



**Ad-Hoc Query on admission/residence and guardianship related provisions
for unaccompanied foreign and/or EU minors in vulnerable situations**

Requested by BE EMN NCP on 18 November 2013

Compilation produced on 16 January 2014

Responses from Belgium, Estonia, Finland, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Sweden, United Kingdom plus Norway (15 in Total)

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1. Background Information

Following a judgment of the Constitutional Court and in the course of preparing laws, Belgium is interested in collecting information from other Member States on (i) admission / residence and (ii) guardianship related provisions for **unaccompanied foreign- and (separately or not) EU- minors in vulnerable situations**. Belgium is particularly interested in (1) the type and value of instruments containing the said provisions and (2) the distinction (or not) between texts dealing with unaccompanied foreign minors in vulnerable situations on the one hand and unaccompanied EU minors in vulnerable situations on the other hand.

In Belgium, a **vulnerable situation is defined as** a situation assessed in the light of the rights recognized by the UN Convention on the Rights of the Child: that is to say, a minor who, because of his/her irregular administrative situation, unstable social situation, pregnancy, disability, weak physical or mental health, condition of victim of human trafficking or smuggling, or begging, can be in danger.

In this context, the following questions are specifically addressed:

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1. **What key instruments provide in your Member State for admission/residence and guardianship of unaccompanied foreign minors and/or EU minors in vulnerable situations?**
 - a. Please fully name and date the said instruments (translated in English)
 - b. Please specify whether or not instruments/provisions apply both to unaccompanied foreign and EU minors in vulnerable situations (as well as possible consequences)
 - c. Please compare the value (legal consideration) of instruments applying to unaccompanied foreign and EU minors in vulnerable situations
 - d. Please provide links to existing English versions
2. **Do above mentioned instruments allow your Member State to adequately deal with both unaccompanied foreign and EU minors in vulnerable situations?** Please elaborate on possible difficulties, shortcomings, etc.
3. **Are discussions on-going/changes planned in this field?**

We would very much appreciate your responses by 20 December 2013.

2. Responses¹

	Belgium	Yes	<ol style="list-style-type: none"> 1. <ol style="list-style-type: none"> a. <ul style="list-style-type: none"> • Specific provisions concerning the residence of unaccompanied foreign minors are laid down in Articles 61/14 to 61/25 (Law of 12 September 2011, Belgian Official Gazette, 28 November 2011, annex 34) of the Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners and Articles 110 <i>sexies</i> to 110 <i>undecies</i> (Royal Decree of 7 November 2011 Belgian Official Gazette, 28 November 2011) of its implementing order of 8 October 1981. • Article 3 paragraph 1 of the Guardianship Act (Programme Law of 24 December 2002, as amended by the Programme Laws of 22 December 2003 and 27 December 2004), provides for a specific guardianship for unaccompanied foreign minors established by the Guardianship Service. • Circular of 19 April 2004 (Belgian Official Gazette, 29 April 2004) relates to the provision of care by the Guardianship Service and identification of unaccompanied foreign minors.
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¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

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			<ul style="list-style-type: none"> • Circular of 23 April 2004 (as amended by Circular of 25 July 2008) relates to the identification form to be used by competent authorities to inform the Immigration Office and the Guardianship Service of the presence of an unaccompanied foreign minor at the border or on the territory. • Circular of 2 August 2007 (Belgian Official Gazette, 17 September 2007) provides for temporary care of unaccompanied EU minors in vulnerable situations. <p>b. Instruments presented above are distinct for unaccompanied foreign minors and unaccompanied EU minors in vulnerable situations. Unaccompanied EU minors aren't considered as unaccompanied foreign minors (called M.E.N.A.) and don't benefit from the guardianship system and specific residence status foreseen for unaccompanied foreign minors. Circular of 2 August 2007 provides only for the temporary care of unaccompanied EU minors in vulnerable situations who aren't registered in one of the population registers. Unaccompanied EU minors in vulnerable situations are to be reported to the Service reporting unaccompanied European minors in vulnerable situations (called SMEV) and the Immigration Office. Once identified as unaccompanied EU minors in vulnerable situations, they don't fall under the responsibility of the Guardianship Service. As for other Belgian minors, a civil or public centre for social welfare guardianship can be organized for them but the procedure is not targeted to them/to their specific needs.</p> <p>c. It appears that Laws, Royal Decrees and Circulars provide for admission/residence and guardianship for unaccompanied foreign minors while only a Circular provides for the temporary care of unaccompanied EU minors in vulnerable situations who are not registered in one of the population registers. The Constitutional Court has mentioned that there is a need to insert specific provisions for unaccompanied EU minors in vulnerable situations in Belgian law.</p> <p>d. Unfortunately English versions / translations aren't available.</p> <p>2. Belgian authorities come across unaccompanied minors in vulnerable situations who are nationals from countries of the European Economic Area (EEA), for example young Roma. As explained above, such minors aren't considered as unaccompanied foreign minors (M.E.N.A.) and don't benefit from the guardianship and specific residence status provided for this latter group in the Belgian law. This raises a series of practical difficulties (assignment of civil guardian, support etc.) as well as legal issues (in the light of Article 2 of the Convention on the Rights of the Child for example by which State Parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or</p>
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			<p>other status).</p> <p>3. Provisions relating to guardianship for unaccompanied EU minors in vulnerable situations are being drafted (to be possibly inserted in a law programme) but there is no agreement yet.</p>
	Estonia	Yes	<p>1.</p> <p>a) Provisions concerning the guardianship are laid down in Family Law Act in chapter 12 Guardianship over minor. Specific provisions concerning representation of applicant for and beneficiary of international protection who is unaccompanied minor are laid down in Act on Granting International Protection to Aliens § 61(1)</p> <p>b) The Family Law Act mentioned above applies both to unaccompanied foreign and EU minors in vulnerable situations.</p> <p>c) Act on Granting International Protection to Aliens Family Law Act</p> <p>2. As local municipalities are responsible for guardianship duties, the quality may be inconsistent, as the readiness to fulfil these duties.</p> <p>3. At the moment there aren't planned any changes in this field.</p>
	Finland	Yes	<p>1. a) Provisions regarding the reception and guardianship (representative) of unaccompanied minors are laid down in Act on the Integration of Immigrants and Reception of Asylum Seekers, Chapter 5 http://finlex.fi/en/laki/kaannokset/1999/en19990493.pdf and in Act on promotion of Integration (no English version available) Chapter 7 Sections 56-59.</p> <p>b) Provisions regarding reception of minors apply both to foreign and EU minors.</p> <p>c) N/A</p> <p>2. A representative is assigned by the District Court for all under 18-year-olds upon application by the reception centre. It is in representative's duty to ensure that the child's best interest is taken into account during the process. Any legally competent, suitable and consenting person who is able to perform the required duties correctly while taking the child's interests into account may be appointed as a representative. This has caused difficulties as the representatives are not supervised nor coordinated by a single authority. Though representative's duties are laid down in law, some representatives have approved to be unaware about their duties/mandate. Also transferring minor from one group home</p>

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			<p>to another may require appointment of a new representative. This may cause difficulties in cooperation between the representative and the minor.</p> <p>3. There are ongoing discussions with regards representatives and Finland is currently implementing the Reception Directive; national legislation on reception will be reviewed in this regard. Changes in national legislation are not currently foreseen.</p>
	France	Yes	<p>1. a) - Provisions regarding the reception and guardianship of unaccompanied minors are laid down in the Code on Entry and Residence of Foreigners and Right of asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile, = CESEDA). - Law No. 2002-305 of 4 March 2002 regarding parental authority (Loi du 4 mars 2002 relative à l'autorité parentale) - Law No. 2006-911 of 25 July 2006 on immigration and integration (Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration): - Law No. 2011-672 of 16 June 2011 on immigration, integration and nationality (Loi n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité) - Circular NOR/INT/D/05/00053/C of 2 May 2005 on admission and residence of foreign nationals who entered in France unaccompanied (Circulaire n° NOR/INT/D/05/00053/C du 2 mai 2005 relative à l'admission et au séjour des ressortissants étrangers entrés en France de manière isolée)</p> <p>According to the French law, minors are not required to be in possession of a residence permit, with the exception of certain cases (Article L.311-3 of the CESEDA).</p> <p>b) Provisions of the Code on Entry and Residence of Foreigners and Right of asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile, = CESEDA) apply to both EU and foreign unaccompanied minors, without distinction. c) See 1.b. d) The following links are only available in French:</p> <p>- Code on Entry and Residence of Foreigners and Right of asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile, = CESEDA): http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&dateTexte=20140128</p> <p>- Law No. 2002-305 of 4 March 2002 regarding parental authority (Loi du 4 mars 2002 relative à l'autorité parentale) : http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000776352&dateTexte=&categorieLien=id</p>

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			<p>- Law No. 2006-911 of 25 July 2006 on immigration and integration (Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration): http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000266495</p> <p>- Law No. 2011-672 of 16 June 2011 on immigration, integration and nationality (Loi n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité): http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024191380&categorieLien=id</p> <p>2. Several actors from different ministries are involved at local and national levels: the French <i>départements</i> regarding child welfare, the ministry of Justice regarding judicial protection for minors, the ministry of the Interior regarding the conditions of entry and residence in France.</p> <p>3. A national mechanism on protection, assessment and guidance of unaccompanied foreign minors has been set up in May 2013 in response to the increased number of unaccompanied foreign minors on the French territory. It aims at limiting the disparities between the <i>départements</i> and harmonizing practices relating to the reception and care of unaccompanied foreign minors. A protocol on protection of unaccompanied foreign minors has been signed between the Minister of Justice, the Minister of the Interior, the Minister of Social Affairs and Health, and the association of French <i>départements</i>.</p>
	<p>Hungary</p>	<p>Yes</p>	<p>1. a. The main national legislative provisions on the entry and asylum procedures, reception conditions, provided care and integration measures for unaccompanied minors are:</p> <ul style="list-style-type: none"> • Act LXXX of 2007 on Asylum (hereinafter referred to as Act on Asylum) • Govt. Decree 301 of 2007 on the implementation of the Act on Asylum • Act XXXI of 1997 on the Child Welfare and Guardianship Administration (hereinafter referred to as Child Protection Act) • Govt. Decree 149 of 1997 on Public Guardianship Authority in Child Protection and Guardianship Administration • Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence • Govt. Decree 113 of 2007 on the implementation of the Act on the Admission and Residence of Persons with the Right of Free Movement and Residence • Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals • Govt. Decree 114 of 2007 on the implementation of the Act on the Admission and Right of Residence of Third-

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			<p>Country Nationals</p> <p>b. The Child Protection Act is applicable in case of unaccompanied foreign minors and EU minors as well without any distinction on the basis of the best interest of a child. According to Article 72 § (1) of the Child Protection Act, unaccompanied third-country national and EU national minors are accommodated under interim care arrangements in children's home. The operation of the child protection system is the responsibility of the state and local municipalities.</p> <p>c. Art. 45(5) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (TCNs) states „An unaccompanied minor may be expelled only if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by state or other institutional care.” Based on nowadays practice, it may occur in alien policing procedure of the Police, i.e. in the framework of the application of readmission agreements. Expulsions cannot be ordered in case of EEA national minors except for if it serves the best interest of the child. No other difference is detected in relation to the treatment of TCN and EEA national minors in alien policing procedures.</p> <p>d. English versions are not available.</p> <p>2. According to the Child Protection Act, Hungary adequately deals with the unaccompanied foreign minors and EU minors.</p> <p>3. The National Police Headquarters (NPQ) is currently working on a general NPQ Protocol entitled ‘Establishing rules for medical examinations and age assessments in connection with certain police measures associated with illegal immigration’.</p>
	<p>Italy</p>	<p>Yes</p>	<p>1. Provisions concerning unaccompanied foreign minors are laid down both in primary (laws, law decrees, legislative decrees) and secondary laws (ministerial decrees, directives, circulars, orders). In order to better clarify the Italian regulatory framework, we must distinguish between:</p> <p>A. UNACCOMPANIED FOREIGN MINORS (NON-EU)</p> <p>Legislative Decree no. 296 of 25 July 25 1998, “Consolidated Text on Immigration” (T.U.I.), (published on the <i>Gazzetta Ufficiale</i> no. 191 of 18 August 1998, Ordinary Supplement no. 139; art. 32: on the issuing of a residence permit for unaccompanied minors; art. 33: establishing the Committee for Foreign Minors);</p> <p>Decree of the President of the Republic of 31 August 1999, implementing regulations for the T.U.I. (art. 28, on the issuing</p>

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<p>of a residence permit for minors) ; Decree of the President of the Council of Ministers no. 535 of 9 December 1999, on the tasks of the Committee for Foreign Minors. Art.1, par. 2, in particular, provides the definition of “unaccompanied minor”; Law Decree no. 95 of 6 July 2012, converted into law no. 135/2012; art. 12, par. 20, which transferred the tasks - previously assigned to the Committee for Foreign Minors - to the Central Directorate for Immigration and Asylum Policies of the Ministry of Labour and Social Policies;</p> <p>Circulars of the Ministry of Interior of 23 December 1999, 9 July 2007 and 13 February 2009, all containing provisions for the identification and admission/residence of foreign minors;</p> <p>B. UNACCOMPANIED FOREIGN MINORS (NON-EU) REQUESTING ASYLUM Legislative Decree no. 140 of 30 May 2005, implementing Directive 2003/9/EU; art. 8 of the Directive contains provisions on minimum standards for the reception of asylum seekers in Member States; art. 8 of the Legislative Decree contains provisions on minimum standards for the reception of unaccompanied foreign minors requesting asylum; Circular of the Ministry of Interior of 11 April 2007 on unaccompanied foreign minors requesting asylum;</p> <p>C. UNACCOMPANIED MINORS (EU) Decree of the Ministry of Interior of 8 October 2007, establishing a Central Joint Committee for the protection of EU unaccompanied minors and the implementation of the Bilateral Agreement between Romania and Italy for the protection of unaccompanied Romanian minors;</p> <p>Bilateral agreement between Romania and Italy, signed on 9 June 2008, on the cooperation for the protection of Romanian minors, either unaccompanied or in a vulnerable situation, living in Italy.</p> <p>Directive of the Ministry of Interior of 20 January 2009; Joint Circular of the Ministry of Interior and the Ministry of Justice of June 9, 2009;</p> <p>D. UNACCOMPANIED FOREIGN MINORS LANDED IN ITALY DUE TO THE NORTH-AFRICAN EMERGENCY Order of the President of the Council of Ministers no. 3933 of 13 April 2011 Decree of the President of the Council of Ministers – Delegate Commissioner no. 2436 of 18 May 2011.</p>

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			<p>2. Since the Central Directorate for Immigration and Asylum Policies of the Ministry of Labour has no authority on EU unaccompanied minors, and in consideration of the high number of Romanian minors in the Italian territory (either unaccompanied or in vulnerable situations) on June 9, 2008 a bilateral agreement between Romania and Italy was finalized and signed, on the cooperation for the protection of Romanian minors, either unaccompanied or in vulnerable situations, living in Italy. This agreement, which was created based on the provisions of the Convention on the Rights of the Child, adopted by the UN General Assembly of 20 November 1989, as well as on the Directive 2004/38/EU of the European Parliament and of the Council of 29 April 2004 ‘on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States’, foresees that the Parties collaborate in order to improve the conditions of Romanian unaccompanied minors or in vulnerable conditions in the territory of the Italian Republic, and to prevent such situations.</p> <p>Article 1 of this agreement states that: “ (...) for unaccompanied minor, we intend a Romanian citizen minor of age (i.e. below 18 years of age) who entered in Italy without his/her parents, legal guardian or legal representative, according to the Romanian law. Provisions of this agreement refer also to minors who find themselves in this situation after entering the Italian territory, as well as those Romanian minors who are not receiving assistance by their parents, legal guardian or appointed legal representative due to carelessness or gross negligence, detected and evaluated as such by the competent Italian authority when a risk situation manifests itself so as to jeopardize the minors’ physical, psychological moral or social development.”</p> <p>The Agreement aims at identifying unaccompanied Romanian minors present in the territory of the Italian Republic, adopting the necessary measures of protection and social reintegration, and facilitating their return to Romania. To implement this Agreement, a Central Joint Committee for the protection of EU unaccompanied minors has been established at the Ministry of Interior. This Committee, by means of certain procedures agreed upon with all the Italian institutions involved, has the duty to receive the information about the identification of the minor and to contact the Romanian authorities, both in Italy and in Romania, to inform them of the presence of the minor and the possible need of further steps for a positive identification. If, after the medical examinations and/or the investigation carried out in Italy, the subject is found not to be of minor age, the Central Joint Committee is no longer responsible for him/her and the procedures become those relating to adults.</p> <p>If, after the investigation carried out by the Romanian authorities, it is evident that the minor is not Romanian, the Central Joint Committee will inform the care facility who is taking care of the minor, and the latter will be assisted according to provisions related to unaccompanied minors of other nationalities.</p>
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	Latvia	Yes	<p>1) What key instruments provide in your Member State for admission/residence and guardianship of unaccompanied foreign minors and/or EU minors in vulnerable situations?</p> <p>a. Please fully name and date the said instruments (translated in English)</p> <p>The admission, residence and guardianship of UAM is regulated by the following legal acts:</p> <ol style="list-style-type: none"> i. Regulation No.707 on Procedures by which Alien Minors Enter and Reside in the Republic of Latvia Unaccompanied by Parents or Guardians adopted on 16 April 2003 by the Cabinet of Ministers; ii. Regulation No.675 on the Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members adopted on 30 June 2011 by the Cabinet of Ministers; iii. Regulation No. 454 “Regulations Regarding Forced Removal of Third-country Nationals, Departure Document and the Issue Thereof” adopted on 21 June 2011 by the Cabinet of Ministers; iv. Immigration Law, adopted on October 31, 2002. v. Law on Orphan's Courts, adopted on June 22, 2006 – Article 27. <p>b. Please specify whether or not instruments/provisions apply both to unaccompanied foreign and EU minors in vulnerable situations (as well as possible consequences)</p> <ol style="list-style-type: none"> i. Regulation No.707 on Procedures by which Alien Minors Enter and Reside in the Republic of Latvia Unaccompanied by Parents or Guardians adopted on 16 April 2003 by the Cabinet of Ministers – apply both to foreign nationals and EU citizens; ii. Regulation No.675 on the Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members adopted on 30 June 2011 by the Cabinet of Ministers – apply to EU citizens; iii. Regulation No. 454 “Regulations Regarding Forced Removal of Third-country Nationals, Departure Document and the Issue Thereof” adopted on 21 June 2011 by the Cabinet of Ministers - apply to foreign nationals; iv. Immigration Law, adopted on October 31, 2002.- apply both to foreign nationals and EU citizens; v. Law on Orphan's Courts, adopted on June 22, 2006 – apply both to foreign nationals and EU citizens. <p>c. Please compare the value (legal consideration) of instruments applying to unaccompanied foreign and EU minors in vulnerable situations</p> <p>Provisions concerning unaccompanied foreign and EU minors are stipulated in laws and regulations. There are no other instruments from legal point of view applied to the unaccompanied foreign and EU minors in vulnerable situations; there are also no differences in issues of providing the rights of accommodation, guardianship, education, healthcare and basic needs.</p>
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			<p>d. Please provide links to existing English versions</p> <ol style="list-style-type: none"> 1) Regulation No.707 on Procedures by which Alien Minors Enter and Reside in the Republic of Latvia Unaccompanied by Parents or Guardians adopted on 16 April 2003 by the Cabinet of Ministers - http://www.vvc.gov.lv/export/sites/default/docs/LRTA/MK_Noteikumi/Cab_Reg_No_707_-_Procedures_..._Alien_Minors_Enter_etc_.doc 2) Regulation No.675 on the Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members adopted on 30 June 2011 by the Cabinet of Ministers - http://www.vvc.gov.lv/export/sites/default/docs/LRTA/MK_Noteikumi/Cab_Reg_No_675_-_Entry_and_Residence_in_the_Republic_of_Latvia.doc 3) Regulation No. 454 “Regulations Regarding Forced Removal of Third-country Nationals, Departure Document and the Issue Thereof” adopted on 21 June 2011 by the Cabinet of Ministers - http://www.vvc.gov.lv/export/sites/default/docs/LRTA/MK_Noteikumi/Cab_Reg_No_454_-_Forced_Removal_of_Third-country_Nationals.doc 4) Immigration Law - http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Immigration_Law.doc 5) Law On Orphan's Courts”, adopted in June 22, 2006 http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Law_On_Orphanxs_Courts.doc <p>2) Do above mentioned instruments allow your Member State to adequately deal with both unaccompanied foreign and EU minors in vulnerable situations? Please elaborate on possible difficulties, shortcomings, etc.</p> <p>Currently the practice of the Republic of Latvia in field of dealing with UAM foreign nationals and EU minors in vulnerable situations corresponds to the procedures mentioned in the above-mentioned instruments. In case of necessity and depending on the practice the legal instruments will be improved.</p> <p>3) Are discussions on-going/changes planned in this field?</p> <p>There is no information on planned changes in this matter.</p>
	Lithuania	Yes	<ol style="list-style-type: none"> 1. Law on the Legal Status of Aliens. <ol style="list-style-type: none"> a. Law on the Legal Status of Alien, adopted in 2004. At the moment, the working group composed of experts from the Ministry of Labour and social affairs, Ministry of the Interior and Ministry of Health is drafting an order to regulate the situation of third country national minors who do not lodge asylum applications.

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			<ul style="list-style-type: none"> b. The Law regulates the situation of both groups: unaccompanied third country minors and EU minors. c. The law regulates the main legal aspects of both groups - accommodation, social care, education, guardianship. For third country nationals other aspects are also regulated – asylum procedure and return. d. There is no official translation of the document into English. <ul style="list-style-type: none"> 2. At the moment Lithuania deals with the issue of third country national minors who do not lodge an application for asylum. The situation of these minors is not regulated in the law therefore problems arise with respect of guardians, accommodation and social care. 3. A working group is established to propose legal act regulating the situation of third country national minors who do not lodge an application for asylum.
	<p>Luxembourg</p>	<p>Yes</p>	<p>1.a. In Luxembourg specific provisions concerning the application for international protection and residence of an unaccompanied minor are established in the modified Law of 5 May 2006 (Asylum Law).</p> <p>Article 12 establishes that once the unaccompanied minor applies for international protection an ad-hoc administrator will be appointed as soon as possible. This ad-hoc administrator will assist him during all the procedure. However, the ad-hoc administrator has not any other function. In practice, a guardian is appointed (either a member of the Red Cross or of Caritas depending on the age of the minor) to represent him in everyday life.</p> <p>Article 52 (1) indicates that once the international protection is granted to an unaccompanied minor, the representation of interest of the minor is guaranteed by an ad-hoc administrator or if necessary, by an organisation, which takes care of minors and of their well-being, or by any other appropriate kind of representation. During the implementation of the Law of 5 May 2006 the needs of the unaccompanied minor must be taken into consideration by the appointed ad-hoc administrator or representative (article 52 (2)).</p> <p>Also article 69 indicates that for the unaccompanied minor benefiting from a temporary protection, the legal representation and lodging is regulated by the legislation on protection of the youth (See article 11 of the Law of 10 August 1992 - Youth Safety Act) which applies to all minors independent of their nationality.</p> <p>Article 103 of the modified Law of 29 August 2008 on free movement of persons and immigration establishes that no</p>

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		<p>return decision can be taken against any minor who is not accompanied by his/her legal representative, except in cases where the decisions are based on imperative grounds of public security (unless the expulsion is necessary for the best interests of the child). The unaccompanied minor is assisted by an administrator ad-hoc during the administrative and judicial proceedings on entry and stay on the territory.</p> <p>Article 125bis of the modified Law of 29 August 2008 indicates that in case of postponement of removal, the special needs of an unaccompanied minor must be taken into consideration.</p> <p>Also articles 388 to 475 of the Civil Code regulate the institutions of guardianship (tutorship) and legal administrator for abandoned children in general.</p> <p>1.b. See 1.a. The provisions of the modified Law of 5 May 2006 consider as unaccompanied minors, third-country nationals or stateless persons aged less than 18 years reaching the territory without being accompanied by an adult responsible for them, by law or custom, and if they are not effectively in the care of such a person. This term covers minors abandoned after reaching the territory.</p> <p>The provisions of the Law of 29 August 2008 can apply to TCN as well as to EU citizens. This law does not define expressly the term “foreign unaccompanied minors”.</p> <p>The provisions of the Civil Code and the Youth Safety Act apply to all children residing in the territory.</p> <p>1.c. See 1.b.</p> <p>1.d. Unfortunately English versions / translations aren't available.</p> <p>2. Luxembourg has not often been confronted with the issue of unaccompanied foreign or EU minors in vulnerable situations. Nevertheless, as the Civil Code and the Youth Safety Acts are general laws they can be applied to this type of situations.</p> <p>3. No. There are for the moment no changes in this field. The Consultative Commission on Human Rights in its legal opinion on the bill n°6507 had pointed out certain problems of the existing legislation in regards with unaccompanied minors such as: the duration for naming an ad-hoc administrator as well as a guardian (tutor), the problem to determine</p>
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			the age of the international protection applicants confronted by unaccompanied minors and the powers of the ad-hoc administrator and guardian (tutor).
	Netherlands	Yes	<p>a. The Aliens Act; the Aliens Decree and the Aliens Act Implementation Guidelines.</p> <p>b. Instruments and Provisions apply to both EU and foreign unaccompanied Minors who apply for Asylum in The Netherlands.</p> <p>c. The legal consideration will be the same to EU and foreign unaccompanied minors.</p> <p>d. There are no English versions / translations available.</p> <p>2 Yes. There are no asylum requests from unaccompanied minors from other EU member states. There would be a difference in the possibilities of tracing family members and/or accommodating adequate Reception facilities in an EU country of origin. Most probably this will be more successful and unaccompanied minors from EU member states will not be granted with a permit to stay, because they can return to their country of origin.</p> <p>3. No.</p>
	Poland	Yes	<p>1. a) Act on foreigners of 13 June 2003: According to art. 53 point 1 § 8 the residence permit for a fixed period shall be granted to a foreigner who is a minor, born in the territory of the Republic of Poland, child of a foreigner and resides on that territory without care. Art. 74 point 1 defines conditions of issue of a Polish identity document to a minor Art. 94 sets conditions of expulsion of a minor, including unaccompanied one. Art. 101a refers to the placement of an unaccompanied minor in the custodian-educational centre. Art. 115 point 3 sets conditions of placement of an unaccompanied minor in a guarded centre. Art. 117 defines rights of foreigners, including unaccompanied minors, placed in guarded centres.</p> <p>Act on 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland Division II Chapter 4 describes proceeding with participation of unaccompanied minors, foreigners whose psychophysical state allows presuming that they have been victims of violence or foreigners with disabilities.</p> <p>Act of 12 March 2004 on social assistance Art. 91a stipulates on access of unaccompanied minors to social assistance</p> <p>Act of 9 June 2011 on family assistance and foster care system</p> <p>Act of 7 September 1991 on the Educational System Art. 94a stipulates on access of foreigners to Polish educational system (school education is compulsory independently of the child legal status)</p>

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			<p>b) Act on foreigners and Act on granting protection to foreigners within the territory of the Republic of Poland do not apply to EU minors. There is no legislations in Poland distinct for unaccompanied EU minors in vulnerable situations; in such cases, when the diplomatic/consular representations are not willing to take responsibility for the children, the Convention on the Rights of the Child is applied. The Convention is implemented into Polish national legislation and thus the EU children are treated in the same manner that Polish children.</p> <p>c) Act on foreigners and Act granting protection to foreigners within the territory of the Republic of Poland provide for admission to the territory of Poland, while other acts mentioned above provide for access to social services.</p> <p>d) Act on foreigners: http://www.udsc.gov.pl/files/old_file/44e9bdd07d1b8_1-44043372d9359_cudzoziemcy.pdf Act on granting protection to foreigners within the territory of the Republic of Poland: http://www.udsc.gov.pl/files/prawo/ACT%20of%20June%2013%202003%20(3).doc</p> <p>2. The existing legislation seems to be sufficient. There are problems with establishing the exact number of unaccompanied minors residing in Poland and without this information it is difficult to develop more tailored solutions. There is lack of comprehensive regulation of the situation of unaccompanied minors similar to that concerning children undergoing the refugee procedure. There is need for specialised facilities for unaccompanied foreign minors and more specialised trainings for people working with such children.</p> <p>3. No changes are planned in this field.</p>
	Slovak Republic	Yes	<p>1. a) Legislation concerning the rights of the child in general is represented in the <i>Constitution of the Slovak Republic – Act no. 460/1992 Coll. as amended and Act no. 36/2005 Coll. on Family and on the amendment of certain acts, as amended</i>. The legal system of the Slovak Republic guarantees the protection of the rights and interests of all children equally without bias concerning gender, nationality, skin colour or citizenship. This means that it provides unaccompanied foreign minors and EU minors in vulnerable situations with the same level of socio-legal protection as children with Slovak citizenship and enforces the constitutional principle of equal status for all children who need such protection.</p> <p>The main piece of legislation related to the care for unaccompanied foreign minors and EU minors in vulnerable situations is the <i>Act no. 305/2005 Coll. on Socio-Legal Protection of Children and Social Guardianship and on the amendment of certain acts, as amended</i>. According to this Act the socio-legal protection and social guardianship measures are undertaken for children who have on the territory of the Slovak Republic permanent residence, temporary residence, tolerated residence (i.e.</p>

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			<p>usual residence) or for a child whose usual residence is not possible to establish and also for a child who is not a citizen of the Slovak Republic and is on the territory of the SR without parent or other adult person to whom he/she could be referred into care. The rights according to this Act relate to everyone in line with the equal treatment policy based on which all forms of discrimination for reasons such as gender, religion, family status, skin colour, language, political or other opinions, trade union activities, nationality or social roots, health disability, age, property or other status is prohibited.</p> <p>The issue of foreign minors is regulated also by the:</p> <ul style="list-style-type: none"> i. Act no. 404/2011 Coll. on Residence of Aliens and on the amendment of certain acts, as amended ii. Act no. 480/2002 Coll. on Asylum and on the amendment of certain acts, as amended for those who decide to apply for asylum <p>b) See the response to question 1.</p> <p>c) NA See the response to question 1.</p> <p>d) Act on Residence of Aliens Act on Asylum</p> <p>Act on Socio-Legal Protection of Children and Social Guardianship is not available in English.</p> <p>2. Yes. The Act on Socio-Legal Protection of Children and Social Guardianship enable to provide the child with the sufficient assistance and take such measures which are in line with the best interest of child based on the Convention on Rights of Children.</p> <p>3. In the National Action Plan on Children for years 2013 – 2017 are two following tasks: - focus on the parents search or search of other persons or relatives responsible for the upbringing of the UAMs in order to merge the UAM with the family - protection of children in the process of application for international protection (the aim is to unify the placement of UAMs and minors applying for international protection in one institution).</p>
	<p>Sweden</p>	<p>Yes</p>	<p>1 a, The main instrument of legislation is the Aliens' Act of the 29th of September 2005, followed by the law on reception of asylum seekers and others of the 30th of March 1994 and specifically on guardianship, the law on trustees for unaccompanied minors of the 9th of June 2005. Housing and the general welfare of the child is regulated in the</p>

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			<p>Social Services Act of the 7th of June 2001.</p> <p>b, The instruments above apply both to unaccompanied minors from the third countries and to EU minors.</p> <p>c, When it comes to UAM, either from 3rd countries or from the EU, the Swedish Migration Board handles the asylum application and the return of these children. They are placed in a local municipality during the processing time where their general welfare and needs are looked after.</p> <p>2, Yes, since legislation does not differentiate between unaccompanied minors from third countries and those from within the EU, there is no problem in handling UAM and EU minors.</p> <p>3, No.</p> <p>4, Aliens' Act: http://www.government.se/sb/d/5805/a/66122 I have not been able to find English versions of the other instruments but they might be available from the Ministry of Justice. Let me know if you want them in English and I will see what I can do.</p>
	<p>United Kingdom</p>	<p>Yes</p>	<p>1. What key instruments provide in your Member State for admission/residence and guardianship of unaccompanied foreign minors and/or EU minors in vulnerable situations?</p> <p>a. Please fully name and date the said instruments (translated in English)</p> <p>Arriving unaccompanied asylum seeking children (UASCs) are remitted to the care of Local Authorities under the Children's Act 1989. Local Authorities in England and Wales have a duty under Sections 17 and 20 of the Children Act 1989 (s22 & s93 of the Children (Scotland) Act 1995 in Scotland) to provide support for unaccompanied asylum seeking children.</p> <p>Section 17 places a general duty on every Local Authority to safeguard and promote the welfare of children in need within their area by providing services appropriate to those children's needs.</p> <p>Section 20 requires every Local Authority to provide accommodation for children in need within their area who require accommodation if:</p> <ul style="list-style-type: none"> • there is no person who has parental responsibility for them; • the children have been lost or abandoned; or • the person who has been caring for them has not been able to provide them with suitable accommodation.

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			<p>The local authority's assessment of the individual's needs will be the basis on which the authority will provide them with suitable accommodation and related support. In England, this assessment and support will be the responsibility of the Children's Services departments within a Local Authority and in Wales and Scotland, within the Local Authorities' Social Services departments.</p> <p>b. Please specify whether or not instruments/provisions apply both to unaccompanied foreign and EU minors in vulnerable situations (as well as possible consequences)</p> <p>The provisions of the Children's Act apply to all children.</p> <p>c. Please compare the value (legal consideration) of instruments applying to unaccompanied foreign and EU minors in vulnerable situations</p> <p>The primary legal instrument is the Children's Act. The Children's Act comes under the responsibility of the Department For Education.</p> <p>d. Please provide links to existing English versions</p> <p>Children Act 1989</p> <p>2. Do above mentioned instruments allow your Member State to adequately deal with both unaccompanied foreign and EU minors in vulnerable situations? Please elaborate on possible difficulties, shortcomings, etc.</p> <p>Yes, the Children's Act does deal adequately with minors in vulnerable situations.</p> <p>3. Are discussions on-going/changes planned in this field?</p> <p>None that we are aware of.</p>
	<p>Norway</p>	<p>Yes</p>	<p>1. Cited acts and regulations:</p> <p>Immigration Act: Act of 15 May 2008 on the entry of foreign Nationals into the Kingdom of Norway and their stay in the Realm https://www.udiregelverk.no/no/rettskilder/sentrale/utlendingsloven-engelsk/</p> <p>Immigration Regulations: immigration Regulations of 15 October 2009 on the entry of Foreign Nationals into the Kingdom of Norway and their stay in the Realm http://www.udiregelverk.no/no/rettskilder/sentrale/utlendingsforskriften-engelsk/</p>

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		<p>Child Welfare Act: Act of 17 July 1992 No. 100 Relating to Child Welfare Services http://www.regjeringen.no/upload/BLD/Lover/Barnevernloven%20engelsk%2001%2001%202010.pdf Council of Europe Convention on Action against Trafficking in Human Beings</p> <p>In addition we can add that Norway adopted a legislative measure in 2012: a new law on guardianship for unaccompanied minors looking for asylum. Its aims to strengthen the legal position of unaccompanied minors, by clarifying the tasks of their representatives/guardians and ensuring a more consistent practice for recruiting, training and supervising such representatives/guardians. Unfortunately there is no English version of the Act on Guardianship.</p> <p><i>There are no specific provisions or legislation that are directed towards the needs of vulnerable children.</i> We do of course, respect international obligations such as The UN Convention on the Rights of the Child, Convention for the Protection of Human Rights and Fundamental Freedoms etc.</p> <p>The Asylum department of the Norwegian Directorate of Immigration has established internal guidelines for identifying vulnerable persons concerning potential victims of human trafficking, genital mutilation and forced marriage; all matters that are addressed during asylum procedures.</p> <p><i>2. Above mentioned instruments do not distinguish between unaccompanied EU minors or unaccompanied minors from anywhere else. The obligations of the Norwegian Child Welfare Services apply to all children who are located within the Norwegian jurisdiction, regardless of their (legal) status.</i></p> <p>3. There is an on-going debate in Norway regarding these issues, and we are currently working with these legal matters. The Asylum department within the Norwegian Directorate of Immigration (UDI) is also further developing our internal guidelines –circulars- on identifying and supporting vulnerable persons.</p>
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