represent the children in legal matters.

Data / statistics (2010)	
- Nb of separated children	0
- Nb of separated children returned	1
- Nb of children in families returned	3

FINLAND

Background information	
Law(s) applicable to the return process	The Aliens Act
Are children returned?	-Children (unaccompanied and in families) can be forcibly returned -Children can benefit deom voluntary return schemes but no unaccompanied child has made use of it

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *And* *Children within families*	-A voluntary return period of 7 to 30 days can be applied. -The best interests of a child should be taken into consideration in all decision making - The voluntary return order is included in the decision for asylum application, which can be appealed. -The decision on extension can be appealed	-One month period is routinely issued. The voluntary departure period is counted from the day that the decision has gained legal force. In special circumstances the voluntary departure period can be extended. Special reasons can be related to children's schooling, family ties or other social relationships, lack of travel documents.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children are appointed a guardian. . If a child is a victim of trafficking, the guardian should be appointed immediately -Children institutions staff should have qualifications as required in the Act on Qualifications for Social Welfare Professionals	-The director or a social worker in a reception facility hosting an unaccompanied child files an application to the district court for the appointment of a legal guardian. The social worker conducts an initial interview with the unaccompanied child and may forward information obtained to the lawyer.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children with siblings should be maintained together - Family is defined as adult parents and blood relatives. Only natural or adoptive parents have automatic guardianship and parental responsibility for children. -Children have access to school, health care, and social and recreational activities.	- Information is given in writing but can also be presented orally in the child's mother tongue or a language which they understand. Information needs to be provided within15 days -Access to school is not guaranteed.
Children within families	-Children have access to school, health care, and social and recreational activities. -Accommodation is maintained	-Access to school is not guaranteed.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children *and* *Children within families*	-Children can be detained - District courts decide on the detention of children. A statement from the social worker is required in case of detaining children -The maximum detention period is 6 months -Alternative to detention is to place the child in state care.	-The assessment of a social worker is required in case of a child being detained. In practise the social worker tend to approve the decisions proposed by the police and border guards. -In practice, children are rarely detained more than 3 months. -Children can be detained with their parents or only the father is detained -There are specific rooms for women and children

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children can be returned to their parents, guardians or reception facilities -Re-entry bans can be applied	-No child has been returned to reception facilities
Children within families	-Children are included in the same return decision as their parents. Re-entry bans applied to parents are therefore also applied to the children	A family may separated upon return if one parent absconds.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	None

Noteworthy practice
The General Secretariat of ISS (Geneva) signed a formal cooperation agreement with the Finnish Immigration Service in 2007 regarding tracing families or legal guardians of unaccompanied children. The Finnish Immigration Service is responsible for the overall tracing obligation according to a legislative amendment regarding tracing (this amendment is based on international treaties to which Finland is bound) that entered into force on 1st February 2007. Whilst ISS are not party to the decision on the asylum application they believe that the information they gather and supply to the Immigration Service about the child's situation in their country of origin does inform the decision on whether a child should be returned or otherwise. Parents or former guardians of unaccompanied children must be traced where possible before a decision is made on whether to return the child or not.

FRANCE

Background information	
Law(s) applicable to the return process	-Foreigners' Entry and Residence and Asylum Code (CESEDA); -OFII – Instruction n°2010/03 on return and reintegration support -Civil Code
Are children returned?	-Unaccompanied children are not forcibly returned except from transit and border zones. -Children in families are not themselves subject to a return decision, but can "follow" their parents. -All children can benefit from voluntary return schemes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-Children can return voluntarily with voluntary return scheme applicable to all migrants. - The law says nothing about the voluntary departure period and possible extensions.	
Children within families	-The law says nothing about the voluntary departure period and possible extensions.	-In practice, when parents want to return with voluntary return program, there is no consideration for the wish or the situation of the children.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Social services have an obligation to provide accommodation and care, and to implement life projects for unaccompanied children. -Guardians are appointed by a guardianship judge to provide legal representation of the child. It is usually the social service who assists the child which is appointed. This assistance is not linked to return procedure.	-In practice, many children do not have any legal representation/guardianship.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children can only be returned with their approval. If returned to a third country is envisaged for family reunification pruposes, a court decision in that country is necessary. In transit zone, unaccompanied children can be forcibly returned to the country they transited through on route to France.	-In practice, criteria of the best interests

	-The best interests of the child is assessed by social workers and then by the judge. -During the phase of practical organisation of the return, OFII (French administration in charge of return) has an interview with the child in order to explain the next steps and discuss organizational issues of the return. -Unaccompanied children are entitled to state care until their voluntary return.	assessment are not clear and there is often a lack of investigation about the situation in the return country. -Members of the family are not really traced: the voluntary return procedure starts when a child informs a social worker that he wants to return and after a contact with this family. If the child wants to return to their family, the judge will decide if it is possible or not but they will not return the child to the care of someone else.
Children within families	-Children with families are returned to their country of origin when the parents are returned. -During the pre return phase, the family unity is maintained: the situation of children is generally linked to those of his family. -The receipt of services to children, for example health care, education etc, is not dependent upon an agreement to return voluntarily. -Families with children are not entitled to accommodation and financial assistance during the pre-return phase.	-In practice children are never separated from their families as part of voluntary return procedure. When a forced return is implemented, children are sometimes separated if one of the parents absconds.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Except in transit and border zones, unaccompanied children cannot be detained. -In transit zones, the maximum detention period is 20 days	-In transit zones, children older than 13 are systematically detained with adults -Children can be detained outside transit zones if their age is doubted.
Children within families	-Children in families “accompany” their parent in detention. -The maximum detention length is 45 days. -No specific criteria are defined to assess if the detention of children is appropriate. -All migrants who are detained can ask for free legal representation and some NGOs provide legal assistance in detention centers. -Families with children cannot be detained if the detention centre does not contain any ‘family area’. -A judge can apply alternatives to detention, such as measures of house arrest, during	-Judges often rule against detention of families with children therefore families are rarely detained. -When families arrive in detention centers, public authorities have already organised their return. Therefore, they do not stay for a long period in detention and do not have the time to see either a judge or the NGO who provides legal assistance. -In family room there are 1 double bed and about 3 beds for children. A yard with playground is reserved to families but no occupation is scheduled during the day for children.

	the return process if they present some guarantees (passport and proof of residence).	-There is no schooling in detention and medical staff are not trained in pediatrics.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-In case of voluntary return of unaccompanied children, an officer from the OFII (French administration in charge of return) accompanies the child from their place of residence to the airport and in the aircraft until his arrival.	-The family (not necessarily parents) was present at the airport for all returns made by OFII. If not, the child would be handed over to airport authorities.
Children within families	-There are no specific follow-up measures regarding the voluntary or forced return of children within families. -The new Immigration Law transposes the Return Directive on the issue of entry bans (for a period no longer than 5 years).	-Children are not subject to a return decision themselves therefore they will probably not be subject to re-entry bans.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	A new immigration law, that aims to transpose the Return directive, was promulgated in June 2011. The government will probably adopt regulations to implement this new law.
Proposed changes to practice as it impacts on the return of children:	The new dispositions of this law will be implemented

Noteworthy practice
Unaccompanied children are not detained

Data / statistics	
Nb of separated children returned	- 160 were forcibly returned from Paris airport in 2009 - 46 returned voluntarily with OFII from 2003 to 2011

GERMANY

Background information	
Law(s) applicable to the return process	Residence Act, 30.07.2004 - Act on Residence, Employment and Integration of Foreigners in the Federal Territory (*AufenthG)* Asylum Procedure Act, 26.06.1992 *(AsylVfG)* Asylum Seekers' Benefits Act, 30.06.1993 *(AsylbLG)* German Code of Social Law, Youth Welfare Act, 26.06.1990 (SGB VIII)
Are children returned?	-Children can be forcibly returned. -They can benefit from voluntary return schemes

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *And* *Children within families*	-A voluntary return period of 7 to 30 days can be granted -Extensions up to 6 months are granted on a discretionary basis for specific circumstances (e.g. education). Concerns related to the previous period of stay in Germany and protection of public interest should be taken into account. -The maximum period –of 6 months, can be prolonged only in case of particular hardship.	-Practice varies: extension for reasons related to education of children possible and common.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Every unaccompanied child in Germany should be "taken into care" by the Youth Welfare Office and appointment of a legal guardian or carer should be arranged without delay. -Children who turned 16 have legal capacity to act in return procedures. -Guardians can be independent (private person, voluntary or professional), associational (association appointed as a guardian, the tasks are performed by its employee), public (employee of a public authority – the Youth Welfare Office). Voluntary guardians should be preferred. -The guardian has the right and the duty to care for and represent the child. -No qualifications are required under legislation -There is no legal requirement regarding the maximum workload of a guardian, except	-Appointment of a legal guardian depends on the local Family Court. It can take between one week and three months to appoint a guardian and models applied in federal states differ. -Guardianship provisions are not fully applied in all federal states for children above 16. -In practice guardianship systems vary throughout the country. Even if they are acting on the same legal basis, the tasks are split up differently between social workers and guardians. In some municipalities guardians work in close cooperation with the staff of social welfare, while in others both services are more separated. Private guardians are in general acting more independently, because they are not employed by the authorities. -No specific training on return is provided. -Guardians' workloads differ: public guardians have up to 100-150 wards,

	for public guardians, who should not work with more than 50 children.[465] -Legal representation shall be provided by the guardian and children shall be informed about and participate in every decision which concerns them. -Support in accessing services is done by guardians, youth welfare and social workers. All together meet in so-called "Hilfeplangespräch" (care planning discussion), in which the needs are discussed together with the child.	voluntary guardians – just a few. -Legal representation is provided by the guardians. The guardian can additionally ask the Family Court to appoint a specialised lawyer (Ergänzungspfleger). There is no common practice on hiring these lawyers. In the federal state of Hesse every unaccompanied child gets assistance of Ergänzungspfleger in addition to assistance provided by appointed guardian.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children have access to education and health care (full access for children who are under care of Youth Welfare, emergency health care for children above 16 staying in reception centres for refugees). -They are free to engage in social, sporting, recreational and leisure activities.	-Generally children can attend school, but in several federal states school is obligatory until the age of 16, and children over 16 tend to be rejected. In a few reception centres for asylum seekers located in remote areas children do not attend school. -Unaccompanied children are not moved to any special accommodation in connection with return procedure.
Children within families	-According to the provisions of the Federal Constitution marriage and the family shall enjoy the special protection of the state. -Children may be separated from their parents or guardian only if it is in their interest.	-Separation of families happens in cases when only one of the parents is detained. -In general parents and their children are considered as family for the purpose of return.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Children above 16 can be detained for the same reasons as adults, but detention shall be used as a measure of last resort. -A best interests assessment is not provided for explicitly in relation to detention of children. And there is no obligation to accommodate children separately from adults. -Detention decisions can be appealed before the local district court.	-Unaccompanied children are generally not detained, except when their age is doubted. -Access to the final appeal instance is limited - appeal can be submitted only by 40 accredited lawyers.

[465] According to the act passed by the Parliament on 14th April 2011

	-Legal representation shall be provided by the guardian and if applicable by the Ergänzungspfleger.	-Access to legal assistance depends on the situation in each particular federal state (free access paid by the state in some, assistance provided by charity organisations is others). -Unaccompanied children are detained in regular prisons, correctional youth institutions for young offenders or in special detention centres for aliens awaiting expulsion. Usually unaccompanied children are detained in the same facilities as adults. -Following the decisions of several Higher regional Courts[466] alternatives to detention have to be considered.
Children within families	-Children above 16 can be detained for the same reasons as adults, but detention shall be used as a measure of last resort. -There is no legal obligation to provide separate accommodation for families. -Appeals: see above	-It is common to detain only one family member (typically the father). It is possible that children above 16 are detained together with their parent(s). -Family contact, facilitated through liberal visiting hours, can be hindered by the fact that the family members cannot afford travel costs. -If families are detained, they are accommodated together.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-The rule that a child shall not be returned if appropriate care is not going to be provided in the country of return is derived from the best interests principle. -The guardianship does not end at the German borders, so guardians are asked to look for appropriate care in case of return. There are no legal requirements referring explicitly to care in the country of return. -Re-entry bans of 2 to 10 years apply to children on the same grounds as to adults. They can be reduced after reviewing of the case by the immigration authorities.	-The return of unaccompanied children is organised on a case-by-case basis. -It depends largely on the guardian's involvement whether children receive appropriate care after return. -Unaccompanied children are generally returned to their families or guardians. Cases were however identified where transfer of care was not done in a proper way. Parents, but also other family members, such as grandparents or adult siblings can be regarded as family, especially if they were taking care of the child before they travelled to Germany.
Children within families	-As a rule family members shall be deported together. It is however not against the principle of family unity to return only some family members if deportation of the others proved impossible. -Re-entry bans – as above	-Separation of families is possible (e.g. in one of the family members absconds) -Children follow one of the parents in the majority of cases.

[466] See e.g. OLG Frankfurt, judgement of 30.8.2004, AZ 20 W 124/06 and OLG Köln, judgement of 11.09.2002, AZ 16 Wx 164/2002

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	Proposal of amendments related to transposition of the Returns Directive is pending.
Expected changes to practice as it impacts on the return of children:	The Bundestag decided on 14th April 2011 to revise the law on guardianship. The main changes are: not more than 50 wards for each guardian and one personal contact must take place

Noteworthy practices
The Central Return Counseling Office in Northern Bavaria undertakes field trips once a year to visit those who have been returned, for example to Kosovo, in order to monitor the reintegration process and identify problems. This helps to further improve subsequent return counseling.

Data / statistics (2010)	
Nb of separated children returned	57 unaccompanied children returned voluntarily with IOM

GREECE

Background information	
Law(s) applicable to the return process	-Law 3907/2011 (published on 26 January 2011) transposing the Return Directive -Law 3386/2005, art. 1 Presidential Decree 114/2010
Are children returned?	-Unaccompanied children can be forcibly returned, but in practice, outside border zones, they are only returned to countries with which Greece has readmission agreements. They cannot benefit from voluntary return schemes -Children in family can be forcibly returned and benefit from voluntary return programmes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children and children within families	- "*voluntary departure*" means compliance with the obligation to return within the time limit fixed for that purpose in the return decision. A return decision foresees a period for voluntary departure of between 7 and 30 days. -Legislation states that during the period for voluntary departure, "minors are granted access to the basic education system subject to the length of their stay; emergency health care and essential treatment of illness are provided; special needs of vulnerable persons are taken into account". -The authorities may, based on the specific circumstances of the individual case (e.g school attendance, existence of other family and social links etc.) extend the voluntary departure period by an appropriate period, which cannot exceed one year.	Those provisions are not yet implemented

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-The new immigration law provides that "*assistance by appropriate bodies shall be granted with due consideration being given to the best interests of the child*". -Regarding legal representation, a circular extends guardianship to unaccompanied children in general, regardless of whether they are asylum seekers or otherwise.	-In practice, the issue of receiving assistance is linked to an asylum application as very few children are the subject of social protection measures independently from an asylum application. -The provision regarding legal representation is not fully applied, as public prosecutors for children have full caseloads and limited capacity to take the necessary steps for the appointment of a guardian. There is also a lack of guardians who could be appointed and they are not trained to work with migrant children. It is estimated that only a small number of unaccompanied

		children are effectively referred to the Public Prosecutor for children and to the appropriate reception centers, the capacity of which is extremely low.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-The new immigration law states, "*before removing a minor from the territory, the authorities verify that he/she will be returned to a member of the family, a nominated guardian or adequate reception facilities in the State of return*". - The receipt of services to children is not dependent upon an agreement to return voluntarily but they are not entitled to State care	-Children can be and are subjected to readmission return procedure to transit countries automatically.
Children within families	-National legislation does not allow for children to be separated from their families as part of return procedures. -In deciding whether to return a child, the law requires a specific consideration of the "best interests of the child". - The receipt of services to children is not dependent upon an agreement to return voluntarily. During this period, they are entitled to engage in activities but are not entitled to accommodation and financial assistance. -Children and families are not transferred from their existing living arrangements.	-In practice, family unity is not always respected.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-The 2011 Law provides that unaccompanied children and families with children are detained as a measure of last resort, only when other adequate and less heavy measure for the same purpose cannot be applied and for the shortest period of time. -The measure of detention is applied when there is a risk of absconding or the third country national avoids or hampers the preparation of return or the removal process or for national security reasons. -The 2011 law states that "*third country nationals in detention are provided with emergency health care and essential treatment of illness*". The law provides separate accommodation for families, except in emergencies.	-The number of available places in reception for unaccompanied children remains insufficient in comparison to actual needs. Children are also detained for prolonged periods of time because of severe delays of the administration in implementing referral procedures. Thus, unaccompanied children aged over 12 years are detained systematically if they are in an irregular situation in Greece, without their circumstances, age or conditions in their country of origin being taken into account. -Appealing the detention decision is almost impossible for children given the lack of available legal representation. Official interpretation and free legal aid is not provided in detention centers at the border. -Access for children to services such as education, health, and social welfare during

	-The maximum period of detention cannot exceed of six months. However, the period "*may be prolonged for a limited amount of time that does not exceed 12 months"*	detention varies depending on the facility in which children are held. -A special holding facility designated for the accommodation of boys operates in Amygdaleza and is considered the only "closed centre" for children, with a capacity of 40.
Children within families		-Children, whether with their parents or unaccompanied, are held in different premises. In most cases conditions are inadequate or even degrading.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children *and* *children within families*	-The 2011 Law states that entry bans shall not exceed 5 years but it is possible to extend this period if the third country national represents a serious threat to public order, public security or national security. The article stipulates the way entry bans are imposed and does not exclude children.	-The guardian is not really involved in the return process. -There is no monitoring mechanism in place. -Children are accompanied by a policeman during their return journey. In a few cases, however, the return of children, particularly ones known to be victim of trafficking, will be implemented with the cooperation of local NGOs in order to bring about a secure reintegration into the country of origin.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	
Proposed changes to practice as it impacts on the return of children:	The Law 3907/2011 will be implemented before the end of 2011, by the way of a regulation.

HUNGARY

Background information	
Law(s) applicable to the return process	- Act II of 2007 on the Entry and Stay of Third Country Nationals (amended in December 2010) and - Government Decree on the Implementation of the Act -Act LXXX of 2007 on Asylum - Act XXXI of 1997 on the protection of children and the administration of guardianship (Child Protection Act)[467]
Are Children returned?	-Unaccompanied children are not forcefully returned except at borders and transit zones though the legislation provides that children may be return to their family, a guardian or adequate reception facilities. -Children in families may be returned

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *and* *Children within families*	- When issuing a return decision, the authority sets a deadline for voluntary departure of 7 to 30 days following the communication of decision. -This period can be extended up to 30 days for personal circumstances: long period of stay prior to the decision, or school attendance. -For children in families, the voluntary departure period of the whole family might be extended for the children to complete their school semester.	Those provisions are recent and the practice is in development. In 2010, no extension had been granted

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Assistance is provided immediately when a child is identified as an unaccompanied minor. -Since May 2011, unaccompanied children seeking asylum are covered by the Child Protection system and therefore are appointed a guardian for all aspects of their life[468]. Guardians are usually lawyers and attached to the Child Protection services. -As a consequence, all separated children, regardless of whether they apply for asylum, are accommodated in the mainstream child care institutions. Unaccompanied children seeking asylum will be placed in a children's home in another town (Fót) also near Budapest. -Legal representation is available	-Guardians do not necessarily have expertise or experience in the law pertaining to foreigners. In addition, they can be responsible for a high number of children at the same time, up to 48. Language is often a barrier and interpreters have to be used. - The new Unaccompanied Children's Home in Fót is operated by the 'Károlyi István Childrens's Center', an organisation with long-standing experience in child protection, but not specialised in asylum seeking children. -The Hungarian Helsinki Committee is providing free legal representation. -Professionals are qualified in childcare but

[467] As of May 2011, unaccompanied children seeking asylum are covered by the child protection system, instead of the immigration system.
[468] Previously guardians were appointed only for the asylum procedures.

	-Children also get assistance in the reception centre from carers, social workers, and psychologists. -Decision on return is made by the Immigration Office. The guardian is involved.	not specifically trained to work with foreign children and have limited language skills.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children remain in the children's home. -Services for children are never withdrawn.	-Children often do not attend school because their period of stay is short, no financial support and few schools are willing and/or able to accept them.
Children within families	-There is an obligation to maintain family unity during the asylum procedure. -There is no requirement to change accommodation. -Services for children are never withdrawn.	-Access to services is limited to what is available in the reception and detention centres. -Access to school can be difficult because of the short period of stay, financial constraints, and few schools are willing and/or able to accept them.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	Detention of unaccompanied children is prohibited.	
Children within families	- Detention of families with children is allowed as a measure of last resort for up to 30 days. - Only a judicial review is possible. -Families in detention are provided with separate rooms, a common area for dining, one for recreational purposes (children's leisure and recreational activities and for receiving visitors), sufficient space for outdoor activities, medical care, and access to education subject to the length of stay. -Families are detained together. -Legal representation is available. - As an alternative, the law provides for 'compulsory confinement' in a designated place, such as a community hostel or reception centre.	-From April 2011 a 'guarded center' opened in Békéscsaba (after being renovated). Families and persons with special needs will be detained there. -In 2011, Menedék (NGO) is providing social, sporting, recreational and leisure activities within the detention facility as well as counselling. -The Hungarian Helsinki Committee provides free legal assistance. There are no social workers in detention centres.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	Unaccompanied children can only be returned if adequate protection is ensured in the country of return.	In practice no unaccompanied child has ever been returned.
Children within families	-Families should not be separated in the return process. - Entry bans may be imposed on everyone, usually for a period of 5 years (10 years in exceptional cases if person is threat to national security)	-Separation of families has happened, mostly in cases when a member of the family was a Hungarian national. -Re-entry bans are not applied in practice

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	N/A
Proposed changes to practice as it impacts on the return of children:	Following the adoption of amendments to the Aliens Act and Child Protection Act, practice is changing and evolving

Noteworthy practice
Unaccompanied children are not subject to immigration detention

Data / statistics	
Nb of separated children	150 from Afghanistan, the West Bank, and Somalia
Nb of separated children returned	0[469]
Nb of families with children returned	57 children, mainly returned to Kosovo

[469] Some returns from the borders have occurred

IRELAND

Background information	
Law(s) applicable to the return process	Statutory Instrument No 52 of 2011 transposing the Procedures Directive Refugee Act 1996; Child Care Act 2001; Immigration Act 2003; Immigration Act 2004; Immigration Act 1999
Are children returned?	-Unaccompanied children are not forcibly returned in practice -Children in families can be subject to forced return -All children can benefit from voluntary return schemes

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children have 14 days to comply with removal or apply for subsidiary protection. -Extensions would be considered on a case-by-case basis though no written criteria is available.	-Unaccompanied children receive a section 3 letter which gives the options of accepting deportation, voluntarily returning, or applying for Subsidiary Protection or Leave to Remain. This is the same as adults. -There is scope for extensions. It is discretionary and there are no criteria/procedures in print. -Typically, the child (with assistance from Refugee Legal service) would apply within the 14 days for Subsidiary Protection or Leave to Remain. -The decision about the voluntary departure period is up to the discretion of the Irish Naturalisation and Immigration Bureau (INIS) and no procedures exist for the decision to be appealed.
Children within families	-Following a negative decision the applicant has 14 days to decide to return to their country voluntarily before a deportation order is issued (or to apply for subsidiary protection and/or leave to remain).	See above

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-There is no provision on independent assistance to separated children	-It is common practice for the social worker to get a solicitor for the child through the Refugee Legal Service in order to seek advice on the child's immigration status. -The persons working with separated children on return are trained social workers or project workers (social care workers or care staff). -Social workers are the only actors involved in determining the best interests of the child and assessing return as a durable solution (assessment of the best interests of the

		child, of the situation in the home country and the family, take into account the views of the child) -The Irish Red Cross' family tracing process links' is facilitated through the social workers. -Sometimes a child who may return will be appointed a Guardian ad Litem who will be the child's voice.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children are still protected by domestic legislation and their rights to support, education and health care remain in place.	-Children in the returns process are treated as any other children. There are no restrictions in relation to access to education. -Separated children will remain in the care of the HSE, either in their foster care placement or in a residential centre.
Children within families	-There is a commitment to maintain family unity during the pre-return phase.	-Children in the returns process are treated as any other children. There are no restrictions in relation to access to education. -Families will remain in Direct Provision if they were in the asylum process prior to removal.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children And Children within families	-Provision is made under the Refugee Act 1996 s 9(8) for the detention of asylum applicants. -The maximum length of detention is 8 weeks.	-In practice, there is no immigration related detention of children in Ireland, although some NGOs report that children arriving without the necessary documentation were detained on immigration matters under s9(8) of the Immigration Act prior to referral to the HSE.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-No legislation exists to allow unaccompanied children to be returned to reception facilities in their country of origin	-The HSE does a pre-departure assessment and conducts home visits of parents or guardians before return. -Children are not returned to reception facilities. -All information regarding the child's return and reintegration is referred back to the child's social worker in Ireland at regular intervals -No re-entry bans applied to those who return voluntarily.
Children within families		-Families separated as a result of returns are rare but they do occur when there is a delay in the arrival of part of a family unit to Ireland and then return decisions are on a different timeline. -No re-entry bans applied for those who return voluntarily.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	None

Noteworthy practices
There is no detention, in practice, of unaccompanied children.

Data / statistics (2010)	
Nb of separated children present	95 referrals to the HSE by ORAC or GNIB
Nb of separated children returned	1 voluntary return through IOM

ICELAND

Background information	
Law(s) applicable to the return process	-Regulations on Foreigners 53/2003 and interior regulations for the Directorate of Immigration -Regulations regarding unaccompanied children and the handling of their applications (2009)
Are children returned?	-Forced return of children (unaccompanied and in families) is possible in the law but not applied in practice -There are no voluntary return schemes for children

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-A delay can be granted to prepare the return. -Unaccompanied children are allowed to communicate their reasons for seeking an extension (e.g. school and exams) to the decision-making authorities.	-One month period is routinely granted and is specified in the decision on the asylum application.
Children within families	-A voluntary departure period is provided in legislation, which can be subject to extension.	-In special circumstances the voluntary departure period can be extended. Special reasons can be related to schooling, family ties or other social relationships, or a lack of travel documents.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Child Protection legislation is applicable to all children in Iceland regardless of immigration status -If an unaccompanied child applies for asylum they will be provided with a legal representative.	-Guardians are appointed by the Child Protection Services as soon as possible. -Child Protection Services in the district where the child arrived conduct family tracing. Institutions in the country of origin are contacted and can seek the assistance of the Red Cross services.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-A child's family is defined as parents, siblings, blood relatives, and anyone who holds parental responsibility for the child. -Children are cared for by Child Protection Services. The child's daily life should be "as normal as possible" and activities should be offered while they stay in asylum facilities.	-Unaccompanied children are allowed to remain in their accommodation and other services, e.g. health and education are maintained.

Children within families		-Rejected asylum seeking families stay within the reception centres until return. -All children have access to basic services that Child Protection services and Social Services offer. This includes health care, access to a library and sports.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children and Children within families	-Children can be detained for a short period. -There is no provision on separate accommodation from adults	-Children's best interests is considered in all cases where detention is ordered. -Children under the age of 15 years are detained in facilities under the supervision of Child Protection Services but are occasionally detained with adults since there are no separate facilities for children available. -Alternatives to detention are available for unaccompanied children but not for families.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-There are no re-entry bans for children	-Children can only be returned if the circumstances and situation in the country of origin is acceptable. -Children have not been returned to institutional care.
Children within families		-Children within families are mentioned in the entry ban of their parents.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	None

Data / statistics (2010)	
Nb of separated children returned Nb of children in families returned	1 "departure" 2

ITALY

Background information	
Law(s) applicable to the return process	-Law of the 2nd of August 2011, n.129, implementing the Return Directive -Consolidated Migration Act 286/1998 -Prime Minister's Decree 9 Dec. 1999, n.535 -President of Republic's Decree 448/88 -Ministry of Interior's Regulation 7 July 2009
Are children returned?	-Unaccompanied children are not forcibly returned, except in border zones. They can benefit from voluntary return schemes -Children in families can be subject to forced return, but it is very rare. They can benefit from voluntary return programmes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children and Children within families	-A voluntary return period of 7 to 30 days was introduced following the transposition of the Return Directive. -It can be extended in specific circumstances (e.g. length of stay, school attendance, health issues)	-No practice yet

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	Local authorities are responsible for providing and funding reception and assistance of unaccompanied children (as well as for national children). It includes: • appointment of a guardian • placement in foster family or child care facility • information and participation • legal assistance and counselling • leisure and recreational activities • food, basic items • health • education and job counselling, • support with integration…	-Assistance is not focused on return but envisaged for unaccompanied children in general. -Unaccompanied children stating their intention to apply for international protection should be expeditiously accommodated in SPRAR centers.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-A decision to return an unaccompanied child can be adopted by the Committee for Foreign Unaccompanied Minors. -When a return is planned, access to services or assistance remain the same	-Once the Committee receives notification of an unaccompanied child, it has to commission family tracing (with IOM) and collect information from local authorities about the child's integration in Italy and their views about return and the reasons for these views.
Children within families	Prior to the transposition of the Return Directive, if a migrant is found on the territory without a regular permit of stay, they would	Often, the adult in this circumstance will not declare to have a child and will rather prefer to entrust their child to a relative or a trusted

	be arrested and detained. Within 48 hours the judge would validate the administrative detention. This is the only chance that the migrant has to state that they have a child in Italy and to be reunited with them.	friend. However, where the adult migrant arrested without a residence permit does claim to have a child, they have to prove it.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children cannot be detained except in transit centres upon arrival. They should be placed in childcare facilities for children deprived of parental care.	
Children within families	-Detention of children is allowed only for family unity purposes and should be based upon a specific request by the parent(s) or upon decision by the juvenile court. -The family shall enjoy privacy and the child shall enjoy treatment in line with their needs -If the child is not detained together with the family, they should be placed in a child care facility upon the decision of the juvenile court. -The maximum detention period is 18 months	-The child will normally not be placed in detention with the parent(s) but in child care of foster families. There were no reported cases of detained children in 2008 and 2009. -In many detention centres, there are no adequate facilities to guarantee children's rights to health, education, play and leisure etc., nor are there procedures to allow them to access these services externally.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	"*Family members*" in the context of return are in priority direct ascendants (parents, grandparents).	In case of voluntary returns with IOM, they accompany the child (depending on age and specific needs.
Children within families	Re-entry bans cannot be imposed on children, both unaccompanied and children within families, as children by law cannot be expelled.	There is no judicial oversight and review of operational aspects of removal, for example, pre dawn forced removals and the impact that these operations may have on children within families.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	Implementation of the new provisions following the transposition of the Return Directive

Noteworthy practice
Unaccompanied children are not detained

Data / statistics (2010)	
Nb of separated children returned	4 returned voluntarily with IOM
Nb of families with children returned	23 children returned at the borders in 2009

LATVIA

Background information	
Law(s) applicable to the return process	-Asylum law -Immigration Law -Cabinet Regulation No 707 "Procedures by which Alien Minors Enter and Reside in the Republic of Latvia Unaccompanied by Parents or Guardian -Cabinet Regulation No. 212 "Procedures for the Forcible Expulsion of Aliens, Form of Standard Travel Document and Procedures for Issue Thereof "[470]
Are Children returned?	-Children are not forcefully returned[471]

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	Children are not subject to a return order.	N/A
Children within families	-When a return decision is issued to the parents, they have 7 days to comply with it.[472] -A suspension or extension of this period can be granted on "humanitarian grounds" by the Head of the Office of Citizenship and Migration. Those grounds are not defined by law. -The return decision may be appealed in front of the head of the Office (with a suspensive effect) within 7 days. Further appeals are not suspensive. -Removal decisions issued by the Border Guard cannot be appealed.	-The scope of the "humanitarian grounds" is subjective but may possibly include health or education reasons, -There have been some cases of families allowed to stay so that the child can finish a school term. Parents have to request the extension themselves.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children seeking asylum are appointed a guardian by the Orphan's Court. -In the asylum procedure, unaccompanied children can be represented by their guardian, the Orphan's Court or the head of a childcare institution. The Orphan's Court represents the interests of all unaccompanied children in immigration procedures. -Guardians are employed by the Orphan's Court and must have qualifications in pedagogy, psychology, medecine or law.	-Due to the small number of cases, there is no uniform practice but so far the Orphan's court has complied formally with the obligation to appoint a guardian.

[470] This regulation applies to adults only. When applied to adults within a family, the provisions have an indirect effect on the child(ren).
[471] In the case of children within families, the return decision concerns the parents who may "decide" to return with their children
[472] There is no voluntary departure period is the decision is issued by the Border Guards

	- Psychologists, social workers, NGOs may provide assistance. -Unaccompanied child asylum seekers are entitled to free legal aid. -There is no obligation to trace the family but the identity and nationality must be established by the Border Guard if necessary in cooperation with the Ministry of Foreign Affairs. -Children seeking asylum should be accommodated at a reception centre or at a child care institution, pursuant to a decision of the Orphan's Court. Those arriving illegally whose identity is unknown are initially placed in child care if below 14 or detained if above 14. -The role of the guardian is not clarified beyond the representation of child's interests during the asylum procedure or interview with authorities where they are obliged to ensure protection of minor's best interests. -There is no written return decision and no procedure to challenge it. Children should be returned if they have no relatives in Latvia and if their return would not their life or health.	-Due to cuts in funding, the availability of psychologists has been reduced. -Many members of the Court are lawyers and if appointed as guardians no additional lawyer is present. -Tracing the family is done together with establishing the child's identity. Border Guards cooperates with consular representations or direct contacts where bilateral agreements are in place The Ministry of Foreign Affairs, Orphan's Court or IOM may be involved if necessary. -In practice, all unaccompanied children seeking asylum have been accommodated in the reception centre. -The involvement of Orphan's court/guardians in return procedure is limited often to the interview where the child is heard and the communication of the return decision even though they are entrusted with ensuring the best interests of the child. Psychologist may also be present at the interview but only when establishing contact with the child is difficult. -Authorities rely on the country of origin to determine whether appropriate care shall be provided on return.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-There is no definition of family for the purpose of return. -Emergency, primary and secondary healthcare is provided if the child resides in reception centre or childcare facility. -Children are allowed to attend school and there are no restrictions on attending other activities. -The place of accommodation of unaccompanied child can only be changed if it is in their best interests.	-The parents are seen as a family. A child would not be returned to a relative is they are not also their legal guardian. -Healthcare access is not restricted. -Recently there have been no unaccompanied childrenattending school as their period of stay has been too short. - Children are not required to change accommodation.
Children within families	-Family unity is maintained in reception as well as detention centres if requested.[473] -Asylum seekers have access to healthcare while in reception or detention centres. Irregular migrants have access only to	-There has been no case of parents not requesting that their child(ren) are detained with them -In reception and detention centres, necessary treatment is never refused even if

[473] Children can be detained with their parents if they request it)

	emergency healthcare. -Children are allowed to attend school. -Families should pay to stay in the reception centre after their asylum claim is refused.	it is not explicitly covered by law. -Families living outside the reception centre and those requiring additional treatment sometimes have difficulties in accessing healthcare and NGOs have to assist them by providing funding or arranging free treatment. -The family decides whether they want their child to attend school or not. If the stay is short, children do not usually go to school -Families are allowed to stay in the reception centre for free after their asylum claim has been refused .

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Irregularly staying children above 14 can be detained. Detention can also be applied in relation to return. -The initial period of detention is 10 days that can be extended by a Court for a maximum of 2 months at a time, up to 18 months. -If the identity of the unaccompanied childhas not been established within the period of detention, the unaccompanied child must be accommodated in childcare institution. -Detention can be appealed within 48 hours. -Unaccompanied children must be accommodated separately from adults. -Children can attend school and other activities outside the detention centre. -There are no alternatives to detention	-Unaccompanied children over 14 who entered illegally are detained. Even though a guardian is appointed, there is no assessment of the best interests of the child and detention is a rule, rather than exception in such case. -Extensions have been applied by judges. - Unaccompanied children are accommodated separately from adults. -Children are allowed to attend school and other activities outside the detention centre.
Children within families	-Parents can request that their children under 14 years old are detained with them to preserve family unity. -Detention can be appealed within 48 hours. -Families can be accommodated together, in separate rooms. -Children can attend school and other activities outside the detention centre. -Recreational and leisure activities are provided for children	-So far there has been no case of parents not requesting that their child(ren) are detained with them. - Children are effectively allowed to attend school and other activities outside the detention centre. -Due to small number of families currently there are not many activities for children in the centre

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-The Border Guards in collaboration with the Ministry of Foreign Affairs are responsible to establish contacts with parents, guardians or childcare institutions.[474] The Ministry's Consular department shall contact the Consular and Diplomatic representations, the relevant institutions or non-governmental organisations which monitor the observance of children's rights in the host country. -Children can be returned to parents, guardians or reception facilities. -There are no specific criteria to assess care in the country of return. - Entry bans can only be imposed if a return decision was issued and children are never issued return decisions	-There is not a lot of practice on return of children -Officials would attempt to return the child to the family (parents) or a legal guardian. A child is not returned to a relative who is not a legal guardian. Only one (voluntary) return to a childcare institution has occurred so far. -Children have never been subject to re-entry ban
Children within families	-The law does not prohibit the separation of families on return. -Entry bans can only be imposed if a return decision was issued and children are never issued return decisions	-Separation has not happen in practice in forced returns. -Children have never been subject to re-entry ban

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	-Alternatives to detention, applicable to adults and children, will be introduced (confiscation of travel documents and regular police reporting). -Border Guards will be allowed to issue voluntary return decisions.
Proposed changes to practice as it impacts on the return of children:	Return decisions will be issued to unaccompanied children.

Data / statistics (2010)	
- Nb of separated children returned	1 voluntary return to India
- Nb of families with children returned	1 voluntary return to Georgia

[474] Country of origin's institutions are in charge of deciding where to place the child.

LIECHTENSTEIN

Background information	
Law(s) applicable to the return process	-Aliens Act, 17.09.2008, LGBl 2008 No 311 -Asylum Act, 2.04.1998, LGBl 1998 No 107 -Order on Asylum Procedure, 7.07.1998, LGBl 1998 No 125
Are Children returned?	-Children (unaccompanied or within families) can be forcefully returned. Unaccompanied children are rarely returned.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *And* *Children within families*	-A voluntary departure period of 7 to 30 days is set when issuing a return order by the authorities -Extensions can be granted based on specific circumstances (e.g. family situation, length of stay, school attendance or health issues) - The voluntary departure period length forms part of the return decision, which can be appealed	-Leaving the country voluntarily during the departure period is considered as voluntary return. -Grounds for extension are assessed on a case by case basis.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
	-Every unaccompanied child, regardless of their status, shall be appointed a guardian: guardianship embraces full-scale authority to decide in all legal affairs concerning the child. -The guardian has to ensure the rights of the child are respected in the asylum and return procedures. -The court can also appoint a legal representative for other child matters if necessary. -There are no specific provisions in the law on family tracing. -Guardian and social welfare services should support the child in accessing services -There are no legal provisions stating explicitly where unaccompanied children should be accommodated. -The law provides that a child can be returned only if effective care can be secured in the country of return.	-The Court appoints a legal guardian. -In general, guardians are lawyers. In most cases they do not have any specific qualification on immigration procedures or child protection and they do not receive training on those issues. They are paid by the State for their work. -Legal representation is provided by the guardian, who is usually a lawyer. - There have not yet been cases of family tracing. -Unaccompanied children are accommodated in specialised institutional care (foster homes) together with local children.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children have access to education; social, recreational and leisure activities and health care.[475] -The guardian should inform the child of all decisions related to their immigration procedures.	
Children within families	-When the removal of rejected asylum seekers is enforced, the principle of family unity has to be respected. -There is no specific definition of a family for the purpose of return. Under the asylum legislation the family covers spouse and minor children. -Children have access to education; social, recreational and leisure activities and health care.[476]	-Parents and their minor children are considered as family. -During the voluntary departure period rejected asylum seekers are still accommodated in the reception centre. After the deadline has expired, third country nationals are entitled to emergency assistance, including a place to stay. Some families receive support to rent a flat.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Children above 15 can be detained on the same grounds as adults. -Detention is at last resort. Alternatives are available and should be considered. -Legality and reasonability of detention have to be assessed by the competent court within 96 hours. One month after this review the person can appeal against the decision in order to be released. Further review is possible depending on type of detention. -Access to emergency health care and necessary treatment of illness are provided.	- There are no known cases of unaccompanied children being detained.
Children within families	-Children can be detained with their parents if they are above 15 years old. -Detention is at last resort. Alternatives are available and should be considered. -Legality and reasonability of detention have to be assessed by the competent court within 96 hours. One month after this review	-There has not been recent cases of detention of children. -The authorities would avoid detention and look at alternatives such as placement in child care facilities

[475] Only emergency health care is available after the date for voluntary departure has lapsed
[476] Only emergency health care is available after the date for voluntary departure has lapsed

	the person can appeal against the decision in order to be released. Further review is possible depending on type of detention. -Access to emergency health care and necessary treatment of illness are provided.	

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-When considering returning a child, the authorities have to ensure that the child will be returned to a family member, a guardian or a facility that guarantees the protection of the child. -Re-entry bans are applicable to children. If important reasons exist, re-entry ban can be temporarily annulled upon written request.	-Unaccompanied children are hardly returned. In most cases, return are issued after the child turns 18. -Effective assistance by family or appropriate institution in the country of return has to be ensured.
Children within families	-Family unity shall as a rule be safeguarded. -Re-entry bans are applicable to children. If important reasons exist, re-entry ban can be temporarily annulled upon written request.	-Families are not separated.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Expected changes to practice as it impacts on the return of children:	None

Data / statistics (2010)	
Nb of separated children returned	0
Nb of children within families returned	14 (voluntary) to Macedonia (13) and Serbia

LITHUANIA

Background information	
Law(s) applicable to the return process	-Law on the Legal Status of Aliens
Are Children returned?	Children (unaccompanied[477] and in families) can be forcibly returned but there are few cases in practice.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children and Children within families	-A return decision includes a voluntary departure period of up to 15 days. -There is no possibility of extension but a removal order may be suspended due to health reasons, confirmed by a health panel.	-Each case is assessed individually.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Within one month a guardian or "adviser" is appointed by the Child Rights Protection Services. The Services decide on the responsible municipality and Reception Centre, which is in charge of appointing a designated social worker -Guardians are paid and are responsible for all aspects of the child's life. -The Migration department, together with NGOs/IGOs and the guardian have to initiate family tracing. -Asylum seekers are accommodated at the Refugee Reception Centre. Those not seeking asylum are also entitled to accommodation but modalities are not regulated. -The child is entitled to legal aid. - Appeals can be made in court within 15 days.	-A guardian is appointed for every unaccompanied child and supports them in accessing services. -The Migration Department sends requests to their counterparts in the child's country of origin to confirm the child's identity and trace the parents. The Lithuanian Red Cross may be involved. -All children[478] are accommodated in the Refugees Reception Centre. They have separated facilities. -The Migration Department must establish if the unaccompanied childwill be properly cared for in the country of return by taking into account their needs, age, and level of independence. However, there are no formal procedures. The child's best interests is ensured through the presence of a guardian.

[477] If an unaccompanied child is apprehended at the border and they do not apply for asylum, then they may be refused entry and returned immediately

[478] Some studies have mentioned that unaccompanied children who do not seek asylum may be held at the Foreigner's Registration Centre. The latter claims that it happened in a few cases because the age was not established.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children have access to all services during their stay. -There is no requirement to move to special accommodation.	-Children continue to have access to all services and attend school if they are enrolled. Not all children attend school due to the short period of stay.
Children within families	-There is no requirement to maintain family unity in this phase. -Access to services is not limited.	-Family unity is maintained. -Families do not have to move to a different accommodation. For asylum seekers, this is the non-secure section of the Foreigners Reception Centre -Children continue to have access to all services and attend school if they are enrolled. Not all children attend school due to the short period of stay or parents' unwillingness.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Children may be detained only at last resort, taking into consideration their best interests. -As an alternative to detention, unaccompanied childrencan be place in the care of a guardian or a social agency.	-Unaccompanied children who do not seek asylum have been detained in the past but this practice is rare.
Children within families	-Irregularly staying families may be detained. Detention is initially limited to 48 hours but can be prolonged following a court decision. There is no maximum period of detention. -Alternatives exit such as reporting obligation or accommodation in an open centre (for asylum seekers). -There is no provision for maintaining family unity in detention -Appeals can be lodged before the Supreme Court and legal aid is provided.	-Irregularly staying families are always detained and children are always detained with their parents, as it is assumed to be in their best interests. -Families are not held together: boys aged 14 and above are accommodated with their father while boys below 14 and girls stay with their mother. Children are allowed to visit the other parent and can take part in activities taking place in the non-secure section and attend school.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	- The authorities can only return unaccompanied children if they will be duly taken care of in the return country, taking into consideration their needs, age and level of independence -Re-entry bans are imposed by the Migration Department for a fixed or unlimited period of time. They cannot be applied to people who return voluntarily.	-There is no mechanism to assess care in the country of return. -Children can be returned to institutions if the parents cannot be found. -Entry bans are not imposed on children
Children within families	-Family could be separated following a return decision. -Re-entry bans are imposed by the Migration Department for a fixed or unlimited period of time. They cannot be applied to people who return voluntarily.	

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	A Draft Law Amending the Law on the Legal Status of Aliens (21 June 2011, No XIP-2360(2)) is being debated in the Parliament: it includes new provisions on voluntary departure and detention.
Proposed changes to practice as it impacts on the return of children:	None

Data / statistics (2010)	
Nb of separated children returned	-3 unaccompanied children from Belarus were returned.
Nb of families with children returned	-6 children (2 families) returned voluntarily through IOM. 7 children (2 families) returned to Russia following a decision.

LUXEMBOURG

Background information	
Law(s) applicable to the return process	Asylum law of 5 May 2006.
Are children returned?	-Unaccompanied children are not forcibly returned in practice. -Children in families can be subject to forced return -All children can benefit from voluntary return schemes

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-There is no difference in the procedure or treatment between a voluntary return and voluntary compliance with a return decision.	-Unaccompanied children have not been subject to removal (other than voluntary) so there is no practice in this area.
Children within families	-The voluntary departure period is not set by law. -The Asylum Law provides that the Minister may grant a delay in the departure of families with schoolchildren to allow them to finish the ongoing school period.	-In practice, nearly all departures of families with children in school are planned in the summer, outside school periods. -In the case of voluntary returns, delays are usually granted to allow children to finish the school year or ongoing traineeships

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-By law, unaccompanied children are provided with a guardian "as soon as possible" at the beginning of the asylum procedure. -Potential guardians are proposed by the NGOs before being officially appointed by the Youth and guardianship judge. -The principle of 'the best interests of the child' applies generally to all children regardless of their status. -The decision to return a child is taken by the Ministry of Immigration. Article 103 of the Immigration Law is applied as a guideline for assessing the child's best interests, with criteria such as length of stay in Luxembourg, age, state of health, economic and family situation, social and cultural integration in Luxembourg and ties with the country of origin.	-In practice, all unaccompanied children are placed under guardianship from the moment they arrive. The Red Cross is in charge of unaccompanied children below 16,5 and Caritas takes care of those between 16,5 and 18. -Guardians are in charge of ensuring the general care, well being and guidance of the unaccompanied child. -Those appointed normally have some background training in childcare although they do not have to have qualifications regarding child rights. Additional training is provided regularly. -Social workers from the Ministry of Family can also provide assistance and monitoring as with adult asylum seekers although their role is more limited with regards to unaccompanied children. Most contacts with these social assistants are made through the appointed guardian rather than directly from the child. -The guardian applies for voluntary return on behalf of the child, with the child's consent. IOM staff discuss return with the unaccompanied child individually or together with the guardian. -IOM staff are also asked to help with tracing

		family members, to make contacts with them, and possibly to assess their suitability as child carers. -Before deciding on a voluntary return, a social report is obtained by the NGO appointed as guardian. This report includes personal data and information about the child's itinerary and background. It is signed by the child. -The child's family or those responsible for the child in the country of origin must give their consent as a pre-condition to return. If the child is not mature enough to make a decision or if nobody reliable can take care of them in the country of origin, there will be no return.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-School is compulsory for all children regardless of their status until the age of 16. -Unaccompanied children are entitled to state care at all times. -No decision to return, except if motivated by serious public security concerns, may be taken against an unaccompanied child, unless return is necessary in their own interests. (Article 103 of the Immigration Law)	-During the voluntary departure or pre return period, children will attend school as usual unless and until they are placed in a detention.
Children within families	-The Asylum Law states that the Minister should ensure that family unity is maintained. -Families with children whose asylum application has been rejected are still entitled to accommodation and basic social assistance and health care, but no financial help.	-No provision is made in the legislation to ensure that the views of children within their family are taken into account during the return process. In practice, they are never consulted regarding either the asylum claim or the return decision.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Children can be detained for a maximum of 72 hours	-No separated child has ever been detained in Luxembourg in connection with the return process.
Children within families		-Children are very seldom placed in detention as part of the return process, and then only for a limited period of prior to a forced return. -The authorities have a policy not to collect children from school when they are to be returned but they are usually taken from their lodgings at early hours and without warning. -After a return decision, families with children are normally allowed to remain in the same

		accommodation as before until just before departure. In the case of a forced return, they are detained in the Aïda Centre for migrant families. Children are always detained as part of a family unit, based on the decision to detain their parents.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-The judge in charge of guardianship procedures takes the necessary steps to officially relieve the guardian from their duties and transfer responsibility for the child's care and custody in the country of return. The Ministry of Family also plays a part in implementing this transfer.	-Unaccompanied children who return voluntarily are accompanied to the airport by their guardian. IOM staff are also present at the airport and during transit if applicable. During the journey, IOM policy is to ensure systematic accompaniment of children below 15 years old, by a person such as the guardian or a social worker who has a good relationship with the child. Children over 15 may also be accompanied, depending on individual circumstances.
Children within families	-Families and their children who are forcibly returned are subject to re-entry bans in the same way as individual adults.	

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	None

Noteworthy practices
There is no detention, in practice, of unaccompanied children.

Data / statistics[479]	
- Nb of separated children present	In 2010, 19 unaccompanied children arrived in Luxembourg, (18 boys and one girl)
- Nb of separated children returned	One child, aged 17, returned voluntarily to Morocco

[479] When the data is available, please specify the nationalities, age groups, Gender and any other breakdown. Use the last whole year available, preferable 2010.

MALTA

Background information	
Law(s) applicable to the return process	-Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulations, Subsidiary Legislation 217.12, Legal Notice 81 of 2011, 11th March 2001; -*Refugees Act*, Chapter 420, Laws of Malta, Act XX of 2000, 1st October 2001;
Are children returned?	-Children can be forcibly returned according to the legislation but there ae no cases in practice -Voluntary return schemes are available but only one family has ever made use of it.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *and* *children within families*	-The voluntary departure period may be extended "*by an appropriate period, taking into account the specific circumstances of the individual case*". -The Return Regulations specify that a 3rd Country National faced with a return decision may appeal the decision in front of the Immigration Appeals Board, the entity created under the Immigration Act to deal with all immigration-related appeals. The Regulations do not specify whether the appeal may be limited to the voluntary departure period, so the present understanding is that it may.	No practice

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-The Minister shall receive technical guidance from a Children and Young Persons Advisory Board on how best to implement care orders. -The Board's role is to advise the Minister on each and every child, to provide general supervision of all such children and to promote their welfare. -Furthermore, following the issuing of a care order, each child is assigned to a social worker with the primary role of following *"the development and well-being of such child"* - Where an unaccompanied child is found in circumstances which clearly indicate that he is in need of care, prior to a return decision they shall be allowed to apply for asylum and shall be assisted by the Children and Young Persons (Care Order) Act".	-Current practice is that the social worker appointed to monitor the child also acts as the child's legal guardian. -There is a lack of appropriate legal training provided to the social workers. -There were some cases of unaccompanied children being detained pending return, not being referred to the appropriate care order channels.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children shall not be removed before the Principal Immigration Officer, in coordination with the relative diplomatic representation of the third-country in question, is satisfied that he will be returned to a member of his family, a nominated guardian or adequate reception facilities in the State of return. -In the case of children under the above-mentioned care order, it is the responsibility of the Minister, acting on advice of the Board and the child's legal guardian, to ensure the child' best interests.	-There are no recorded instances of returns of children under a care order.
Children within families	-Maltese law does not envisage the separation of children from their families for the purposes of return.	

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children *and* *children within families*	-Children shall only be detained as a measure of last resort and for the shortest period of time possible. The best interests of the child shall be a primary consideration. -Regarding the conditions of detention, the regulation provides that separate accommodation guaranteeing adequate privacy shall be provided to families. -A child in detention shall have access to leisure activities, including play and recreational activities appropriate to their age, as well as to state education in Malta depending on the length of their stay. -An unaccompanied child shall as far as possible be provided with accommodation in an institution with staff and facilities which takes into account the needs of a person of their age. -The period of detention may not exceed six months (extendable by a further twelve months in exceptional cases)	-Currently vulnerable migrants, including families with children and unaccompanied children, are not detained, except for a short period of time at arrival.[480] -Children under a care order are never detained. *Detention upon arrival:* -It is considered better for children to be detained with their families. There are attempts to keep families in separate detention sections, generally reserved for families and single women. -Unaccompanied children are detained with

[480] Every person entering Malta illegally is detained. Vulnerable persons and children are released after being identified and age assessed. This can last a few days or a few weeks.

		adults. -Procedures have been established to try to reduce the detention period for children entering Malta irregularly.[481] -Malta's detention centers have come under severe criticism from several international and local agencies and organisations because of the bad conditions.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children can be returned "*to a member of his family, a nominated guardian or adequate reception facilities.*" The latter term is not defined, and neither are the criteria for assessing suitability of any of these options.	
Children within families	-The length of the entry ban shall be determined subject to all relevant circumstances of the case concerned and shall not exceed five years. No special provision applies to children.	

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	None

Noteworthy practice
Children are not detained for return purposes

Data / statistics (2010)	
- Nb of separated children returned	0
- Nb of children in families returned	0

[481] Following arrival, families and unaccompanied children are visited by social workers to ascertain their vulnerability and, in the case of unaccompanied children, to establish their age. Once vulnerability and minority are established, persons are required to undergo medical screening prior to release. Once the medical tests are finalized, the children are released from detention.

NETHERLANDS

Background information	
Law(s) applicable to the return process	-Aliens Act 2000 -Aliens Decree 2000 -Aliens Act Implementation Guidelines 2000 -Legal Assistance Policy Asylum
Are children returned?	-Children (unaccompanied and in families) can be subject to forced return -All children can benefit from voluntary return schemes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *and* *Children within families*	-A person who has not been granted asylum or does not qualify for a residence permit is issued an order to leave. - A period of 28 days is granted for voluntary departure. -If a person has a medical condition and/or is too ill to travel, the departure period can be extended.	- The IND decides on extensions on a discretionary basis -Sometimes the departure can be postponed until after an exam or graduation, so the child will still have a certificate/diploma.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-The Dutch Civil Code, states that all children in the Netherlands must be under the legal custody of an adult who exercises parental authority. -All unaccompanied asylum seeking children are appointed a professional guardian, provided by the NIDOS foundation to exercise overall legal capacity and to act on behalf of the child regarding all legal matters. -Guardians are appointed promptly (NIDOS is also present at Amsterdam Schipol airport, to assist children as soon as they arrive). -Guardians are in charge of the child overall well being and respect of his best interests. However daily care is provided by other actors (e.g. foster family)	-When a separated child enters the Netherlands, the authorities inform Nidos. An application for representation is submitted to the Court by Nidos at the earliest possible stage. This is the pre-phase of guardianship. In this stage, Nidos is able to apply for asylum on behalf of the child. -In order to become a guardian a bachelor degree in social work is needed. The guardians also need to pass a ten-day course about the methodology for guardians. -The guardian collects all relevant information to assess if return is in the best interests of the child. He submits his opinion to the authorities, however the Immigration Service makes the final decision on return. -In case an unaccompanied child expresses the wish to return voluntarily, their guardian has to assess whether it is in their best interests. -The International Red Cross is the main actor responsible for family tracing.

	-Legal assistance is provided during the Return procedure	-If the child wants to return voluntarily, IOM will contact the family in the country of origin and if the child has lost touch with his/her family, IOM offers the possibility of family tracing. Both the legal guardian in the Netherlands as well as the family in the country of origin are required to give their consent for the voluntary return of the child. -Other actors involved are mentors, lawyers, teachers, foster family, etc

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children are allowed to continue their education. -They have access to healthcare. -Children can engage in social and leisure activities if they are not placed in detention.	-Unaccompanied children stay in their existing placement until they return. -Children, who live in reception centres, will be given four weeks to arrange their return. If return is not arranged within these 4 weeks they will be placed in detention. -Children, who live in foster homes, are usually supported in arranging the return by their care giver.
Children within families		-During the pre-return phase, there is a general commitment to keep families together. However, separations are possible e.g. family members have different legal status. -During their stay in reception centres children can access sports and leisure activities. However financial limitations will often be a problem, especially if the child has become undocumented by the time the procedure ends. - Children are entitled to receive healthcare, although there are some restrictions limiting this to essential treatment. Undocumented children may face difficulties to access helth care -Families are moved to a detention centre

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Since March 2011, detention pre departure is limited to 14 days. -Health care can be accessed	-Unaccompanied children are detained in juvenile justice institutions. -If not detained, UACs are accommodated in special centre for foreign children -Access to education is very limited - Legal representation is available
Children within families	-The Alien Circular states that detention of families with children should be at last resort and for the shortest time possible. -Since March 2011, detention pre departure is limited to 14 days. -Health care can be accessed	-Families are detained in specific units in the detention centres -Children in families are 'not detained', their parents are. If the parents 'choose' to have their children with them, the child can be placed in detention too. No best interest of the child assessment is made. In some instances, only the father will be detained. -There is limited access to education: only lessons within the detention centre to prepare for the return -Alternative to detention is placement in the open centre of Ter Apel where people have to report to the 'alien police' every day and are not allowed to leave the municipality. -Legal representation is available

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children can be returned to institutional care if the standards are adequate when measured against local standards. -Procedures for the transfer of care and custody are written down in publicly available procedure protocols. -Re-entry bans can be applied if the child has committed a crime.	-There are no mechanisms to monitor the child's welfare and reintegration following return. In few cases the child still has contact with their Dutch guardian. It is sometimes possible for guardianship from the host country to continue post return when the child returns to a country that signed the Hague Child Protection Convention. -There are centres in Congo and Angola (co) financed by the Dutch Government for the purposes of returning unaccompanied children. As a result of the existence of these centres, a separated child from one of those countries will not be granted a residence permit in the Netherlands.
Children within families	-Re-entry bans can be applied if the child has committed a crime.	-Practice is to return the families together, but sometimes separation still happens in the return process.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	Amendments to the Aliens Law transposing the Return Directive are being discussed in the Parliament. Adoption is planned for early 2012. Changes will include application of re-entry bans to any person who was undocumented after a residence procedure.
Proposed changes to practice as it impacts on the return of children:	None

Noteworthy practices
-All unaccompanied asylum seeking children are appointed a professional guardian, provided by the NIDOS Foundation to exercise overall legal capacity and to act on behalf of the child regarding all legal matters. Guardians are appointed promptly (indeed NIDOS is also present at Schipol airport, Amsterdam, to assist children as they arrive). The foundation's mission statement outlines that, as an independent guardianship and family supervision agency, NIDOS carries out the guardianship task for unaccompanied child asylum seekers, in line with relevant legislation. -The Beyond Borders project supported young (former) asylum seekers to make plans about their future, including return with the goal of preventing them living in an irregular situation, and hence on the margins of society in the Netherlands. The project was launched in 2006 by the Foundation for Unaccompanied Minor Asylum Seekers Humanitas (SAMAH) and was managed by the Mediation Agency for Return (Maatwerk bij Terugkeer). The project was open to young people from 15 to 25 who had recently arrived in the Netherlands. It encouraged them to make an informed decision and plan their future through the development of personal action plans, information workshops, tailor-made training, coordination of relevant activities between various organizations and information sharing through social networks. The development of these networks between young people and their peers in countries of origin was a key feature of this project, encouraging young people to connect with the realities and opportunities in countries of origin. Those networks reach to the countries of origin, such as Afghanistan, Angola and Sierra Leone. It was recently announced that the Project will be winding down their work because of lack of funding.

Data / statistics	
- Nb of separated children returned	6 forced returns (Surinam, Angola, Brazil, etc) and 19 voluntary departures (Afghanistan, Iraq, FYROM, etc)

NORWAY

Background information	
Law(s) applicable to the return process	- Immigration Act and Immigration Regulations (2010) Child Welfare Act (1992) -Children Act (1981)
Are children returned?	-Children (unaccompanied and in families) can be forcibly returned through very few unaccompanied children are subject to forced return in practice -Children can benefit from voluntary return schemes

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children are required to negotiate their own departure period with the police. They are obliged to plan this or otherwise may be subject to forced removal.	-The voluntary departure period is in practice defined as compliance with a return decision issued by the Police Immigration Unit. -Practice is that the voluntary departure period is set at 21 days.
Children within families	-The voluntary departure period should be set between 7 to 30 days -The voluntary departure period can be extended for specific reasons. Individual circumstances must be taken into account and the circumstances must be serious and beyond the control of the third country national.	-As a rule no extensions are given. -Extensions are not given due to schooling or exams, but can on rare occasions be given due to severe health issues. i.e if the third country national is suffering a serious health condition which means he or she is advised against travelling.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	- Unaccompanied children below 15 are in the care of Children's Welfare Services and are accommodated in child protection institutions. Children above 16 are in the care of the Immigration Service and are housed in special accommodation centres. -The public guardianship office in each municipality is responsible for appointing and monitoring legal guardians for unaccompanied children. -A clean criminal record is required to be a guardian. -The guardian shall ensure the child's legal rights are respected in all procedures. -The Immigration Service is in the process of issuing new guidelines regarding the provision of information (including on return) to all unaccompanied children regardless. -An unaccompanied child, seeking asylum	-A new guardian is appointed whenever the child changes municipalities -No limits are imposed on the number of children a guardian can work with. -The duties of guardians vary depending on the procedures.

	has the right to a lawyer. - A law regarding legal representation and assistance to unaccompanied children is being drafted. It will contain guidelines on guardians. -Asylum seeking children under 15 are accommodated at a care centre while their application is being processed. Those aged 16 to 18 are are accommodated at special centres for unaccompanied children.	-Lawyers are assigned to unaccompanied children after the age assessment procedure. -For family tracing, the Immigration Service cooperate with the Red Cross on a case by case basis depending on the information given by the child.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Family for the purpose of return includes extended family members such as grandparents, aunts, uncles and other relatives if they had a previous caregiving role for the child. -Children have access to education, health care and social and leisure activities pre-return	-Where unaccomanied children have minor siblings, the principle of family unity will as far as possible be maintained and the children will be housed together. -Access to education is not always possible in practice, especially for children above 15. -Access to social and leisure activities can be limited in practice -Unaccompanied children are given help and assistance from reception centre staff and the guardianship system to access services such as healthcare, education etc. -Children older than 7 years have a right to be heard in all matters concerning them and are given more information from the Immigration Service. -Accommodation is maintained
Children within families	-Children have access to education, health care and social and leisure activities pre-return	-The principle of family unity is maintained and children are accommodated with their family and returned together. -A separate return centre to house families with children and rejected adult asylum seekers who are subject to a return decision opened in 2011. -Access to education is not always possible in practice, especially for children above 15. -Access to social and leisure activities can be limited in practice

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Children should not be detained unless it is "particularly necessary". There should be a strichter proportionality principle in the arrest and detention of children. -Guidelines from the Ministry of Welfare and Employment state that the removal of persons under 18 shall, as far as possible be carried out without the use of coercion and without the imposition of Police or Immigration detention -The child has the right to contact a lawyer and they have a right of appeal under the Public Administration Act. The cases can also be taken before Ombudsmen. -Children placed in immigration detention should have the same rights as other children regarding access to education and health care.	-A best interests assessment is carried out in all cases where detention of an unaccompanied child is considered. Alternatives to detention are applied in the majority of cases involving unaccompanied children. -The child's legal rights are explained with the help of interpreters if this is required and information leaflets are available in a range of languages. -Legal assistance is provided free of charge and appeals against the decision to detain can be submitted. -There are special units for unaccompanied children.
Children within families	-A best interests assessment must be carried out in all cases of detention of families with children. The court decides on custody and any extension of the detention period. -Detention should not exceed twelve weeks, unless there are special reasons. -Children placed in immigration detention should have the same rights as other children regarding access to education and health care. -Those in detention have the right to contact a lawyer and they can appeal against the decision to detain.	-An assessment takes place before children are placed in detention. It is In practice it is generally considered to be in the best interests of the child to remain with their parents in detention. -Police Immigration detention has a section specially designed for children, families with children and women. Children older than 15 may be held with their parents or separetaly. -The detention is usually very short

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-The forced return of an unaccompanied child should only happen when the child is returned to a family member, appointed guardian or another appropriate care services. The child's parents will be presumed as suitable caregivers to whom the child can be returned to unless there are clear indicators to the contrary. -There must be a specific assessment of whether there is sufficient evidence that the child will be assured of adequate care upon return to the authorities' or government care institution. -Unaccompanied children are not subject to re-entry bans	-Before an unaccompanied child is returned, contact is made with their caregiver in the country of origin. -Children are always accompanied during the removal. -Unaccompanied children can be returned to the authorities in their home country, where there is deemed to be a functioning child welfare system.
Children within families	-Children are subject to re-entry bans because their parents are. Re entry bans are imposed if there have been immigration offenses.	-If one of the family members absconds, the return of the rest of the family can still be carried out as planned. Families can be subject to re-entry bans of a minimum of 2 years

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	-New circular from Ministry of Justice on voluntary return -A separate law regarding legal representation and assistance to unaccompanied minors is under being drafted. This law will contain guidelines on guardians for unaccompanied children. -UDI is in the process of issuing new guidelines for information work to children and unaccompanied minors. These will also contain information on return.
Proposed changes to practice as it impacts on the return of children:	-Separation of reception centres into ordinary reception and removal centres. -Increased incentive and investment in assisted voluntary return schemes targeted at unaccompanied children and families with children.

Data / statistics	
Nb of separated children returned	158 forced returns (including Dublin transfers)
Nb of children in families returned	583 forced returns (including Dublin transfers)

POLAND

Background information	
Law(s) applicable to the return process	-Act on Aliens; -Act of June 2003 on Granting Protection to Foreigners -Act of 12 March 2004 on Social Care and Regulation of 14 February 2005
Are Children returned?	-Unaccompanied children are not forcefully returned in practice while children in families are. -Children can benefit from voluntary return schemes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *and* *Children within families*	-In some cases, foreigners may be issued an 'obligation to leave' if there are indications they would comply voluntarily. -No extension is possible.	-A person may apply for suspension due to illness, family problems or to other extraordinary circumstances.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Guardians (legal representatives) are appointed by a guardianship court upon request of the institution where the child is staying. -They are unpaid, do not need special qualifications and their role is limited to a specific procedure (e.g. asylum, return). -Everyday care is provided by a tutor from the state care institution, hired by The Office for Foreigners, who must have an MA degree in pedagogy, psychology, rehabilitation, and social care. -Family tracing must be done by the Office for Foreigners. -Unaccompanied children seeking asylum must first be accommodated with a temporary foster family, or in a care centre until a guardianship court orders their placement in an education and care centre. -During return, Border Guards may act as guardians.	-Tutors hired by The Office for Foreigners work with a couple of children and have training. -NGOs provide assistance and free legal aid. - Since the Office for Foreigners does not organise returns, family tracing is done though the care centre or IOM. -In practice, all unaccompanied asylum seeking children are accommodated in Children's Home Number 9 in Warsaw.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children have access to all services as well as social and leisure activities.	- There is no definition of family for the purpose of return but parents are usually considered as a family. -Children are allowed to stay in the Education and care centre until their return. -Access to services is not limited
Children within families	-Children can have access to education -They are only entitled to emergency healthcare if they did not apply for voluntary return during the asylum procedure.	-Access to emergency healthcare may be problematic: hospitals are unwilling to take irregular migrants as there is no mechanism to recover costs. - There is no requirement to change accommodation, unless the family is detained

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Children can be detained on the same basis as adults in the return procedure. Detention of asylum seekers is unlawful. -Any person under an expulsion decision or who does not respect its conditions may be detained for 48 hours which may be extended by a court for 90 days and prolonged further if the expulsion is not executed due to foreigner's fault. -The maximum detention period is 1 year. -Appeals may be lodged within 7 days. -Unaccompanied children must be accommodated separately from adults. -As an alternative to detention, authorities may make request the court to place the child in an education and care centre.	- Some cases of detention of unaccompanied children have been reported but it is not a regular practice. -Legal aid is available through NGOs. -There is no access to school but some educational programmes are being introduced. - In most guarded centres, social and leisure activities are provided but the conditions are not very good. Children are allowed a walk of 1 hour per day.
Children within families	-Children can be detained together with their parents. -Families should be accommodated in the same room if possible. -Families can be assigned to a specific accommodation and required to report to the police instead of being detained. -Access to healthcare is ensured.	-There has never been a case where children were not detained together with parents. -Alternatives to detention are rarely used. -No access to school.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-A return decision is executed only when it has been confirmed that care will be provided to the child in the return country by parents, other adults or by competent care institutions. -If return would put the child at risk or be detrimental for their personal development, they must be granted tolerated stay. - Entry bans may be imposed for a period of 1 to 5 years on anyone.	-Few returns are enforced: most children are granted a permit or abscond. -There is no procedure to assess care in the country of origin. -If the return is organised by the Polish orphanage to another state care institution in the country of return, contacts happened bilaterally. -Entry bans have been imposed.
Children within families	-A tolerated stay must be granted if the return would affect the right to family life of a foreigner. -Entry bans may be imposed for a period of 1 to 5 years on anyone.	-Entry bans have been imposed.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	The Return Directive is being transposed in Poland: provisions on voluntary departure period will be introduced and entry bans will be proscribed in case of voluntary returns.
Proposed changes to practice as it impacts on the return of children:	None

Data / statistics (2010)	
Nb of separated children returned	2 (Georgia, Russia)

PORTUGAL

Background information	
Law(s) applicable to the return process	-Law n° 147/99, 1st of September – Rights and protection of children and youngest in danger; -Law n° 23/2007, 4th of July – the Immigrants Law; -Law n° 27/2008n 30th of June – the Asylum law
Are children returned?	-Unaccompanied children are not forcibly return except in border and transit zones -Children in families can be forcibly returned. They can also benefit from voluntary return schemes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children and children within families	-A voluntary return period of 20 days can be granted	-The date of return, under the existing voluntary return program can be postponed for education reasons.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children are integrated into residential centers for youth at risk with Portuguese children. -They are appointed a guardian who is in charge of • ensuring that all decisions are taken in the child's best interests; • inform the child about all possible options for durable solutions and about the different stages of the process; • accompany and assist the child during interviews and in all stages of the process including, if necessary, an appeal against a return decision; • support the child in assessing their situation and planning for the future; • arrange competent legal representation for the child; • consult and advise the child as appropriate; • ensure that the child has appropriate opportunities to express their opinions; • provide a link between the child and the organisations undertaking the necessary assessments and services in relation to return; • act as an advocate on the child's behalf; • assist in re-establishing and facilitating contact with the child's family.	

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children can attend school prior to return. - There is no limit to the social activities, sports, and leisure for children. -Access to health care is not limited -Procedures regarding voluntary return outline that a declaration is required from the individual exercising parental authority or guardianship of the child in Portugal, authorising the child to travel alone to the country of origin. In addition a signed declaration by the person who will receive the child in the country of origin, outlining that they are aware of the journey the child is undertaking and committing to take responsibility for the child upon return is also required.	-The decision to return an unaccompanied child to their country of origin is always the result of a judicial decision, taken only when in accordance with the interests of the child.
Children within families	-Children can attend school and social activities. -Access to healthcare and services is not limited	-There has been some complaints about difficulties in enrolling children in school and in accessing medical services, but these difficulties are not solely related to the issue of return. -Under the Voluntary Return Program, the date of return takes into account the wishes of families so that children can remain in school. They are also free to engage in activities until their departure.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children cannot be subjected to forced removal therefore they are not detained	-Children aged 16 years and over are considered legally responsible and are therefore treated as adults.
Children within families	-Children in families can be detained -The maximum length of detention is 60 days. -There are alternatives to detention	-In the Porto detention centre, children share accommodation with their mothers, a games room has been set up for these children and activities are organised outside of the centre. -Full access to health care, access to education and children's leisure are guaranteed.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-There are re-entry bans only for those who are expelled	-Under the IOM Voluntary Return Program children are assisted at departure and arrival airports (whenever possible). In some specific cases, reception and transfer to the family is arranged.
Children within families		-In very rare cases, children stay and parents are returned (forcibly or voluntarily). When this happens, in general, children are transferred to other family members. -Under the Voluntary Return Programme, IOM has only provided reintegration support to adults because families did not identify any specific needs for their children post-return.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	None

Noteworthy practice
Unaccompanied children are not detained in immigration procedures.

Data / statistics (2010)	
- Nb of separated children returned	-3 voluntary return with IOM

ROMANIA

Background information	
Law(s) applicable to the return process	-Law 122/2006 on Asylum; -Emergency Ordinance 194/2002; -Law 272/2004 on the Protection and Promotion of the Rights of the Child
Are children returned?	-Children (unaccompanied and in families) can be forcefully returned. They can also make use of voluntary return schemes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *And* *Children within families*	-A voluntary departure period of 15 to 90 days (depending on the legal status) is granted. -The voluntary departure period cannot be extended and do not apply to those who crossed the border illegally or who stayed illegally and whose identity cannot be established.	

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Guardians are appointed by the Directorate for Social Assistance and Child Protection and must be graduates in law or social work. They are employees of the Directorate or an authorised private institution and must protect the interests of the child during the asylum procedure. -Unaccompanied children are entitled to representation, protection and care, under the same conditions as nationals. They also have access to healthcare and education. -Legal assistance is available to asylum seekers and at the judicial stage of a return decision. Appeals can be made within 10 days. -The Romanian Immigration Office (RIO) has an obligation to inform the respective diplomatic mission and to trace the family. If the tracing is unsuccessful, the child must be granted temporary residence. -During the return procedure, the child's interests is represented through their guardian but decision-makers also have the obligation to act in the best interests of the child. The child is heard and their opinion is taken into account.	-Guardians have a limited mandate and have a big number of children under their care. -Assistance is also provided by social workers and psychologists, usually working as a team with the guardian. -Access to education remains problematic as children in state care only attend some educational activities but not school. -In addition, to the cases prescribed by law, legal assistance may be available through NGOs. - If parents are found, or relatives agree to accommodate the child, there are no further assessment of the child's best interests and care upon return. The child's opinion is taken into account and they are not returned forcibly: in such cases, tolerated stay is granted until they turn 18.

	-Asylum seeking unaccompanied children under 16 can be accommodated in childcare homes or authorised private institutions. Those above 16 can be accommodated in the reception centres for asylum seekers. Those who do not apply for asylum are under the care of the Child Protection Authority and a court decides on a placement measure.	-Children below 16 are accommodated in state care homes and those above 16 in reception centres run by the Immigration Office.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children can be returned to parents or relatives who agree to care for them or to a child care institution. If the parents or a family member cannot be found or a country does not accept the child, they must be granted a temporary permit. -Access to services pre-return is not limited. - After a return decision, the child will be accommodated in one of the centres under the administration of the child protection authority.	-Children do not access school in practice because the pre-return phase is short. However, they have access to educational activities if placed in state care. -Asylum seekers above 16, residing in reception centres, are taken into state care homes. Those below 16 continue to reside in state care homes.
Children within families	-Asylum seekers are allowed to stay in the reception centres for 15 days after the end of asylum procedure.	-After the 15 days they have to make their own arrangements. -Family unity is maintained, unless one member of the family is taken in detention

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children		Unaccompanied children are not detained. They are accommodated in state care homes until their return.
Children within families	-If removal cannot take place within 24 hours, anyone can be taken into public custody following a judicial order. The initial detention period is 30 days but may be extended up to 6 months by a judge.[482] -Detention can be appealed within 5 days and legal aid is available. -Children have access to education. -Conditions in detention centres must be adequate and access to social and medical care must be provided. - There are no alternatives to detention provided by the law.	-Children are detained with both parents and more often only the father is detained. The rest of the family can visit the parent who is detained. -Once the maximum period of detention expires, the families are released from detention and given a toleration status for a period of up to 6 months. -There is access to health care but no access to education in practice. -There is no alternative to detention of family, other than having only one parent detained.

[482] In case of expulsion following a criminal conviction the limit is 2 years and for those declared undesirable it is indefinite.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-If the child is returned to a family member other than parents, the latter's agreement is necessary. -Entry bans may be imposed on anyone for up to 5 years (15 for those declared undesirable).	-The Immigration office arranges the transfer of custody together with the countries of return. There is no subsequent monitoring by the Immigration office. - So far, children have only been returned to parents and not relatives or childcare institutions even in a case where family was found but refused to take the child. -Entry bans have been imposed.
Children within families	-Entry bans may be imposed on anyone for up to 5 years (15 for those declared undesirable).	-Families have been separated on return but cases are rare. After going back, the parent can apply to join their family. -There have been no practice of imposing entry bans on children in families.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	On 11 July 2011 was published the law 157/2001, which modifies the Aliens law (including changes to transpose the Return Directive).
Proposed changes to practice as it impacts on the return of children:	Following the new legislation, there will be changes in practice (e.g. voluntary departure, detention).

Noteworthy practice
Unaccompanied children are not detained

Data / statistics	
-Nb of separated children	-34 from Afghanistan, Moldova and Pakistan
-Nb of separated children returned	-According to the estimate of the Immigration Office, 13 unaccompanied children were returned in 2009 and2010 to Moldova, Turkey and Congo.

SLOVAKIA

Background information	
Law(s) applicable to the return process	-Act no. 48/2002 Coll. on Stay of Aliens, 13.12.2001 -Act no. 480/2002 Coll. on Asylum, 20.06.2002 -Act no. 305/2005 Coll. on Socio-legal Protection of Children and Social Guardianship, 14.07.2005 -Act no. 36/2005 Coll. On Family, 11.02.2005
Are Children returned?	-Unaccompanied children cannot be forcibly returned and voluntary returns are rare. -Families are rarely forcibly returned.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-Return decisions are not applied to unaccompanied children.	
Children within families	-A voluntary departure period of 7 to 30 days is provided in the return decision. -The voluntary departure period may be prolonged based on the previous length of the stay, private and family affairs or health issues.	-Voluntary departure is understood as compliance with the obligation to return within the time limit provided in the return decision. -Extensions are not common in practice.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
	-Every unaccompanied child is referred to an Office of Work, Social Affairs and Family. A guardian is appointed by the court rapidly after referral. - A guardian can be appointed for a long term, for a limited period of time and/or for specific purpose (e.g. legal representation in asylum procedure or procedure related to stay/return). The long-term guardian (tutor) exercises parental rights and duties. -The Office of Work, Social Affairs and Family participates in family tracing and finding durable solutions, informs the child on procedures, and ensures the child's views are heard in procedures. -Guardians need to have at least a bachelor degree and receive training (general rule for Civil servants).	- The Office of Work, Social Affairs and Family in Trenčín is usually appointed as a guardian. -In general, guardians for a limited period or specific task are appointed. Based on the child's views, the guardian takes necessary measures in cooperation with the child and other actors. -IOM participates also in family tracing in collaboration with Slovak embassies or the Red Cross. -Guardians who are employees of Office of Work, Social Affairs and Family in Trenčín have university degree in social work. They attend training concerning child abductions and child trafficking.

	-Free legal aid provided by the state is available only in relation to decisions issued in the asylum procedure. -Childcare is provided by educators and other employees of the foster home. -Unaccompanied children shall be accommodated in a specialised foster home, under the same conditions as nationals.	-Legal representation is provided by the guardian, but there is also a possibility for the guardian to ask the Centre for Legal Aid (free legal assistance provided by the state) or NGO lawyers for representation. -Children are as a rule accommodated in the specialised Foster Home for unaccompanied children in Horné Orechové. Those who apply for asylum are accommodated in a reception centre for unaccompanied children and families.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children have access to education (compulsory until the age of 16). -Children placed in the foster home have unlimited access to medical services during their whole stay.	-Children staying in the specialised Foster Home can attend school and training.[483] In the period preceding voluntary return they are not obliged to attend language courses or school. -Children are free to engage in any free time activities. -Prior to (voluntary) return, unaccompanied children can continue to live in the foster home. Those who are refused asylum are moved from reception facility for asylum seekers to the foster home.
Children within families	-Children have access to education (compulsory until the age of 16). Asylum seekers have in addition to attend Slovak language classes. -(Rejected) asylum seekers accommodated in centres are entitled to emergency health care during the voluntary departure period.	-Families are not separated prior to return. Children follow the procedures of their parents and are detained together with them. Family is usually understood as parents and their children. -Families with children are placed in the detention centre for aliens in Sečovce. IOM is able to provide accommodation to families in need that decided to return voluntarily until the time of departure.

[483] Most of them disappear from the facility before they can be integrated into the school system.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	Unaccompanied children cannot be detained.	
Children within families	-Children in families can be detained with their parents. Children may be detained only at last resort and for the shortest time possible. The maximum detention period is 6 months and cannot be prolonged . -An appeal against the detention decision can be lodged before the regional court within 15 days. -Children should be detained separately from other adults and families should be accommodated together. -There has to be a cultural room in the facility. -Children under 15 shall have access to education, if they are detained longer than 3 months. -Detainees have to undergo general medical examination and special attention shall be paid to vulnerable persons. Should a person require health care which cannot be provided in a the detention facility, the police should ensure access to necessary care in a medical centre. -No alternatives to detention are envisaged.	-Children are systematically detained with their parents as part of return procedure: it is considered to be in their best interests. -Free, state-sponsored legal assistance specifically relating to detention is not available but NGOs do provide some legal assistance. -Families are detained in a separate unit of detention centre. -Children have limited access to leisure activities - a playground and a play room. -Children have access to education and a teacher from the Slovak Humanitarian Council provides classes to children under 15. -A nurse and a doctor are present in the detention centre, and access to a paediatrician is provided if necessary.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Legislation refers for voluntary return to return to the care of parents and other family members -Re-entry bans can be imposed on children for the same reasons as adults.	-As unaccompanied children are not forcibly returned, re-entry bans are not imposed.
Children within families	-Re-entry bans of 1 to 5 years can be imposed on children for the same reasons as adults. The period for the ban can be reduced in specific circumstances.	-Children are returned together with their parents. -Children are included in the same return as their parents and the same ban applies. Reducing the time period of re-entry ban is not common in practice.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	New legislation was proposed in January 2011 that would introduce alternatives to detention such as reporting obligations or payment of a bail.
Expected changes to practice as it impacts on the return of children:	None

Noteworthy practice
Unaccompanied children cannot be detained under Slovak law.

Data / statistics (2010)	
-Nb of separated children	220 children were accommodated in the Foster Home of Horné Orechové
-Nb of separated children returned	1 voluntary return to Moldova
-Nb of children in families returned	7 children within families returned voluntarily to Georgia, Kosovo and Russia.

SLOVENIA

Background information	
Law(s) applicable to the return process	-Aliens Act, Official Gazette, No. 50/2011, 27.6.11 -Marriage and Family Relations Act, Official Gazette, No. 69/2004, 24.6.04 -National Border Control Act, Official Gazette, No. 35/2010, 03.05.10 -Police Act, Official Gazette, No. 66/2009, 21.08.2009 and amendment 22/2010, 19. 03. 10 -International Protection Act, Official Gazette, No. 11/2011, 21.02.11
Are Children returned?	-Unaccompanied children can be ordered to leave but cannot benefit from voluntary returned schemes. -Children in families cannot be forcefully removed and can benefit from assisted voluntary return programmes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *and* *Children within families*	-Irregular migrants either have to leave immediately or within a deadline. 'Voluntary removal' means that the alien cooperates with the police (except under an expulsion order.) -The voluntary departure period should take into account the period needed for the person to leave. It may not exceed three months and is granted on a discretionary basis. -Schooling is a reason for suspending removal if the second term has started, under the condition that the child regularly attends the school.	-No written return decisions are issued. -Deadlines are set on a case by case basis taking into account all relevant circumstances, including the child's best interests. -Schooling or medical treatment can be taken into account, and permission to stay is granted in such cases. However, in most cases however the goal is to return a child as soon as possible.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Every irregularly staying unaccompanied child who cannot be returned immediately is referred to a Centre for Social Work which shall immediately appoint a guardian. Guardians should also be appointed when a child seeks asylum.	-Unaccompanied children detained are appointed a guardian. In case the return occurs under readmission agreements immediately after entry, a guardian is not appointed. -Until March 2011, Slovene Philanthropy workers or volunteers were appointed as guardians. Since March 2011 they have been replaced by employees of the Centre for Social Work (CSW) in Postojna (social workers and lawyers).
	-The guardian covers parental duties. The duty is voluntary and honorary.	-The guardian represents the child in all legal procedures, including those related to stay and/or return and protect her/his rights and interests.
	-Unaccompanied children can also receive psychosocial assistance – provided in the Centre for Foreigners - if necessary.	-Children who have been tortured, exposed to traumatic experience or trafficking are ensured a special 24-hour custody.

	-There is no right to state-sponsored legal representation in the return procedure.	-Free legal aid is provided by NGOs. -Family tracing is usually conducted by the Slovene Philanthropy (guardians) with the child's consent. The police may also cooperate with national or international bodies or NGOs.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children have a right to education under the same conditions as Slovene children. Those who are granted temporary stay shall have a right to basic education. -Children are entitled to emergency health care. Children who were granted temporary stay have a right to emergency health insurance.	-Unaccompanied children are systematically detained pre-return (including rejected asylum seekers) and access to services depends on what is available at the Centre for Foreigners (see below 'Detention'). -Information regarding the return procedure is provided by the guardian, who has to explain the legal situation and the different possibilities to the child.
Children within families	-A general commitment to the protection of family and family unity is expressed in the Constitution and in directly applicable international acts. -In all procedures relating to aliens, family includes the spouse or the partner in cohabitation in a stable relationship, unmarried dependent minor children. -Children have a right to education under the same conditions as Slovene children. Those who are granted temporary stay shall have a right to basic education. -Children are entitled to emergency health care. Children who were granted temporary stay have a right to emergency health insurance. -Families who cannot be removed immediately can be transferred to the Centre for Foreigners (CF) or may find their own accommodation. Accommodation at a social welfare facility is also possible.	-Families are not separated in this phase. Children are either detained together with their parents in the Centre for Foreigners (CF) or stay together in an alternative accommodation. -In practice, for the purpose of return, the family definition also includes grandparents, older siblings, aunts and uncles. -Children who are not detained have limited access to leisure activities. -Children who are not detained and not insured are only provided essential and emergency healthcare. -Families are encouraged to stay outside of the CF, and find accommodation by themselves. Rejected asylum seekers who lived in private flats during their asylum procedure are allowed to stay there, those who lived in the Asylum Home may be transferred to the CF.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Children can be detained on the same grounds as adults. -Children shall be detained for the shortest time possible and they shall be accommodated in a special unit for children. Detention under stricter police supervision is	-Unaccompanied children are systematically detained during the return procedure. -If only one or two unaccompanied children are detained, they can be accommodated in the same division as families when it is considered in their best interests.

	prohibited. -The decision on placement in the Center for Foreigners (CF) can be appealed within 8 days to the Minister of Interior, whose decision can be appealed before the Administrative Court. -Free legal assistance is provided only to asylum seekers. -In the Centre for Foreigners, access to emergency health care is ensured in the premises of the CF, or at a hospital if necessary. -Children have a right to education. -Unaccompanied children may be placed in a social welfare setting if their guardian requests it (or consents) and if it deemed in the child's interests. More lenient measures (e.g. restrictions on freedom of movement or reporting obligations) may also be applied instead of detention.	-As legal representation in relation to detention issues is not freely available, decisions on detention are as a rule not appealed against or reviewed, with the exception of the asylum procedure. -Guardians and social workers ensure the child's access to services in the Centre for Foreigners. -Children detained in the CF can take part in a "learning project" implemented by NGOs, which provides certified short period courses. There are only few cases when children are enrolled in secondary school (mostly rejected asylum seekers who started the school during the asylum procedure). The Police provides transport to the primary school in Postojna, but most children are above 15 and therefore do not attend. -Children in the CF can take part in social/leisure activities organised by the CF and Jesuit Refugee Service (JRS). There is a room with TV and books, a courtyard to which children have unlimited access, and a playground. -In the CF emergency health care is provided, as well as psychiatric treatment if needed. -Alternatives are not applied in practice.
Children within families	-Children can be detained on the same grounds as adults. -The decision on placement in the Center for Foreigners (CF) can be appealed within 8 days to the Minister of Interior, whose decision can be appealed before the Administrative Court. -Free legal assistance is provided only to asylum seekers. -Children have a right to education. -In the Centre for Foreigners, access to emergency health care is ensured in the premises of the CF, or at a hospital if necessary.	-As a rule, children are detained if their parents are detained. -As legal representation in relation to detention issues is not freely available, decisions on detention are as a rule not appealed against or reviewed, with exception of the asylum procedure. -Families are detained in a special unit for vulnerable categories, and are entitled to their own room. See above. -Children detained in the CF can take part in a "learning project" implemented by NGOs and go to schools (see above on unaccompanied children). -Children in the CF can take part in social/leisure activities organised by the CF and Jesuit Refugee Service (JRS). (see above on unaccompanied children). -In the CF emergency health care is provided, as well as psychiatric treatment if needed.

	-If a person cannot be accommodated at the CF due to special circumstances they may, in agreement with the social welfare office and with the costs borne by the CF, be accommodated at a social welfare facility or provided with other appropriate institutional care. -Additionally, more lenient measures as in the case of unaccompanied children can be applied at any time.	-Alternatives are applied and families with children are encouraged to stay outside of the CF, but the practice varies.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children may only be returned to their country of origin or a third country if suitable reception is provided.	- Unaccompanied children are generally returned to their parents. Return to other close family members is also possible, as well as to a reception facility. -Children may be returned at the borders under readmission agreements if appropriate care and custody of the child is secured. -Re-entry bans are not imposed on children.
Children within families		-Families are not separated during return. -Re-entry bans are not imposed on children.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	A new Aliens Act transposing the Returns Directive was published in June 2011.[484]
Expected changes to practice as it impacts on the return of children:	-Since March 2011 the CSW Postojna is responsible for providing guardians. -In 2011, an Interdepartmental Working Group on Unaccompanied Children has been established, with the aim of improving cooperation between different state actors and the NGOs.

Data / statistics (2010)	
-Nb of separated children	25 unaccompanied children applied for asylum.
-Nb of separated children returned	At least 3 children returned (voluntarily and forcefully)
-Nb of children in families returned	5 children in families returned with IOM voluntarily

[484] Aliens Act, Official Gazette No. 50/2011, published on 27 June 2011, enforced from 27 July 2011 and applicable since 27 October 2011.

SPAIN

Background information	
Law(s) applicable to the return process	- Aliens Organic Law (LOEX): 2/2009, amending organic - LOEX Regulation, approved on 15 April 2011
Are children returned?	-Children (unaccompanied and in families) can be forcibly returned but unaccompanied children are not currently subject to forced return following courts decisions. -Voluntary return schemes apply to children

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children	-A voluntary return departure as define in the Return Directive has been introduced in the Aliens Law	
Children within families	-A voluntary return departure as define in the Return Directive has been introduced in the Aliens Law -Previously the pre departure period was set within the capacities of each organisation engaged with the return. -Extension could be granted upon a request from the family, in order to allow children to attend school.	-In practice return is often undertaken with immediate effect: third country nationals are not always informed in advance of the decision to return. -The procedure to apply for, and to be included in the voluntary return program is very quick sometimes only taking the time necessary to organise the travel, usually about 15 days. -There is the possibility to postpone the return, where children have to finish a school course or the yearly school cycle.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-When an unaccompanied child is identified, the process begins with the intervention of the public authority of the Autonomous Community who will declare the legal situation of abandonment (lack of protection, called "*declaración de desamparo*") and provide the child with immediate protection. -The public administration of the Autonomous Community acts as the child's guardian.	-There are no differences regarding the practice of dealing with children in the children pre return period and the others stages of the application. -In practice, in many instances, the authority skips the step of the declaration of abandonment considering that immediate assistance has just to include the provision of accommodation and food. -The manager of the child's reception centre assumes legal responsibility. - In case of non-voluntary returns, the child will be legally represented by their guardian. In some cases, a judicial defence is also appointed in order to defend the child's interests.

	-The new system introduced by the LOEX Regulation is trying to address all those issues and to offer solutions (i.e. the possibility for the child younger than 16 years to appoint a judicial defense and the child older than 16 can appoint their own legal representation).	-An important court decision issued by the Constitutional Court in December 2008 stated that the right to effective judicial process has been violated where a child does not have proper legal representation and has not be allowed to state their case

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-The Spanish Government, by virtue of upholding the principle of family reunification for children, and after receipt of a report from the Child Protection Services, shall decide whether to return unaccompanied children to their country of origin, or to the country where their family is located or, in the absence of these options, whether they may be granted permanent residence in Spain. -Return can only be undertaken if "*adequate conditions for the protection*" of the child have been met and in view of the "*principle of the best interests of the child*". -The receipt of services to children such as health care and education does not depend on an agreement to return voluntarily. Children in the pre-return phase enjoy exactly the same rights they had before the decision to return was made.	-Children are always returned to their countries of origin, but there might be cases where they are returned to other countries if their families have the residence permit in these countries.
Children within families	-The family unit is a principle permeating all the Spanish legislation and practice. -Children are entitled to education, healthcare (with some limitation depending on their legal status) and can access social and recreational activities.	-Children are never separated from their parents, unless one of them is expelled and the other one remains in Spain: in this case, the child will remain in Spain with them. -Children live where they lived before the decision on return is taken: in children's reception facilities or with their families. There are no special centers for pre-return -Many professionals with different expertise are involved on the return process: educators, social workers, psychologists, attorneys, etc. but at different level of involvement.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Unaccompanied children (once identified) are not detained	-The time spent at the hospital for the age assessment is the only moment considered as deprivation of the child's liberty. Following this assessment, the child enters in a protection center, which is not a detention facility.

Children within families	-Children in families can be detained following a court decision. -They have access to some assistance in detention - medical, social and leisure) but not to education. -There are special units for families. -The maximum number of days they can stay in detention is 60 days.	-Children are never detained in practice. -When a parent is detained prior to removal the judge generally decides not to detain the children. One parent can be detained while the child and the other parent not.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	- Legislation provides some elements of follow up of the child's need post return but no indication on how to implement them in practice -There are no re-entry bans imposed on children	-Once the return processes have been finalised and the return decision becomes definitive, it is executed the National Police Force, who transfer the child to the authorities at the border of the country to which they are returned. The execution of the return is communicated to the Child Protection Services and the Prosecution Office. During the journey, children are accompanied by the police and someone from the organisation where the child was staying unless they are able to travel by their own, in which case they are not accompanied. -Children are received by their families or the corresponding authorities who are assuming the guardianship.
Children within families	-There are no re-entry bans imposed on children	

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	Transposition of the Return Directive will lead to some changes in practice (e.g. granting of a voluntary departure period)

Data / statistics (2010)	
Nb of separated children returned	11 returned voluntarily
Nb of children in families returned	1824 returned through voluntary return programmes

SWEDEN

Background information	
Law(s) applicable to the return process	-The Aliens Act (2005:716) chapter 8 and 12 -Government Bill 1997/98:173
Are children returned?	-Children, unaccompanied and in families may be forcibly returned. However, there have been few cases of forced return of unaccompanied children. -Children can benefit from voluntary return schemes

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children and Children within families	-A voluntary period of 2 to 3 weeks is applied	- Extensions are decided on a case-by-case basis for specific circumstances (e.g length of stay, school attendance and family and social links).

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Guardians are appointed to unaccompanied children and the criteria are set out in the Swedish Parental Code. -The guardian is responsible for the child's personal circumstances and protecting the child's interests. -If an unaccompanied child does not have grounds for asylum in Sweden, the main focus should be on family reunification in the child's home country. -Children up to the age of 18 should be placed in specialised accommodations for children, in foster family or with relatives.	-The guardian helps the child access welfare and services. -The staff at the special accommodation centre for unaccompanied children also support the child and guardian. -The guardian assists the Swedish Migration Board in identifying durable solutions for the child, and also engages and liaises with other actors if it is in the best interests of the child or if the child expresses a desire to do so. They do not have a formal role in practice in supporting the child through the determination procedure. -An criminal record clearance is a strict requirement for being a guardian. -Guardians are paid a small fee for their work. - NGOs provide some practical assistance to children. -The Migration Board can appoint a lawyer to represent the child. -Family tracing is done by the Migration Board. The Swedish Red Cross can also help the child in finding their family -Children homes are supervised 24 hours a day.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Accommodation is provided to asylum seeking unaccompanied children by the municipality. -The local Social Welfare Board is responsible for providing a suitable living for the child -Unaccompanied children should receive appropriate information to assist them. -Family is defined as a child's parents, can also be the extended family. When someone in the child's extended family is a possible caregiver, they need to give their consent prior to departure. When the parents are the caregivers, consent is not required, even though a dialogue is held between the actors involved in the return process	-No other special accommodation is arranged as part of the pre-return phase. The child stays at their current address. -The Migration Board is responsible for informing the child about the return procedure. If the child returns voluntarily, the Migration Board meets with the child and their guardian and goes through the practical issues. -Children are still allowed access to services, for example education and health care during this phase.
Children within families	-The immediate family has the right to live together. -Family is defined as above.	-There have been cases where children were separated from a parent (e.g. parent absconds, or child is Swedish and one parent is an irregular migrant). -No special accommodation is arranged as part of the pre-return phase. The family stay at the address they have notified to the Migration Board. -Families do not receive special assistance to access services. -If the family returns voluntarily, the Migration Board meets with the family and the same procedure outlined above regarding unaccompanied children is applied.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-A child cannot be in detention for longer than 72 hours, only at last resort. This decision can only be extended once for another 72 hoursif there are specific reasons. -A child cannot be detained in a correctional institution, prison or police custody. -A public counsel is appointed to a child in detention in accordance with the law. -The decision to detain can be appealed to the Migration Court and Migration Court of Appeal	- Detention is applied if there is a departure scheduled and /or if there is a risk that the child absconds. -Since children are in detention for a short period of time, the decision is rarely altered if appealed.

		-Whilst detained children are placed in accommodation separate from adults. The common rooms are, however, shared with other detainees. -A child can be requested to report regularly as an alternative to detention.
Children within families	-A child must not be separated from both parents. They can be detained with their parents or only one parent is detained. -The detention decision of the parent is re-evaluated after 2 months. If there are still reasons for detention, the adult can be detained for another 2 months. This decision can be extended for 2 months at a time as long as there are legitimate reasons for the detention. -The detention decision can be appealed and should be reviewed promptly	-It is more common that only one parent is detained, if there is a risk of them absconding. -Families are placed in separate rooms. The common rooms are, however, shared with other detainees. -As alternative to detention, a family can be requested to report regularly, be assigned to a specific residence or required to surrender documents

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children can be returned to third country if this country accept them -Re-entry bans can be issued if a crime or immigration offense has been committed.	-The Migration Board takes responsibility for the child's return and reception in the country of return. When their parents receive them, no formal handover is required. Regarding a reception through an aunt or an uncle, the Migration Board is only seeking their consent to care for the child. -If the caregiver is an institution or an organisation in the country of origin, the transfer of care is arranged pre-departure. -Re-entry bans of up to 2 years have been applied to children for immigration offense (e.g. lying on personal situation and identity)
Children within families	-Re-entry bans can be issued if a crime or immigration offense has been committed.	-If a child is born in Sweden and a parent face deportation because of a negative asylum decision, the child can be separated from one of the parents. -Re-entry bans apply as above.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	There will be a new section of a law in the Aliens Act (2005:716) (transposition of the Return Directive) which states that a decision of expulsion of an unaccompanied child can not be enforced unless the enforcement authority has made sure that the child will be received by a family member, an appointed guardian or an appropriate reception center in the country of return or origin.
Proposed changes to practice as it impacts on the return of children:	None

Data / statistics (2010)	
Nb of unaccompanied children returned	20 and 48 with extended family (voluntary)

SWITZERLAND

Background information	
Law(s) applicable to the return process	-Federal Act on Foreign Nationals, 16.12.2005 -Asylum Act, 26.06.1998 -Asylum Ordinance I on procedural aspects, 11.08.1999 -Ordinance on the execution of expulsion of foreign nationals, 11.08.1999
Are children returned?	Unaccompanied children and children in family can be forcefully returned. However unaccompanied children are rarely returned before turning 18. They can also benefit from voluntary return schemes.

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children *And* *Children within families*	-A voluntary departure period of 7 to 30 days is set in a removal or expulsion order. -The term "independent departure" means compliance with a return decision. -The voluntary period for departure can be extended due to special circumstances (e.g. family situation, health problems length of stay, school attendance, preparation of return)	-Extensions depend on the child's age, legal situation and place of residence. Extensions have been granted for reasons related to schooling, ongoing medical treatment, as well as time needed for preparing the return.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-Cantonal authorities shall immediately appoint an adviser[485] for any unaccompanied child -In the case of asylum seekers, assistance of an advisor has to be provided for the duration of the asylum and removal procedures if no guardian or tutor has been appointed. [486] -Advisers should safeguard the child's rights and interests in all administrative and	-In many cases by the time removal procedure is initiated the child has already been appointed a legal guardian, tutor or advisor. -The advisor appointed for the asylum procedure continues to assist a child whose asylum application was rejected in proceedings related to return. -If a legal guardian cannot be appointed, a tutor or adviser is provided. -Employees of state authorities are often appointed as guardians, while the tasks of advisers are also performed by NGOs providing legal assistance to asylum seekers. -The adviser's role extends to all areas of the child's life (e.g. school attendance,

[485] "Advisor" can be used in a narrow sense as developed by the jurisprudence or as a broader term covering legal guardians and tutors as defined by the Civil Code, as well as advisors in a narrow sense.
[486] A guardian can only be appointed if it has been established that the child's parents are not or unwilling or unable to perform parental duties. A tutor represents minor if his/her parents are (temporarily) unable to exercise their parental authority.

	procedural issues. -The guardian, tutor or adviser should support the child in accessing services. -Advisers must have practical knowledge and experience in asylum and immigration procedures but no formal legal education is required. -Legal representation shall be provided by the legal guardian, tutor or adviser.	accommodation, healthcare, etc). - Assistance to access services is also provided by social workers from care institutions. -Qualification of advisers vary widely (e.g. experienced social workers trained in asylum and migration law, law students working under supervision of a lawyer) as well as of guardians. -Guardians are paid for their work. The numbers of children they have under their care vary (20 to 150 per year). -Legal representation and assistance is provided by local NGOs or by advisers from specialised state institutions. The return counselling office can be contacted for assistance. -There is no systematic approach to family tracing: Swiss representations abroad, ISS, ICRC and IOM can be asked for help. -There are special accommodation facilities for unaccompanied children in the cantons of Bern, Basel, Neuchâtel, Vaud and Zurich.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children shall have access to education, social, sporting, recreational and leisure activities. -General health care is provided during the voluntary departure period. After the deadline has lapsed, only emergency assistance is provided. -The child's advisor is responsible for the provision of information to the child on the return process.	-Access to services other than health care varies in practice depending on canton and community. -The role of the advisor varies among cantons, and often depends on the the person's commitment.
Children within families	-Family unity should be safeguarded in return decisions and process -Children shall have access to education; social, sporting, recreational and leisure activities. -General health care is provided during the voluntary departure period. After the deadline has lapsed, only emergency assistance is provided -Information on obligation and deadline to leave is provided in writing in the removal decision. Information on return assistance: leaflets, appointments with cantonal return assistance office	-Access to services other than health care varies in practice depending on canton and community. -Scope of information provided by the authorities, readiness to explain decisions etc. can vary, depending on canton and on individual officials.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-Children above 15 can be detained on the same grounds as adults.	-Some cantons do not detain unaccompanied children.
	-The best interests and needs of the child should be considered.	
	-The legality and reasonability of detention have to be assessed by the competent court within 96 hours. One month after this review, the detention order can be appealed. Further review is possible depending on type of detention.	-Unaccompanied children are detained prior to deportation or if their age is contested.
	-The child's guardian, tutor or advisor has to provide or arrange legal representation.	-The practice varies among cantons.
	-Children should be detained in special accommodation if possible.	-Children are always detained together with adults.
	-They should have the possibility to engage in leisure activities, and access to education depending on length of stay.	-Unaccompanied children usually have no access to education, but they can use leisure facilities and take part in activities available in detention centres.
	-Access to emergency health care and necessary treatment of illness should be ensured.	-Emergency and necessary medical treatment is provided.
	-Detention shall be a measure of last resort: alternatives have to be taken into account (restricted freedom of movement).	-Practice varies with regards to alternatives to detention.
Children within families	-Children above 15 can be detained on the same grounds as adults.	-Often, one of the parents (father) or sometimes both parents are detained, while the children stay with the other parents or are placed in a specialised institution. A few cases of children detained with their parents were reported. Children under 3 are detained together with mothers as it is considered to be in their best interests.
	-The legality and reasonability of detention have to be assessed by the competent court within 96 hours. One month after this review, the detention order can be appealed. Further review is possible depending on type of detention.	-Practice on reviews and legal assistance varies depending on cantons.
	-Access to legal assistance and representation regarding the legality of detention must be provided upon request.	
	-Families should be detained in separate accommodation	-Separate accommodation and access to leisure activities and depends on the cantons and detention facilities.
	-Children should be able to engage in leisure activities, and to access to education depending on the length of stay.	
	-Access to emergency health care and necessary treatment of illness should be ensured.	-Access to necessary health care provided.
	-Restriction of the freedom of movement can be applied as alternative to detention.	-Practice varies with regards to alternatives to detention.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-The authority shall ensure that the unaccompanied child will be returned to a family member, a nominated guardian or reception facilities that guarantee the protection of the child. -The situation of the child post-return, including effective care, should be assessed by the authorities prior to return. -Re-entry bans of up to 5 years are applicable to children. They can be lifted or revoked for humanitarian reasons or specific circumstances.	- Effective care and custody by the family or an institution has to be ensured in order for the return to be regarded as reasonable. - Jurisprudence has established that prior to making a return decision, authorities have to take into account a number of elements.[487] The assessment should also consider the social and economic reality in the country of origin. -Children are most often returned to their parents (but also other family members, such as grandparents, older siblings). There have been a few cases of returns to reception facilities.
Children within families	-Family unity shall be safeguarded. In case the whole family was issued a return decision and did not leave voluntarily, the family may be separated in the return process. -Re-entry bans of up to 5 years are applicable to children. They can be lifted or revoked for humanitarian reasons or specific circumstances.	

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Expected changes to practice as it impacts on the return of children:	-Practices may change following the adoption of amendments implementing the Returns Directive on 1 January 2011. -The Federation of Swiss Protestant Churches in cooperation with OSAR will monitor forced returns (initially for a 6 months pilot phase).

Noteworthy practices
-The Swiss Foundation of the International Social Services (ISS is running reintegration projects for children in West Africa (West Africa Network for the protection of children – WAN). The goal of the project is to protect and support vulnerable children on the move to reintegrate socially, educationally and professionally.

Data / statistics (2010)	
-Nb of separated children returned	214 returns (5 voluntary returns through IOM)

[487] Age, maturity, degree of dependence, relationship to persons providing care, resources, education, degree of integration (length of stay), and chances of durable reintegration in the country of origin.

UNITED KINGDOM

Background information	
Law(s) applicable to the return process	The Borders Citizenship and Immigration Act 2009 Children Act 1989 Children Act 2004
Are children returned ?	-Unaccompanied children are not subject to forced return in practice. -Children in family can be forcibly returned -All children can benefit from voluntary return schemes

Considerations surrounding the extension of the voluntary departure period		
	Legislation	**Practice**
Unaccompanied children		-Unaccompanied children are not subject to forced return in practice. -Procedures in preparation for removal may take place after the child is 17.5 years, but removal will not take place until they reach 18.
Children within families	-There is no time-limited fixed period of voluntary departure.	-Home Office documents refer to a 'few weeks' while accepting that an application and leaving plan can take longer. -After the initial discussion, families will be allowed 'at least two weeks' to decide if they want to pursue the option of voluntary return. -Removal can be delayed due to school examinations and is not normally scheduled in the 3 month period prior to exams. -Removal can also be delayed for medical reasons.

Provision of independent assistance to unaccompanied children		
	Legislation	**Practice**
Unaccompanied children	-The legislative requirement to provide a guardian is restricted to the allocation of a legal representative and a social worker to an unaccompanied child. -Under Section 11 of the Children Act 2004, a range of public bodies are expected to provide assistance. It includes most of the agencies that will have contact with children. These bodies are independent but are expected to cooperate via the Local Safeguarding Children's Board. The 2004 Act specifies the membership of the Board. -Agencies with duties under Section 11 are monitored via Local Safeguarding Children Boards (LSCB) and are subject to independent assessment and inspection.	-There is no standard 'assistance' package outlined in the UK, as the responsible local authorities caring for the child will deliver as they see fit. When unaccompanied children opt for voluntary return their 'assistant' or social worker must be involved in the process including signing the declaration of return. -Assistance will vary from agency to agency. Some may provide material support. Others (including UKBA) will be expected to identify and act on concerns about the child's welfare. Assistance is not focused solely on return issues.

	-Statutory Guidance outlines that the best interests of the child should be a primary (but not necessarily the only) concern in reaching decisions about children.	-The Asylum Process Instruction requires a best interests assessment to be conducted before a decision to return a child, (following the asylum decision has been made). At the moment this is not carried out in practice.

Safeguarding of children during the pre-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children are entitled to education, recreation and free health care. -There is no legal requirement or practice for unaccompanied children to move to special accommodation.	-Children receive education and free health care. Financial costs can restrict access to leisure and recreation.
Children within families	-Children are entitled to education and free health care. In order to receive free heath care children in families must be eligible for other forms of support -Section 55 of the Borders Act 2009 requires the UK government to have regard to the need to safeguard and promote the welfare of children, which means that any decision to separate a family must consider the resulting impact on the child's welfare. This does not mean that families will never be separated but may result in reduced numbers or court decisions in individual cases that such action should not have taken place. -The new family returns process includes provision of separate accommodation for some families. Although not compelled by law to live in particular accommodation the provision of support is dependent on their compliance.	-If families have to move then in practice it may be difficult for the children to access education, despite it being a legal requirement. -If not detained, children will usually have access to all the facilities previously open to them. Children are entitled to free health care. -Under the new proposals for the three stage removal process, family unity will generally be maintained unless it is deemed in the child's best interests – i.e. if the local authority has concerns about the ability of the parent to keep the child safe they may be separated. -A family will, to some extent, be defined by the members themselves, as dependents listed on the asylum claim will be considered to be dependents for the purposes of detention and removal. This can be wider than parents.

Promotion of the rights of children in detention		
	Legislation	**Practice**
Unaccompanied children	-There is no legislation covering the details of children in detention as guidelines outline that generally unaccompanied children should not be detained	-Policy allows the UKBA to detain unaccompanied children if they feel it is in the interests of their care and safety. In practice it rarely, if ever, happens. -Children's whose age is disputed should only be detained if appearance 'very strongly' suggests they are an adult.
Children within families	-There is no requirement to conduct a best interests assessment during this phase. -There is no statutory limit on the length of detention.	In May 2010, the UK Government committed to end the immigration detention of children and have been developing alternative processes. Guidance to UKBA requires a review at Assistant Director level as soon as a child has been detained for 24 hours. A new form of secure pre-departure accommodation will open shortly where

		families can be held for up to 72 hours, which could be extended to a maximum of a week in 'exceptional circumstances'. -Separate family accommodation exists and the pre-departure accommodation is provided in a separate facility. -The detention may be challenged via a bail application or a judicial review. -The Government is retaining the right to detain families with children in non-asylum cases at the border while a decision is made as to whether to admit them to the UK or make arrangements for immediate return.

Post-return phase		
	Legislation	**Practice**
Unaccompanied children	-Children cannot be subject to re-entry bans. -Children can be returned to reception facilities.	-In practice children have not yet been returned to reception facilities, but are returned to families or guardians.
Children within families	-Children cannot be subject to re-entry bans but their family members can.	-In the case of the removal of foreign national prisoners, families are frequently separated as part of the returns process.

Expected changes	
Proposed changes to legislation as it impacts on the return of children:	None
Proposed changes to practice as it impacts on the return of children:	The UK Government has committed to end child detention, and is in the process of introducing new ways to work with families prior to removal.

Good/best practices
-All UKBA staff at operational and case working grades are required to complete training applicable to their level of involvement with children. -Unaccompanied children are not detained in practice. -The new multi disciplinary family return panelm currently set up, will advise the UKBA on return plans to ensure the welfare of the child is taken properly into account. The Panel will look at the individual return plan for each family. -In April 2010, IOM launched a specific assisted return and reintegration programme for families and children. It has now been taken over by Refugee Action.

Data / statistics (2010)	
- Nb of separated children returned	0
- Nb of families with children returned	5555 children unaccompanied and in families returned (also forced returns) in 2009

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