Implementing the Core Standards for guardians of separated children in Europe
Country Assessment: Belgium, 2013
Katja Fournier

Co-founded by the European Union
Implementing the Core Standards for guardians of Separated Children in Europe

Country Assessment: Belgium

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Preface

I would like to thank the guardians who took the time to reflect together on the implementation of the standards and share their expertise. Their commitment to the well-being and future of the separated children is a daily inspiration. I'm very grateful to all the youngsters for sharing their experience and hopes for the future. You have a lot to teach us, us the adults. Furthermore I would thank from the bottom of my heart my colleagues and all the other professionals who do everything to make those children reach to fullest of their potential despite the hard circumstances and sometimes institutional obstacles. A special thanks to Samantha Arnold, Jurriaan de Jong, Martine Goeman, Carla Van Os and Laetitia Van der Vennet for their useful and constructive feedback. Hartelijk dank! Milles merci!

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Disclaimer

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ATF-MENA: (Association des tuteurs francophones): is the organisation of the French-speaking guardians who aim to share good practice and exchange information between them.

BIC: Best Interest of the Child

CRC: Convention on the Rights of the Child

Comité Bijzondere Jeugdzorg/Service d’aide à la jeunesse: Youth welfare services (Flemish community, French community)

CGRA-CGVS: Commissioner General for Refugees and Statelessness

Child Focus: Child Focus is the common name of the European Centre for Missing and Sexually Exploited Children

CPAS/OCMW: Social Welfare Agencies on local level

ERPUM: European Return Platform for Unaccompanied Minors

Fedasil: Federal Agency for the reception of asylum seekers

IOM: International Organisation for Migration

Office des étrangers/Dienst Vreemdelingenzaken: Foreigner’s Office (FO)

Gardanto: is the organisation of the Flemisch-speaking guardians who aim to share good practice and exchange information between them. (Gardanto means ‘guardian’ in Esperanto).

GS: Guardianship Service

Maia vzw: (Maatschappelijke Initiatieven te ontwikkelen en te ondersteunen, ten dienste van één voor voogden van Niet -Begeleide Minderjarige Vreemdelingen -Provincie Antwerpen): Develop social intitiatives to support guardians of separated children

Oliv: is the organisation of the Flemish-speaking guardians who aim to share good practice and exchange information between them in the provinces of Limburg and Vlaams Brabant.

SC: Separated child/children

SCEP: Separated Children in Europe Programme

SPF Justice/FOD Justitie: Justice Federal Public Service (FPS) (the Ministry of Justice)

Vade-mecum: Handbook for guardians
In December 2009 the first ‘Closing a protection gap for separated children in Europe’ project started, financed by the EU Daphne III Programme, as a response to the differences in the level of protection separated children receive in European countries. There are approximately 100,000 separated children in Europe. Separated children have the right to a guardian who protects their rights and best interests. Not only do separated children have to live without their parents in a country they don’t know, but in some countries, they also run the risk of being detained because of their residence status or run the risk of being exploited by traffickers. Separated children can face risks in their country of origin, during their journey and in the host country. The type of protection and care a separated child receives from a guardian depends upon the country which the separated child has (often randomly) entered and it can differ depending on whether or not a separated child asks for asylum.

These differences are not acceptable. All European countries have ratified the Convention on the Rights of the Child (CRC) and have the obligation to take into account the special needs of separated children. Proper guardianship systems are essential to assist in finding a durable solution for separated children, whether that be integration into the host country, transfer to another country or return to the country of origin.

The first ‘Closing a protection gap for separated children in Europe’ project aimed to harmonise the protection separated children receive from their guardian by focusing on the qualifications of the guardian. The mission of this project was to improve the situation for separated children by means of: closing a protection gap for separated children in Europe by developing core standards on qualifications of guardians based on the views of separated children in relation to their rights according to the Convention on the Rights of the Child. Separated children in Europe should get the guardian they are entitled to irrespective of which EU country they entered. The assumption is that when all guardians have sufficient qualifications and mandates to work in the best interest of the child, the level of protection children receive in the different European countries will harmonize.

From December 2009 until December 2011, the project partners developed the Core Standards for guardians of separated children in Europe based on interviews and workshops with 127 separated and former separated children, 68 guardians and 39 other experts (for instance; foster parents, lawyers, social workers).

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1 In this country assessment the term separated child is used, as described in the Statement of Good Practice of the Separated Children in Europe Programme: separated children are under eighteen years of age, outside their country of origin, and separated from both parents, or their previous legal, or customary primary caregiver. Some authorities and organizations use a different terminology: the unaccompanied minor asylum seeker or unaccompanied minor foreigner.

2 In 2011 over 12,000 unaccompanied children seeking asylum entered the EU (Data from the Action Plan on Unaccompanied Minors (2010-2014), European Commission, COM(2010) 213).

3 See also: United Nations Committee on the Rights of the Child, General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin (2005), CRC/GC/2005/6, paragraph 3.
The views have been measured against the Convention on the Rights of the Child (CRC), General comment No. 6 (treatment of unaccompanied and separated children outside their country of origin) and General comment No. 12 (the Right of the child to be heard) of the Committee on the Rights of the Child and the Statement of Good Practice of the Separated Children in Europe Programme. The Core Standards for guardians have been inspired by the Quality4Children standards for Out-of-Home Child Care in Europe. 54 members of the national advisory councils in the eight research countries were consulted and shared their expertise.

The Core Standards and indicators are written from the perspective of separated children and guardians. The Standards reflect the ideal standard of care for separated children and are formulated to address the role of guardians. The Core Standards should empower all guardians in Europe to work towards common goals and they should inspire State authorities to provide the guardian with the work environment and mandates needed to meet the Core Standards. The first six Core Standards focus on the role and responsibilities of the guardian. Core Standards seven, eight and nine focus on the relationship between the guardian and the separated child. Core Standard ten addresses the professional knowledge and competences of the guardian.

Core Standards as inspiration and goal for guardians

The Core Standards are a tool for guardians in practice. The Core Standards aim to inspire the guardians in their daily work and they offer a goal to work towards. The project partners, however, recognize the challenges a guardian faces. Due to the current guardianship systems in some countries there are a lot of hurdles to overcome for guardians in order to successfully implement the Core Standards. Guardians with a very high caseload are also confronted with multiple dilemmas. The guardians in these countries should not get frustrated when they cannot fulfill all the Standards immediately. Guardians can incorporate the Core Standards as a guideline for their work irrespective of the guardianship system and legislative framework. The Core Standards can be used as a checklist to monitor their current practice. Where there are Core Standards that are unfulfilled the guardian should feel empowered to advocate for change.

Core Standards as inspiration and goal for State authorities and guardianship institutions

The enjoyment of rights stipulated in the CRC is not limited to children who are citizens of a State party but must be available to all children, including asylum-seeking, refugee and migrant children, irrespective of their nationality, immigration status or statelessness. The positive aspect of protection obligations for separated children also extends to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage.

Closing a protection gap 2.0: Taking the next steps

“The report Closing a protection gap provides core standards that should inspire policies at national and European level in order to improve the protection of separated children in our continent. It also highlights the need for harmonizing the quality of guardianship systems all over Europe and within countries, where huge differences still persist.

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4 Available at: http://www.separated-children-europe-programme.org/.
7 See also: United Nations Committee on the Rights of the Child, General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin (2005), CRC/GC/2005/6, paragraph 13.
The goals set for guardians and policy makers are ambitious, but not impossible to attain. It is all about applying systematically these standards in all policies on separated children and using them holistically”. From the preface of the report ‘Core Standards for guardians of separated children in Europe: Goals for guardians and authorities’ by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg.

“Now we are going to promote the standards for guardians everywhere when it comes to separated children. However, more needs to be done. There have to be European rules on the qualifications of guardians”. Member of the European Parliament at the launch of the Core Standards for guardians of separated children in Europe, November 2011 in Brussels.

These quotes highlight the support and the need to increase the awareness, implementation and extend the scope of the Core Standards for guardians of separated children in Europe developed in the project ‘Closing a protection gap for separated children in Europe’.

From December 2012 until December 2014 nine project partners\(^8\) will work on the project ‘Closing a Protection Gap 2.0: Implementing the Core Standards for guardians of separated children in Europe in practice, feeding into policy and legislative instruments on guardianship’.

The objective of this large-scale and ground breaking follow up project is to take the next important steps to further close the protection gap by working with the Core Standards in practice and taking the work further on towards policy and legislative initiatives at the national and the European level. The overall aim of this endeavour is to provide the strongly needed framework for responsibilities of guardianship systems in order for all separated children in Europe to get the protection to which they are entitled.

The specific objectives of the project are:

1. Raising awareness of the Core Standards, tailor them to the situation in every EU country participating in the project and empower guardians;

2. The national implementation of the Core Standards in practice and advocate for provisions in national legislation;

3. The development of a European initiative/instrument for harmonisation of appropriate guardianship inspired by the Core Standards;

4. Enlarging the scope of the Core Standards for guardians of separated children in Europe in nine other EU countries.

In the country assessments the nine project partners analyze the implementation of the Core Standards for guardians of separated children in the various countries based on the input from workshops with separated children and guardians and a desk research of the existing laws, policies and methodologies. Promising practices as well as challenges will be discussed in every country assessment. The objective of the country assessment is to get a status quo picture in relation to every Core Standard.

\(^8\) The project partners are: Defence for Children-ECPAT the Netherlands (coordinator), Asylkoordination Österreich, Bureau d’accueil et de défense des jeunes (Service Droit des Jeunes), HFC “Hope For Children” UNCRC Policy Center, Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.v., Irish Refugee Council Ltd., Defence for Children International Italia, Conselho Português para os Refugiados, Slovenska filantropija.
An important source for the country assessments are the outcomes from the workshops with separated children and guardians. For the workshops a former separated child acted as an advisor. Because the former separated child is not dependent on his or her guardian anymore he or she can speak freely and provide essential suggestions to the implementation of the Core Standards in practice. Defence for Children- the Netherlands worked with Foundation Alexander (an organization specialized in the participation of children) to draft a programme for the workshop with separated children that could be used as a guideline by all project partners. Every project partner involved at least five separated children who still have a guardian. Their participation is essential for the sustainability of the Core Standards. The children were actively involved and asked to give their opinion on the implementation of the Core Standards, as well as think about tools guardians could use (for instance child-friendly information on their rights) and to provide suggestions to implement the Core Standards.

During a training session for guardians (which focused on Core Standards 1 to 6 because they specify the responsibilities of the guardian), the project partners worked together with the guardians on practical tools and ideas for the implementation of the Core Standards in practice.

During a project partners meeting in Nicosia in Cyprus from the 26th until the 28th of June 2013 the preliminary results of the country assessments were discussed and guidelines to continue the work on national level were established.

**More to come**

The country assessments are the basis for the development of a toolkit for practitioners to work on the implementation of the Core Standards for guardians in practice. National and European changes in policy and legislation will be advocated during (expert) meetings. Consultations with Members of the European Parliament, the Council of Europe and (international) stakeholders will lead to a draft European initiative/instrument. To enlarge the scope of the project new partners are included in this follow up project and nine organizations from other countries will be trained. All information about the project will be made available on the project website.

**NATIONAL METHODOLOGY**

**Desk research**

The goal of this report is to assess whether and to what degree the core standards on guardianship are implemented in legislation, policy and practice in Belgium. This research will also help to identify promising practice and tools for guardians to implement the core standards. In order to do so, extensive desk research to collect relevant studies, recommendations, case-law and parliamentary questions has been done. To complete the information it was necessary to organize several focus-groups with guardians and separated children. We also used the feedback from trainings organized at the end of the first project on the core standards: “Closing a protection gap: core standards for guardians of separated children”. 55 guardians and other professionals had participated in the trainings.

**Focus-groups with the guardians**

Two full day focus-groups with guardians were organized. The idea was to have small-scale focus-groups with the French speaking guardians on one side and the Dutch speaking guardians on the other. Nine guardians actively participated in total.

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⁹ The 6th and 11th of June 2013.
First they were asked to describe the qualifications and competencies that a guardian should have according to them. Then they were asked to organise the standards from “most important to less important”. Finally we assessed each indicator in relation to three questions: Are they applied (see the colour code hereunder)? What are the obstacles to apply them? What would be your recommendations and tools to make the implementation of the standards possible?

In the workshop with the guardians we analysed each indicator and tried to establish whether the indicator was applied in practice. The guardians were asked to assess general practice and not just their own practice. A colour code was applied and the results where transposed in the standards.

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<th><strong>Green:</strong> Overall applied.</th>
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<td><strong>Orange:</strong> The practices can widely vary between guardians and/or exterior obstacles to implement the standard.</td>
</tr>
<tr>
<td><strong>Red:</strong> In general not applied, not applicable or no training provided.</td>
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For some indicators two colours have been applied when there was no consensus on the level of implementation between the guardians or between the Dutch and French speaking guardians. The results need to be interpreted with caution and cannot be generalized as this is qualitative and not quantitative research. It is just a first try to visualize in a schematic way which might be the standards which are easily applied and those where there are more obstacles with regard to effective implementation. Overall the analysis shows that a lot of indicators are analysed as “orange” indicating a variety of practice. This is a result in itself.

**Workshops with separated children**

Two meetings were held with separated children. 7 separated children and a former separated child participated. 4 girls from Guinea, 1 boy from Guinea, 1 girl from Rwanda and 2 boys from Afghanistan were present. The separated children were between 16 and 17 and the former separated child was 18 years old. A first test meeting was organized in a reception centre on the 19th of June. A second, more comprehensive, workshop was held on the 19th of August. They were asked to describe and draw what qualifications and competencies the guardians should have. Then each standard was discussed to see if according the standards where applied and how important each standard was to them. Per standard they were asked if they could give positive and negative examples on how the standard was (not) applied in practice.

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10 See annex.
11 19th of June 2013, Petit Chateau, CADE.
12 See annex.
Qualitative research: its strengths and limits

With qualitative research special attention should be given to the treatment of the information gained through the workshops and trainings. On the one hand there is a risk to generalise practices that might only represent the practices of a few guardians. On the other hand there is a risk that the evaluation is a bit altered because of the type of participants to the workshops and trainings. The guardians and the separate children who participated considered guardianship as very important; otherwise they would not have taken part in the workshops. The guardians who participated in the trainings are those who have the willingness to strive for improvement and who have already thought extensively about how to be the best guardian possible. It is unlikely that guardians who are not committed to their work will participate in those workshops. Some more problematic practices might therefore not appear in this report or might be under evaluated.

Quantitative methodology would not have been appropriate as the goal of the report is to benchmark the level of implementation which cannot, in an objective way, be quantified.

2. SUMMARY CORE STANDARDS FOR GUARDIANS

The role and responsibilities of the guardian:

STANDARD 1: THE GUARDIAN ADVOCATES FOR ALL DECISIONS TO BE TAKEN IN THE BEST INTERESTS OF THE CHILD, AIMED AT THE PROTECTION AND DEVELOPMENT OF THE CHILD.

The guardian is able to advocate, assess and adjust the best interest of the child on a regular basis, involves all relevant actors and ensures that the assessment of the best interest of the child is based on the views of the child and the individual circumstances.

STANDARD 2: THE GUARDIAN ENSURES THE CHILD’S PARTICIPATION IN EVERY DECISION WHICH AFFECTS THE CHILD.

The guardian provides information in a child friendly way and checks if the child understands and recalls the information, listens carefully to the child and ensures plans are based on the views of the child and shared with the child, is open to feedback and manages expectations.

STANDARD 3: THE GUARDIAN PROTECTS THE SAFETY OF THE CHILD.

The guardian gives the highest possible priority to the child’s safety, knows the signals of child abuse and trafficking, acts and reports upon signals of any harm or danger, ensures the child knows he is welcome to voice anything concerning his/her safety, only breaks the confidentially norm when a child is at risk, ensures victims get appropriate treatment and is open to being monitored on own behaviour.

STANDARD 4: THE GUARDIAN ACTS AS AN ADVOCATE FOR THE RIGHTS OF THE CHILD.

The guardian is an assertive, committed watchdog, dedicated to defending the rights of the child, shows emotional strength, opposes decisions which are not taken in the best interests of the child and pursues fair procedures concerning the child.
STANDARD 5: THE GUARDIAN IS A BRIDGE BETWEEN AND FOCAL POINT FOR THE CHILD AND OTHER ACTORS INVOLVED.

The guardian keeps in contact with all relevant actors, ensures to be informed about all decisions which have an impact on the child and is where necessary present at meetings, assists in establishing links with the child’s community and developing relationships that gives the child a sense of belonging to a family or group.

STANDARD 6: THE GUARDIAN ENSURES THE TIMELY IDENTIFICATION AND IMPLEMENTATION OF A DURABLE SOLUTION.

The guardian ensures the identification of a durable and safe solution and challenges others to prove that their proposed solutions take the best interest of the child as a primary consideration, supports the reunification of the child with his/her family and supports the integration of the child in the host country when this is in the best interest of the child, defends safety guarantees when a child is returned and prepares the child for all predictable changes which will occur after turning eighteen.

The guardian and the separated child:

STANDARD 7: THE GUARDIAN TREATS THE CHILD WITH RESPECT AND DIGNITY.

The guardian demonstrates appropriate behaviour, treats the child unprejudiced with respect to the child’s identity, privacy and cultural differences, supports the child in developing peer relationships and shows a flexible approach tailored to the individual needs of the child.

STANDARD 8: THE GUARDIAN FORMS A RELATIONSHIP WITH THE CHILD BUILT ON MUTUAL TRUST, OPENNESS & CONFIDENTIALITY.

The guardian is always honest with the child, keeps his/her promises and keeps all information confidential unless it is necessary to break confidentiality to keep a child safe, pays attention to verbal and nonverbal communication, is empathic towards the child and gives moral support and makes clear to the child that a child who disappears is always welcome to return.

STANDARD 9: THE GUARDIAN IS ACCESSIBLE.

The guardian can be reached easily, lives near enough of the child to be able to respond quickly to difficulties, sees the child as soon as possible after his/her appointment and pays visits to the child on a frequent basis and communicates in a way which fits the age and development of the child, making use of interpreters whenever necessary and contacts the child to keep in touch also when there is no specific need to do so.

The qualifications of the guardian:

STANDARD 10: THE GUARDIAN IS EQUIPPED WITH RELEVANT PROFESSIONAL KNOWLEDGE AND COMPETENCES.

The guardian is proactive in identifying learning and development needs, manages his/her caseload and available resources, is accountable, works according to a set methodology, knows personal and professional limits, seeks support and counselling whenever necessary and is open to supervision and monitoring.
Since the report “Closing the Protection Gap 2010-2011” there have been several important developments in Belgium with regard to the inflow of separated children, legislation and practice.

In 2011 there has been a peak in the numbers of arrivals of separated children. 3258 separated children arrived in Belgium in 2011 compared to 2510 in 2010 and 2811 in 2012. This high increase was linked, in part, with more arrivals of Afghani separated children. Since 2011 the Platform Minors in exile has noticed an increased use of age assessment procedures. Between 2004 and 2010 there were, on an annual basis, 300 to 400 age assessment procedures. In 2011, 1042 persons claiming to be separated children were subjected to medical age assessment. In 2012 this was the case for 953 youngsters.

The top 10 nationalities, irrespective of their choice of procedure, are: Afghanistan, Guinea (Conakry), Democratic Republic of Congo, Morocco, Somalia, Serbia, Cameroon, Algeria and Congo (Brazzaville). Uniquely, in Belgium, on average, 50% of the minors are asylum-seekers and the other 50% are non-asylum-seeking minors. Of the 2811 separated children who have arrived in 2012, 2255 were boys and 556 were girls. 82% were aged between 15 and 17 years old. The 16 year olds represent the biggest category.

Since 2009 there has been a reception crisis. Non asylum seeking children have, illegally, been excluded from reception. The only way to obtain housing for the separated children is to lodge an appeal in the courts, which can take several weeks, leaving the minors on the streets in the meantime. For example, there were 612 separated children registered as “without housing” by the guardianship service in 2012. Those appeals have been systematically won and Belgium was condemned for this practice by the European Committee for Social Rights on 21st of March 2013. Since 2013 some improvements have been noticed but no structural solution has come forward.

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14 Source: Guardianship service
15 This platform, called “Minors in exile” aims at the protection of the minors in exile, through different actions: researches, promotion of the rights of unaccompanied minors and minors in irregular situation. The Platform coordinates the actions of 38 NGO’s, institutions, reception centres, publishes legal guides for practitioners and recommendations for governmental bodies. The Platform is also the national contact- and focal point for the Separated Children in Europe Programme (SCEP).
16 The age assessment is done by means of a so-called “triple medical test”. This test is based on the clinical impression of a dentist, a radiological examination of the dentition, and the hand and wrist of the non-dominant hand and the medial ends of both collarbones. The tests are analysed by a medical expert who gives an approximation between two ages. According to the Guardianship Act the lowest age must be taken into consideration (the law provides that the benefit of the doubt is to be applied). The Guardianship act leaves the possibility to also instate psycho-affective test. Those however have not been introduced in practice because there are a lot of unsolved practical issues (which tests, how to take the tests, the time needed to execute the tests) and not all professionals are convinced of the reliability of those tests.
17 Source: Statistics 2012 of the Guardianship Service
18 Source: Statistics 2012 of the Guardianship Service
19 Source: Statistics 2012 of the Guardianship Service
20 http://www.coe.int/t/dgbl/monitoring/socialcharter/Complaints/CC69Merits_en.pdf
The lack of reception had a grave impact on guardianship. A guardian with wards living on the streets faced several of the following difficulties: increased disappearances of minors; difficulties ensuring the medical needs of the minors are met; negative impact on the relationship and trust with the minor (trust in the guardian but also in the “system”); impossibility to register the minors in a school; difficulties in maintaining contact; increased exposure of the minors to criminal activities; a deep impact on the organisation of the work of the guardian as most of their energy goes to finding (emergency) housing for the minor; increased use and preparation to launch appeal procedures against the non-reception of those minors; etc.

Since 12 September 2011 a new law regulating the assessment of the durable solutions for non-asylum seeking separated children or separated children whose asylum claim was rejected was introduced. The legislation holds that the favoured durable solution is family reunification. The durable solution is proposed by the guardian but the final decision is taken by the Foreigners’ Office. Child rights organisations have regretted that there is not enough consideration for the situations where family reunification is not in the best interest of the child. The law does not oblige the Foreigner’s Office to determine the durable solution before the child reaches the age of majority which can affect the minor’s right to an effective remedy. No set methodology exists to determine the durable solutions or to make social enquiries in the country of origin. In the general policy paper of the Secretary of State for migration and asylum the focus has been put on the improvement of voluntary return for SC.

A new protocol of collaboration between the Foreigner’s Office, the Guardianship Service, the Police and Fedasil (Federal Agency for the reception of asylum seekers) has been applied since 28th January 2013. This protocol officially aims at the quicker identification of non-asylum seeking minors. Normally the registration and identification (including the age assessment) is done by the Guardianship Service but for non-asylum seeking children this is done at the Foreigner’s Office. At this stage there is no guardian yet. This transfer of competences is contrary to the law and questions certain professionals on the effective independence of the Guardianship Service. Under this protocol their fingerprints will be taken but the protocol does not specify from which age, which has access to the database and for how long the data is kept. A person who declares to be a minor but fails to register at the Foreigner’s Office within 48 hours can be declared an adult. This type of decision has no legal basis and is perceived as an exclusion mechanism. With regard to reception, the protocol introduces a restriction to reception, only for non-asylum seeking children if the network of reception centres is saturated, which, again, is contrary to Belgian legislation which sets an unconditional right to reception for separated children. The protocol will be evaluated in the summer of 2013. An annulment appeal against this protocol has been launched in the highest administrative Court.

**Directives to harmonise practices**

The Secretary of State responsible for migration asylum and social integration has asked the Guardianship Service to establish directives to harmonize the practices of the guardians. A preliminary remark is that it is surprising or worrisome, that this instruction comes from the Secretary of State responsible for migration as normally the Guardianship service is independent from migration and asylum authorities and depends of the ministry of Justice (see hereunder the part of the Guardianship Service). Child rights organizations are worried that this means the Guardianship Service is not de facto independent anymore. The objective of the directives, to harmonize practices, has been well received. A working group has been launched by the Guardianship Service with several guardians. The directives are not public yet so it is not possible to assess if and how the standards have been integrated in the directives but initial indications suggest that some standards have been used to inspire the drafting of the directives.

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21 Plate-forme Mineurs en exil, “Mémorandum sur l’accueil des mineurs étrangers non accompagnés” mars 2012
22 Replacing the procedure called “Circular 2005”
On the one hand the general guidelines aim to define a framework for guardians and harmonize the practices of guardians. On the other hand, the guidelines clarify the role of guardians vis-à-vis the various institutional and social actors. They also aim to improve collaboration between guardians and their partners. These guidelines specify the different legal guardian missions set out in Articles 9 to 13 of the Guardianship Act.

The focus is particularly on the nature and frequency of contact with the guardian maintains the minor as well as the establishment of a relationship of trust with the minor. The guidelines also highlight the consultation with various stakeholders.

Other issues addressed are:
- The role of the guardian in the different phases of administrative and judicial proceedings;
- The education;
- Psychological support and medical care;
- Accommodation;
- The search for members of the minor's family and a durable solution;

Issues related to ethics and professional secrecy were not covered in these guidelines. These issues will be the subject of a thorough consultation with various experts.

4. A SHORT OVERVIEW OF THE NATIONAL GUARDIANSHIP SYSTEM

a) The legislative and policy framework of guardianship

The guardianship system was introduced in Belgium in 2004. The creation of a guardianship system was triggered by the “Tabitha case”. The creation of a guardianship system had been demanded since the end of the nineties but negotiations struggled. In 2002 a 5 year old Congolese girl called Tabitha arrived in Belgium with her uncle with the intention to join her mother in Canada who was recognized as a refugee there. The uncle did not possess the required documents to enter Belgium and was deported. The girl was left alone and confined in a closed centre for two months without an appointed guardian and then deported back to her country of origin where no family member was waiting for her. In the end the girl was reunited with her mother and in Belgium the controversy around this case sparked the political and legal discussions leading to the creation of a guardianship system. In 2006, the European Court of Human Rights condemned Belgium for violations of Articles 3 (prohibition of inhuman treatment), 5 (right to liberty and security) and 8 (right to respect for private and family life) of the European Convention on Human Rights (Mubilanzila Mayeka et Kaniki Mitunga c. Belgique).

23 Mubilanzila Mayeka et Kaniki Mitunga c. Belgique 12 October 2006, no 13178/03
The main legal instruments on guardianship in Belgian Law

- Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002
- Circular of 19 April 2004 on taking charge of and identification of unaccompanied minor aliens by the Guardianship Service
- Circular of 2 August 2007 on European unaccompanied minors in a vulnerable situation

Definition of the separated child

The guardianship Act refers to unaccompanied minors. In Belgium an unaccompanied minor, as defined by article 5 of the Guardianship Act, is a person who has to meet the following four conditions:

1. Being under 18 years of age;
2. Being without the guidance of a person with parental authority or a person acting as guardian;
3. Originating from a country that does not belong to the European Economic Area (EEA);
4. Applying for asylum or not fulfilling the conditions to enter or reside on the Belgian territory.

This definition of the unaccompanied minor, which gives the right to a guardian, does not include the following categories:

1. The separated children who are nationals of EEA. In particular this can be problematic for separated children (SC) coming from Bulgaria or Romania, present in relatively large numbers in Belgium (when those two countries became members of the EU, many children fell out of the remit of this legislation and lost the protection they were accustomed to prior to accession.)

2. The SC who have a valid travel document at entrance (for instance for family reunification, tourism, study, etc). They can be considered as SC if their stay becomes irregular, after the validity of the documents expires.

3. According to article 23 of the Guardianship Act the mission of the guardian ends when the minor receives a permanent permit of stay. A civil guardianship or a guardianship by the social welfare agency can be provided.

In this national assessment we rely on the legal definition of unaccompanied minor, as only those minors who are appointed a guardian. The absence of guardians for European separated children is however, for Service Droit des Jeunes, a clear gap in the protection of those minors, who are separated and vulnerable. This situation is contrary to Article 2 of the Convention of the Rights of the Child (CRC) which states that “States Parties shall respect and ensure the rights set forth in the present 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 other status.”

24 In practice some guardians continue to exercise their guardianship until the 18th birthday.
Recommendations for a way forward:

- Recommendation 1: Modify the Guardianship law and the definition used in Belgian legislation in order to include the European unaccompanied minors. Also the guardian should remain appointed until the 18th birthday of the SC without regards to the administrative status of the minor.

b. The role of Guardianship Service (GS)

The Guardianship Service (GS) is part of the Justice Federal Public Service (FPS) (in other words the Ministry of Justice).\(^{25}\) It was considered important to have a GS that is independent from the immigration and asylum authorities. The GS is responsible, among other things, for the protection of separated children upon arrival, until the guardian is appointed. The GS has essentially the following tasks\(^{26}\):

- Taking charge of the SC as soon as they are informed of their presence in the territory or at the border and finding initial accommodation, until the appointment of the guardian;
- Identifying the SC (and, if a doubt is expressed regarding age, determine the age of the minor);
- Appointing the guardian;
- Recruiting the guardians;
- Coordinating and controlling the work of the guardians;
- Coordinating the contacts with the other authorities (immigration and asylum authorities and the authorities in the home-countries)

There are on average 300 active guardians in Belgium. Within this number there are 15\(^{27}\) employee-guardians. In Belgium there are different types of statuses for the guardians: The “employee-guardian”, the “independent guardians”\(^{28}\) and the volunteers. The employee-guardian will be employed by a NGO of the social and legal sector to be a guardian.\(^{29}\)

On the 31st of December 2012 there were 2570 guardianships ongoing for separated children.\(^{30}\) More specific numbers cannot be given as the number of guardianships and the number of separated children in Belgium varies each day.

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25 Article 3 of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002
27 This number will probably increase in the near future. See Parliamentary question n°322 by Sarah Smeyers of 29 October 2012
28 The term “independent” refers to the fiscal and legal status of as a self-employed worker and does not imply that employee-guardians are not independent in their working methods.
29 Article 7 bis of Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002
30 Source: Statistics 2012 of the Guardianship Service
Appointment of the guardian

According to article 8 of the Guardianship Act, the GS proceeds immediately to the appointment of the guardian. The GS should, according to Article 4 of the Guardianship Act, be available 24 hours a day. Separated children can therefore be referred to the guardianship institution directly after discovery. After the identification of an SC, the Guardianship Service contacts one of the guardians on its list, who can accept or refuse guardianship of the minor. The geographical proximity to the SC, the availability of the guardians and the experience of the guardian to handle a certain profile are elements that the GS tries to integrate in their choice of a guardian. When a person has declared themselves to be an unaccompanied minor Article 6§3 of the Guardianship Act provides for the possibility to appoint a temporary guardian in case the person finds themselves in an “extremely urgent situation that can be appropriately motivated”. This is however rarely applied. In 2012 45 temporary guardians were appointed for the 953 youngsters who were subjected to the age assessment.31 Age assessment is most often applied for minors who arrive at the border and are detained.32 Minors who were sleeping on the streets during their age assessment or arrived by boat did not receive, or very rarely receive a temporary guardian. The temporary guardian has a more limited role than a ‘normal’ guardian. The temporary guardian can for instance not introduce any legal or administrative procedure. If the minor is recognised as a minor the appointment of the guardian will be confirmed.

In practice however the appointment does not always happen immediately. Before the reception crisis it was common practice for the Orientation and Observation centres, the first reception centre for separated children, to first establish where the minor would be sent and then the guardian, preferably from the region around the new reception centre for the minor, would be appointed. However, because of the reception crisis, it has become difficult finding guardians willing to accept minors living on the streets. Because of the lack of guardians, the appointment can take longer. The appointment of the guardian was pointed out as an area of concern in previous studies. Some very exceptional cases of delays of a month or several months have been reported.

c. Tasks and responsibilities of the guardian as defined by the Guardianship Act

The main tasks and responsibilities of the guardian are:

- Legally represent and accompany the minor in all administrative or jurisdictional procedures (relative to the asylum claim, the immigration status or any other procedure);
- Ensuring that all decisions are in the best interest of the child;
- Appointing, without delay, a lawyer;
- Being present at every hearing or interview;
- Ensuring that the separated child is offered suitable care, accommodation, education, health care and psychological care (if needed);
- Building a relationship of trust with the SC and consult the minor to know his or her point of view before taking any decision in his name;
- Contributing to and making proposals for a durable solution in coherence with the child’s best interest;

31 Source: Statistics 2012 of the Guardianship Service
32 In general separated children cannot be detained in Belgium. The only exception is when the minor arrives at the border and that a doubt on their age has been expressed. For 3 workdays, renewable once, the minor can be detained during the age assessment procedure is being done.
- Respecting the religious or political views of the minor
- Exploring the possibility of family tracing and reunification with the child;
- Administering the minor’s assets;
- Reporting on the situation of the minor for both the Guardianship Service and the justice of the peace: a first one after a maximum of 15 days after the appointment, regular reports every 6 months and one report at the end of the guardianship.

d. Education, status and case-load of the guardian

The education and experience profile

There are no specific educational backgrounds required to become a guardian. The person has to be of age and have a residence permit for an unlimited duration. The website of the Guardianship Service indicates that they have to be “concerned by the issue of separated children; that they have to have relational capabilities; that they have to have capacities with regards to organization and coordination and that they do not have a conflict of interest with the minor”.

Social workers or persons with a background in social sciences are very common within the pool of guardians. Others have a more legal background or are self-employed persons who seek additional activity. Within the pool of interviewed guardians the majority of guardians had a social science background. The self-employed guardians have professions which can vary from the insurance sector, to a hairdresser, to an architect. If some guardians do not have an apparent link with youth protection, they often have experience with the representation or protection of children.

Caseload and remuneration of guardians

Giving an average of guardianships per guardian is problematic as the case-load varies enormously and an average will not reflect this variation. Employee-guardians will averagely have 25 guardianships at the same time. The “independent guardians” are the guardians who take on guardianships as independent professions. The can have from 1 to 40 (the legal maximum) guardianships. They have the fiscal statute of self-employed. There are also volunteers who have 1 or 2 guardianships.

The case-load of the guardians has been subjected to quite some discussions. An organisation of guardians “A&A” has made an estimation of the number of hours needed on average per child and per month on the basis of the counting of their members. An average of 10 hours a month was estimated. If we calculate that a month consists of an average of 160 working hours this would mean that a guardian should have between 15 and 20 guardianships. This average can give a good indication. Several variables can however influence that management of the case-load: the number of new guardianships, the level of complexity of the situations, the years of experience of the guardian, the network around the guardian, the share of responsibilities between the guardians and other professionals, the possibility to delegate administrative work, etc.

34 Aide &assistance aux Mena et à leurs tuteurs ». In English : “Aid and Assistance for separated children and their guardians”
35 AlterEchos, Enfance en exil, n°285-286, décembre 2009, p.29
The guardians receive a yearly lump sum of 605.26 Euros for one guardianship and 85 Euros for administrative expenses. Travel expenses and expenses for registered letters are reimbursed. For the employee-guardians the system is a bit different. They are employed by a non-profit organisation or a public organisation. These organisations sign agreements with the Guardianship Service and receive 3500 EUR a year per guardian who accepts to take on 25 guardianships simultaneously. Another 25.20 EUR per guardianship and per month are allocated for the administrative and transport costs. For NGOs who want to employ guardians the sum given by the GS is problematic because it means that the NGO has to find a large part of the finances in their own budget.

Among the independent guardians who are self-employed, there are three main situations. There are those who live completely from their guardianships, those who have a part-time activity or job in addition to the guardianships and those who are retired and take on guardianships. As the allocated sum per guardianship is low this can lead to the risk of guardians taking on additional guardianships just to make a basic salary. Guardians who are completely dependent on their guardianships to have means of subsistence are most likely to do this. A phenomenon of a “guardianship overload” can arise. A constant concern is that the quantity of guardianships can be inversely proportional to the quality of it.

Volunteer guardians have one or two guardianships a year. The specificity on this status is that the lump sum cannot be subjected to the same taxation as a salary would. With less than three guardianships a year it is considered to be volunteer work.

Recommendations for a way forward:

- Recommendation 2: Establish the limit of case-load at 20 wards for a full-time working guardian. Only if the guardian motivates explicitly that he can take on more wards and only with the informed consent of the Guardianship Service the case-load can be increased to 30 wards. Financial means should be made available to ensure that the guardian can make a decent living with this case-load.

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36 Articles 6 and 7 of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002
37 http://justice.belgium.be/fr/themes_et_dossiers/enfants_et_jeunes/mineurs_etrangers_non_accompagne/tuteur/remuneration_du_tuteur/
38 Article 7 bis of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002
5. BENCHMARK OF THE CORE STANDARDS FOR GUARDIANS OF SEPARATED CHILDREN AGAINST THE NATIONAL CONTEXT

Preliminary remarks

Before benchmarking the standards one by one we have tried to assess if we could find the trace of the Core Standards in certain documents, studies or recommendations. The Délégué Général aux Droits de l’enfant, the French-speaking Child Rights Commissioner (Ombudsman) has published in April 2012 recommendations on the situations of separated children and in his recommendation 19 stated that: “authorities should take into account the Core Standards [...] and that it should be proposed to the guardian as a work method”\(^{39}\).

In January 2013 the guardianship organisation “Oliv” has initiated a meeting to discuss the Core Standards and the difficulties that guardians might encounter to implement them.

During the summer of 2013 guardians of the network of guardians “ATF MENA\(^{40}\)” have started a self-evaluation through sending questionnaires on the practices of the guardians to migration officials, reception centre personnel and lawyers. A part of the questionnaire used the Core Standards as a tool to benchmark the current practice. Hereunder you will find the results of the questionnaires:

<table>
<thead>
<tr>
<th>Are the standards applied in practice?</th>
<th>Rarely</th>
<th>Quite often</th>
<th>Regularly</th>
<th>To be improved</th>
<th>Total respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.</td>
<td>7</td>
<td>25</td>
<td>13</td>
<td>7</td>
<td>42</td>
</tr>
<tr>
<td>2. The guardian ensures the child's participation in every decision which affects the child.</td>
<td>12</td>
<td>26</td>
<td>11</td>
<td>12</td>
<td>51</td>
</tr>
<tr>
<td>3. The guardian protects the safety of the child.</td>
<td>15</td>
<td>20</td>
<td>15</td>
<td>12</td>
<td>62</td>
</tr>
<tr>
<td>4. The guardian acts as an advocate for the rights of the child.</td>
<td>11</td>
<td>23</td>
<td>20</td>
<td>5</td>
<td>59</td>
</tr>
</tbody>
</table>

\(^{39}\) Délégué Général aux Droits de l’Enfant, « Recommandations sur la situation des mineurs étrangers non accompagnés », avril 2012

\(^{40}\) ATF MENA (Association des tuteurs francophones) is the organisation of the French-speaking guardians who aim to share good practice and exchange information between them.

\(^{41}\) The section “to be improved” was added by ATF-MENA to evaluate the importance given by the respondents to each of the standards. The first three boxes reflect the assessment of the implementation of the standards and the box “to be improved” reflects the wishes of the respondents to see the implementation of the standards improved. The more attention is given to future improvement, the more the standard is important to the respondents.
The results of the study of ATF-MENA will be analyzed standard by standard hereafter. It will referred to as the “ATF-questionnaire”.

| 5. The guardian is a bridge between and a focal point for the child and other actors involved. | 8 | 36 | 11 | 12 | 67 |
| 6. The guardian ensures the timely identification and implementation of a durable solution. | 12 | 23 | 13 | 10 | 56 |
| 7. The guardian treats the child with respect and dignity | 0 | 35 | 22 | 3 | 60 |
| 8. The guardian forms a relationship with the child built on mutual trust, openness & confidentiality | 8 | 26 | 15 | 12 | 61 |
| 9. The guardian is accessible | 17 | 21 | 10 | 15 | 63 |
| 10. The guardian is equipped with relevant professional knowledge and competences. | 3 | 28 | 17 | 13 | 62 |
The guardian and the best interest of the child

The guardian is by law responsible for the best interest of the child (BIC). The guardians for SC have the legal parental authority of their wards. The only difference with guardians for national children (called “civil guardians”) is that they do not have the civil responsibility over their wards. For example, if the minor destroys a car the guardian cannot be held accountable as a parent or a civil guardian could be.

Article 2 of the Guardianship Act clearly states that the best interest has to be the primary concern in all decisions to be taken. It is crucial and very positive that this starting point is set in legislation about guardianship. The question that is raised in Belgium is rather how to define and assess the best interest.

No criteria or methodology exists and the definitions given to the best interest of the child can vary widely. There is no formal, and often not even an informal, check-list to assess the best interest of the child.

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**STANDARD 1**

The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

**Indicators:**

The guardian:

A) Makes an assessment on the best interests of the child, **for example before decisions are taken about:**
   - Legal procedures,
   - The choice of a lawyer,
   - Housing accommodation and placement,
   - Education,
   - (Health)care,
   - Leisure activities.

B) Other support.
   Makes sure that an assessment on the best interest of the child is based on the views and opinions of the child and on individual circumstances.

C) Involves all relevant actors in the determination of the best interest of the child in decisions impacting upon the child to ensure a multi-disciplinary approach.

D) Avoids having a conflict of interest concerning the child and works independently from other actors who make decisions about the welfare and status of the child.

E) Adjusts the assessment of the best interests of the child regularly, while taking at a minimum into account:
   - The child’s personal background and past experience in the country of origin and journey,
   - His/her development,
   - Family situation,
   - Duration of stay in the host country,
   - Phase of residence procedure or immigration status.
The project of UNHCR and UNICEF to develop guidance on the assessment and determination of the best interests in an industrialised context will be of crucial importance.42

As the minors progress through their school career, change reception structure, see changes in the family situation or in the level of integration in the host country the best interest needs to be regularly reassessed. The BIC needs also to be reassessed according to the amount of information that the guardian has which will be different according to the length of stay and the development of the relationship of trust. The Vade-mecum 43 gives information on the legal elements to take into consideration when making a decision but does not address the pedagogical/educational needs. Only half a page in the Vade-mecum mentions the best interest of the child. There is no explicit mention of the need for regular reassessment of the best interest.

**Best interest assessment and the impact on the decision-making**

In the ENGI report of 2010 it was stated that “while the guardians have the independent responsibility to make choices in the BIC, their ability to make the choices is limited by the possibility the system offers”.44 This can be true with regard to appropriate reception, the assessment of a durable solution or other rights that can be hindered by institutional or practical obstacles. The lack of knowledge about and recognition of the role of the guardian by other actors and institutions can also be an obstacle to promote and implement decisions that are considered, by the guardian, in the best interest of the child.

The SC are placed in reception facilities by a central dispatching mechanism. The guardian has no influence on the choice or the location of the centre. This is also the case when transfers between reception centres occur. The guardian can however assess that it would be in the best interest of the child to be in a more specialised reception centre or that the minors could start living on his own (with several modalities of supervision). In this regard the guardian can and often plays an important role in the assessment.

When it comes to migration procedures the guardian has to, often with the lawyer and the child, choose the most appropriate procedures. Such a choice can have a tremendous impact on the future of the child and requires therefore specific legal knowledge (which some guardians do not have) and consultation with the lawyer (which some guardians do not do). This choice can be influenced by the story of the minor, but also the age, the level of traumatisation, access to documents/evidence and is therefore not always easy to assess.

42 UNHCR and UNICEF are developing guidance on determining best interests of the child in industrialized countries. The publication is expected for autumn 2013. This guidance will aim to assist States in their establishment of best interest assessment and determination procedures which can be linked to the existing asylum, migration and child protection systems. http://www.unhcr.org.uk/fileadmin/user_upload/pdf/JCHR_UNHCR_final.pdf

43 All guardians receive at the start of the guardianship the Vade-mecum of the guardian. This publication of more than 400 pages covers different subjects: what happens to the minors before the appointment of the guardian, the procedure of appointment of the guardian, the role of the Guardianship Service, the first tasks of the guardian after the appointment, the practicalities of the residence procedures, the role of the guardian towards housing, the education of the minor, the psychological support, the access to health services, the search for a durable solution, the management of the assets of the minor, the demand of help from public services, the control of the guardian, ethical questions, the responsibilities of the minor, the social and fiscal statute of the guardian and the end of the guardianship. Service Public Fédéral Justice, Vade-mecum pour les tuteurs des mineurs étrangers non accompagnés, première édition-mise à jour le 31 aout 2007

44 ENGI, Towards a European Network of Guardianship Institutions, Utrecht, February 2010, pp. 15-16
In the context of the legal procedure of durable solution determination the guardian has to propose a durable solution to the Foreigner’s Office (FO) but the FO is not obliged to follow the proposal and often gives little explanation as to the reasons for refusal.45

In relation to education and health the decisions are often made with other actors like the teachers or the doctors and the guardians serve more as a go-between for the minor and them. Guardians do not always have the necessary expertise to make a formal assessment with regard to those kinds of decisions. It also depends on how extensive the definition is that the guardian has of their own role: purely a legal representation or a more comprehensive role to counsel and accompany the minor in each decision?

The view of the child and the best interest assessment

“It is his role to find the best solution for us. When you leave a country that is at war and you arrive here you do not know what you have to do and you need someone who explains everything. You need someone who sometimes pushes you and annoys a bit so that you have the tools to make it” - 17 year old separated girl from Guinea

There are no formal guidelines for how the views of the SC are taken into account and again the practices vary widely. In the national report it was mentioned that a difficulty that guardians face is to know when to indeed follow the wishes of the minor and when to impose a decision because the guardian thinks the wishes of the minor are unrealistic. Guardians do not necessarily have the tools to assess the maturity of the minor and therefore the level of impact his or her views can have on the decision making. The guardians in the trainings of the 1st 46 project mentioned that this can be problematic when dealing with highly traumatised children, very young children or children with a low IQ. Guardians in all the trainings also mentioned that sometimes it can be difficult to obtain reliable information on the country of origin and the journey. It can be difficult to assess the veracity of the minor’s story and to know upon which information to base the best interest assessment.

Conclusion

The legislation is quite complete in the sense that it sets the best interest of the child as the primary concern for guardians and defines a comprehensive role for the guardian. Unfortunately the law does not give guidelines to interpret the practical extent of the role. A crucial element that is missing is a set methodology to assess the best interest. The lack of guidelines and methodology cause the practices to vary widely, leading to differentiated and unequal treatment amongst SC by the guardians. The lack of recognition of the role of the guardian by certain actors and/or the lack of appropriate institutional possibilities can limit the effective implementation of the decisions in the best interest of the child.

45 For more information please consult the section on standard 6
46 Belgian National Report, Closing a protection gap. “You need to earn the title of guardian”. Core standards for guardians of separated children in Europe, 2010-2011
Recommendations for a way forward:

- **Recommendation 3:** Develop an independent multidisciplinary process to assess and determine the best interest of the child. This needs to be informed by the new Guidance by UNHCR and UNICEF on the assessment and the determination of the Best Interest of the Child that will be published end 2013.

- **Recommendation 4:** Develop a methodology to assess and determine the best interest. Guardians should receive practical tools to do so. It should be included in an updated version of the Vade-mecum.

- **Recommendation 5:** Raise awareness on the role and the tasks of the guardian of all actors involved with separated children.
STANDARD 2

The guardian ensures the child’s participation in every decision which affects the child.

Indicators:
The guardian:

A) Provides the child with all relevant information concerning his/her rights and information needed for his/her participation in a language the child understands and in a child friendly way, repeats this information as often as necessary and checks if the child understands and recalls the information.

B) Listens carefully to the child and takes his/her views into account in the most appropriate way in accordance with his/her age, development and evolving capacities.

C) Informs the child of the outcome of the decision making process and explains how his/her views were considered.

D) Manages expectations of the participation of the child.

E) Makes sure that action or development plans are based on the views of the child and shared with the child.

F) Ensures that appointments are made with the informed consent of the child.

G) Informs the child about complaint procedures concerning the guardianship and is open to feedback from the child.

H) Uses creative tools, like visual materials, where necessary to ensure participation.

“The first time I was really trying to figure out who this a person was that they call ‘guardian’ I had a lot of different images in my head. When you meet the guardian he reassures you. He tells that he is going to help with everything and help you to deal with what you have lived through. But it only works if you do your part. He can’t help if you do not tell. [...] When we arrive we do not know anything! Through the guardian you discover a lot of things. At first we do not know what your rights and obligations are.” - 17 year old separated girl from Guinea

Information as a precondition for participation

The Guardianship Act states in Article 11 in §1 that “He acts in consultation with the minor [...]”. In §2 in states: “He interacts with the minor in order to develop a relationship of trust and to know the view of the minors on the decision he intends to take. The guardian explains the decisions made by the authorities competent on asylum, access to the territory, residence permits and return, as well as other authorities”.

The consulted guardians in the two projects stated to be attentive to correctly informing the minor. The two main elements of information that guardians give are: “what is the role of the guardian (and what is not)? ” and “what are your rights (what is going to happen during your journey in Belgium)?”. Overall the obligation to inform in adequate way is respected according to the guardians and the minors who were consulted.

In the national report\textsuperscript{48} all guardians mentioned giving specific attention to handling cultural differences. Most guardians warned against a too Eurocentric view and perception of human relationships, values and habits. The use of cultural elements was generally considered very important. They used cultural elements such as the religion or the culture of the minor to answer questions the minor has on life, the future or his/her well-being. For example, in an interview for the first report a guardian explained that he used the religion of the minor to talk about the suicidal tendencies of the minor in order to give the minor some relief. But it was also often underlined that a balance should be found between using the culture of origin to increase mutual comprehension and trust and the teaching of the cultural codes of the host country in order to facilitate integration. Verbal and non-verbal (intercultural) communication is only briefly touched upon in the trainings for guardian and more training is needed according to the guardians who participated in the trainings of the 1\textsuperscript{st} and 2\textsuperscript{nd} project.

Another important element according to the trained guardians in both projects is to discuss the information the young people have received about the host country prior or during their journey and check this with the actual possibilities in Belgium. Also the guardian is confronted with the fact that other minors give, sometimes incorrect, information which can influence their wards and that this has to be deconstructed.

**Tools to inform minors**

“When you arrive you are scared and stressed and sometimes you forget in what order the problems happened. I really liked that my guardian worked with me on a time-line. He listened and with the time-line I could tell my whole story” - 17 year old separated girl from Guinea

A child friendly brochure has been developed by the Platform Minors in Exile which explains the role of all the actors involved with the child and the rights they have in Belgium (guardian, lawyers, institutions, ...) and how to access them (reception, health, education, procedures). The brochures are available in the national language and some languages of the main countries of origin. A DVD has also been developed with the same information. The brochure is used by a lot of guardians. Also the Guardianship Service has developed a brochure in several languages on the role of the guardian and the role of the Guardianship Service.\textsuperscript{50} The Commissioner General for Refugees and Stateless persons has developed a comic book to explain the asylum procedure to separated children\textsuperscript{51}. There is also a specific brochure for girls and women asking for asylum\textsuperscript{52}. Some guardians have developed their own tools (drawings, diagrams, ...). The use of a time-line was mentioned as a useful tool by the guardians and the children. There are no formal guidelines on how to talk with very young children, traumatised children or children with special needs.

Interpreters’ costs are reimbursed by the Guardianship Service. The interviewed minors in both projects did not appear to mind the presence of an interpreter. Guardians were in some cases more sceptical of the use of certain interpreters. Several mentions were made of interpreters who were not neutral in their translation and sometimes they felt that the translation was not always free from ethnical tensions or other prejudices. The guardians considered that it was their role as a guardian to ensure that their wards would have access to a good interpreter and that they have the responsibility to change interpreter if difficulties became apparent.


\textsuperscript{49} Belgian National Report, op.cit

\textsuperscript{50} http://justitie.belgium.be/nl/binaries/Mena-EN_tcm265-178477.pdf

\textsuperscript{51} http://www.cgvs.be/en/binaries/Cover_tcm266-99105.jpg

\textsuperscript{52} http://www.cgvs.be/en/binaries/cover%20EN_tcm266-146802.jpg


**Participation**

The minor does not have a choice of guardian. However in practice Service Droit des Jeunes notices that if the minor clearly states a preference, informal efforts are made to find a guardian that fits the minor’s needs or requests. Minors can complain alone about their guardian at the Judge of the Peace (JP)\(^{53}\) and can be heard in procedures in which conflicts are settled between the minor and the guardian. Some guardians organise a meeting at the end of the guardianship to receive feedback from the minor.

> “Sometimes the way we look at things is not the way the guardian views things. Then it is important that the guardian explains why he thinks what he thinks. This way we can discuss and negotiate.” - 17 year old separated girl from Guinea

In the trainings of the first and second project it was mentioned regularly that separated minors are not always used to expressing their views and participating in decision-making in the country of origin. They also do not necessarily know how to do so in a system in which is not familiar to them. The guardians mentioned that it was crucial “to discuss everything regularly and to make any topic discussable”. Guardians have difficulties finding out whether the opinion of the minor is indeed the opinion of the minor. Sometimes the minor can present the desires of his/her parents and/or community as his own. Here again specific attention from the guardian is needed and the minor has to know that all topics are open for discussion. A recurring question for the guardians was also what to do if the minor wants something that in the guardian’s opinion is contrary to the child’s best interest. The conclusion from the workshops with the guardians was that participation was important. In the case of conflicting views the priority should be given to a compromise but that the guardian should not take a decision contrary to the best interest, even if the minor wants to.

**Conclusion**

The standard is not entirely applied. The legislation sets a role for the guardian that encompasses informing, explaining and listening to the views of the child. The practices of the guardian vary quite a bit. Several efforts have been noted by institutions, NGO’s and individual guardian to develop child-friendly information. A creative toolbox should be developed and made accessible to all guardians to help them communicate with their wards, in particular with those with specific needs. In general it seems that separated children are involved in the decision making but that it can be a struggle for the guardian to assess the level of maturity and the extent to which the minor can indeed decide on his own.

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\(^{53}\) Belgium is divided in 225 judicial cantons, each with its own justice of the peace. The Justice of the Peace was given competence in some 80 type cases, for instance civil and commercial cases up to maximum 1860 euro. Besides those cases, the Justice of the Peace has full competence regardless of the amount with regards to: disputes regarding all different kinds of tenancy; Easement; Consumer Credit; Homeowner association; Eminent domain. The Justice of the Peace also has various competences in the domain of family law (appointment of a guardian, alimony, collocation of the mentally ill,...)

Recommendations for a way forward:

- Recommendation 6: When possible and advisable, give a reasonable amount of time for the guardians to discuss the choice of the procedure and to prepare the interviews. To obtain the most reliable information it is necessary to develop the relationship of trust, which takes time.

- Recommendation 7: Develop and disseminate techniques to help the guardian to obtain the life narrative of the minor.

- Recommendation 8: Organise (by the Guardianship Service or by specialised services employed by them) trainings on intercultural communication and on how to discuss difficult topics with minors.

- Recommendation 9: The reception centres should have access to cultural mediators to deconstruct the "migration myths and other incorrect information" when the minors arrive in order for the guardian to start informing the wards without incorrect information ‘polluting’ the participation of the child.

Promising practices:

- Promising practice 1: Guardians use visual material like drawings, diagrams and timelines to explain procedures to the minors and to help the minors express themselves.

- Promising practice 2: The Guardianship Service and the Commissioner General for Refugees and Stateless persons have developed child-friendly tools to help minors understand their rights and the procedures, which are regularly used by the guardians.

- Promising practice 3: The use of the DVD and the brochure for the SC on their rights and the roles of the actors around them.

- Promising practice 4: Guardians organise evaluation meetings with their former ward after the end of the guardianship in order to evaluate themselves.
STANDARD 3

The guardian protects the safety of the child.

Indicators:
The guardian:

A)  Gives the highest possible priority to the child’s safety and ensures that his/her own conduct does not put the child at risk.
B)  Makes sure the child knows he/she is welcome to voice anything concerning his/her safety or any danger that he/she feels.
C)  Keeps all information about and from the child confidential unless it is necessary to break confidentiality to keep the child or another child safe and informs the child, when possible, about a confidentiality breach.
D)  Can identify the signals of child abuse and trafficking, acts upon signals of any harm or danger to the child and reports those signals to the relevant child protection authorities.
E)  Is aware of the additional pressure, dangers and risks presented by those who facilitated the child’s journey.
F)  Ensures that if a child is a victim of violence, abuse or trafficking the child gets appropriate treatment.
G)  Always reports the disappearance of a child.
H)  Is open about being monitored on his/her own behaviour.

“How can you feel safe if you never see your guardian?” – 16 year old separated boy from Afghanistan

Role of the guardian on safety: trained to detect and protect?

Belgian legislation does not mention any explicit role for the guardians with regards to safety. The legislation does state that the guardian should have the best interest as a primary concern and that the guardian should take care of the minor during his/her stay in Belgium. Leaving a minor in an unsafe situation would therefore not be in conformity with the legislation.

The main obstacles with regard to the protection of separated children are the lack/absence of training on signs of abuse or trafficking and the high number of disappearances. The difficulty in getting recognition of the status of “victim of human trafficking” under Belgian legislation also leads to a situation where victims of trafficking do not receive the needed help. In those cases the guardian is left without all necessary institutional means to help protect the minor.

54 To benefit from this status the minor must fulfil the following three conditions:
   ▪  Break off contact with the suspected offenders;
   ▪  Receive obligatory guidance from specialised and approved centres for victims of trafficking;
   ▪  Cooperate with the judicial authorities by making a statement or by instituting legal proceedings against the offenders.

It is mainly the third condition which is problematic as many minors fear to collaborate with the police. Statistically speaking there are only a few minors recognised each year as victims of trafficking. Those numbers do not necessarily coincide with the actual number of minors trafficked into the country.
Besides trafficked children or children at risk of trafficking there is another category of children where guardians struggle to assess potentially dangerous situations: children who live with their extended family. Living in their extended family can be very positive for certain SC as they live with persons of trust who know their cultural and family background, but in some cases the minor is not welcome in the family or can be exploited by the family. The extended families are often not official foster parents and are not necessarily monitored by any official authority. There is no specific training on recognising signs of abuse or neglect in a family context and there is no formal protocol signed between guardianship instances and youth protection instances in case the guardians spot signs of abuse. Often the guardians will contact youth protection services. Several guardians mentioned in the workshops of the 1st report that it was difficult to know how to balance the risk of harm against the risk of losing the relationship of trust with the minor or the family, if they involve others persons or institutions.

When a file is opened by the youth protection institutions the guardian is involved or at least informed about the plans concerning their ward. Not all youth protection institutions are very familiar with the role of the guardian and therefore the involvement or collaboration can vary.

During the training sessions it was mentioned that regular contact is a fundamental step to be able to detect dangerous situations. The regularity in the contact moments depends again from the personal investment of the guardian and the manageability of the workload. The minors in the first workshop mentioned that the feeling of being safe was very much linked to the frequency of contact they had with their guardian.\(^{55}\) The minors in the 2\(^{nd}\) workshop stressed that the accessibility of the guardian and the level of trust they had in their guardian were the two main elements making them feel safe or not. A third of the minors indicated that they did not feel that their guardian protected their safety. The 44 minors who answered the ATF-questionnaire indicated that this was the standard that was the least applied in practice by the guardians.

The guardians had also some concerns on how to ensure safety in regular reception centres. As the minors are often teenagers the questions arise relating to spending a night outside the centre or going out to party. This can be difficult to deal with if the personnel in the centre and the guardian do not agree on how to deal with those situations.

Separated children who need more specialised care or are at risk of trafficking

The guardians are supposed to contact youth protection services who will then examine the situation and if necessary take the required measures. According to the situation the minor can be offered ambulatory help or can be placed in a specialised youth centre. If the minor is a potential victim of human trafficking, the minor can be housed in specialised reception centres. There is, for example, a centre for victims of trafficking at a secret location.\(^{56}\) The location of the centre is kept secret in order to avoid that traffickers can easily find the minors. If the guardian assesses that there is a risk of trafficking or that the minor needs more specialised care he or she will contact the responsible institutions. The reception institutions will however assess the needs of the minor themselves and the decision to provide reception of protected shelter will be taken without the guardian. In practice it is rare that a minor above 16 years old will receive a spot in a more specialised centre of the youth care.

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\(^{55}\) Workshop of the 19\(^{th}\) of June 2013.

\(^{56}\) http://www.esperantomena.org/historique.html
Disappearances

The disappearances of SC are explicitly mentioned in the Vade-mecum for the guardians. All the interviewed guardians in the context of the national report who had faced this situation knew where to signal and how to signal the disappearance. The collaboration with the police appeared to have gone quite smoothly. Guardianship ceases 4 months after the disappearance of a minor.

A distinction is made between a “disappearance” and a “worrying disappearance”. “Worrying disappearances” concern minors under 13, minors with a physical or mental handicap, minors needing medical treatment, minors of whom is thought that they are in a life threatening situation and minors who are thought to be accompanied by persons who would harm them. This distinction is also made for national children. The problem is that often disappearances occur shortly after the arrival of the minor. Therefore the guardian does not have a lot of information to pass on to the police and to assess whether the disappearance is “worrisome”.

Disappearances will be treated according to their worrying or non-worrying character. Two organisations can be informed about the disappearances: the police and Child Focus. Often, due to the lack of information the disappearance of a SC, it will not be classified as a “worrying disappearance”. In 2011 Child Focus dealt with 93 missing SC and in 2012 with 83 missing SC. Around half of the signalled missing SC were under 13 years of age. 18% of the children were found or came back. The Guardianship Service registered 66 disappearances in 2012 according to Article 24, 5° of the Guardianship Act.

In 2012, on the 2811 identified separated children, only 2124 were appointed a guardian. A small amount of them will have received their guardian in 2013, for example if they arrived in December 2012, but the rest will probably encompass the 612 minors who did not receive reception (non asylum seeking minors). A certain amount of those minors will probably have disappeared and without accommodation and a guardian those disappearances have not been registered. Disappearance numbers of 2012 are underrated, certainly if we compare them to the statistics in a former study mentioning the disappearance of up to 50% of the minors in certain reception centre (often in the first 48h). A thorough analysis is needed on the numbers, disappearance schemes and practices with regard to the follow-up of disappearances.

Monitoring of the guardians

The guardian is controlled by the Guardianship Service and by the Judge of the Peace of the district of the residence of the minor. The GS performs an administrative control of the day to day material organisation of the guardian. The Judge of the Peace controls whether the guardian properly manages the assets of the minors and if the guardian does indeed search for the durable solution for the minor. The minor can be consulted by the judge. The Judge of the Peace also settles conflicts between the minor and its guardian. If the guardian fails to accomplish his or her mission with diligence or if there are grave divergences in views between the guardian and the minor, the Judge of the Peace can end the appointment of the guardian.

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57 Child Focus is the common name of the European Centre for Missing and Sexually Exploited Children
62 Article 20 of the Guardianship Act
The minor can ask to change guardian on his own or with the support of any person s/he trusts. The view of the minor is only explicitly and directly asked when a procedure to end the appointment of the guardian is launched. For Belgian minors who receive a civil guardian the control is also done by the Judge of the Peace, with the specificity that the Judge of the Peace designates a ‘surrogate guardian’ who controls the action of the civil guardian. In practice all interviewed and trained guardians felt that the Judge of the Peace did not proactively monitor the situations of the SC and that the reports of the guardians were rarely read. The question is also whether and how the guardians can proactively be monitored.

In 2013 the first known case of a paedophile guardian was made public. The Guardianship Service (GS) has since then asked guardians to inform the GS on all the moments they spend alone with their wards. Also experienced guardians were asked to participate in the recruitment of new guardians. All potential guardians have to prove that they have a blank criminal record (this was already the case) and all the active guardians had to reintroduce the proof that their criminal record was still blank.

Conclusion

When analysing the responses to the questionnaire of ATF-MENA we see that the assessments are very different. There are almost as many positive as negative assessments on the application of this standard. This is problematic, as physical and mental safety is a fundamental issue. The lack of training on recognising signs of trafficking, abuse or self harm is mentioned in the previous report and is still very real. Even when the guardian identifies a dangerous situation it is not certain that the guardian will receive the adequate institutional response (for example by the youth welfare, psychiatric service) as they are submerged by work and not always very familiar with separated children.

Recommendations for a way forward:

- Recommendation 10: Organise trainings on signs and forms of child abuse, trafficking and self harm.
- Recommendation 11: Organise awareness raising session for guardians on the risks taken during the travel to Europe and the dangers arising from the presence of the traffickers in Belgium.
- Recommendation 12: Create and provide specialised and adequate reception for minors who are in danger.
- Recommendation 13: Start an in depth research on the causes and consequences of the disappearances of separated children in Belgium.

63 Article 420 of the Civil Code

64 A penal procedure is ongoing against a guardian accused of abuse on a 13 year old separated girl.
The role of the guardian in legal procedure and appeals

“When you go to the Foreigner’s Office you do not know what is going to happen but your guardian knows, he has solutions. Whereas you..., you are just scared, you do not even know how to approach them. It is important to have someone with you who knows your rights” - 17 year old separated girl from Rwanda

The law specifies that the guardian has to present in all hearings and is responsible for the exercise of appeals. On a more general level the law states that the guardian has to ensure that all available help is indeed given to their ward. The guardian is also responsible for the immediate appointment of the lawyer. The legislation also sets a clear obligation for the guardian to be present at all interviews. In the trainings of the 1st project guardians however mentioned that they sometimes really had to fight to be present when the minor was interrogated by the police and the youth judge. The presence of the guardian at more informal meetings like school meetings depends on the availability of the guardian and the (extent of the) interpretation of the role of the guardian that the guardian has.

The national report and current practice show that guardians do support legal procedures and appeals. When guardians feel that the best interest is not taken into account - mainly in issues around reception, forced psychiatric care and residence procedures – they often contact the lawyers and or other helping organisation (legal services, NGO’s ) to see how they could defend the best interest. This can take the form of an appeal but also a search for relevant case-law or specialised information (legal, cultural, country of origin, etc). In the trainings of the 1st project it was mentioned that sometimes the guardians do hesitate to appeal when they do not think it is going to be effective or when they fear that the appeal for one ward is going to damage the collaboration they can expect from an institution for all their wards. Two reasons were mentioned that could lead to a fear of having a different view than the authorities: “fear or dislike of conflict situations” and “fear of repercussions on their ward(s)”.

65 Article 9 §1.3° of the Guardianship Act
66 Belgian National Report, op.cit
67 Belgian National Report, id
68 Belgian National Report, id
Independence of the guardian

The Guardianship Service is part of the Justice Federal Public Service (FPS) (in other words: the Ministry of Justice).\textsuperscript{69} This service was created under the FPS Justice in order for it to be independent of migration, asylum and reception instances. The law explicitly forbids that personnel of the Interior ministry, the Foreigners’ Office, the Commissioner general for refugees and stateless persons, and the Foreigners’ appeal court can become guardians. Also a lawyer cannot be the guardian and the lawyer of the same ward. The legislation has been quite careful to avoid conflicts of interest.

The question of independence and confidentiality was an issue raised already in the ENGI report of 2010: “A weak point in the position of the guardian is said to be that the guardian has a duty to represent the child’s best interest, yet Belgian law states that all pertinent information must be given to the authorities, which can result in a contradiction of the best interest rule and the guardian’s relationship of trust with the child”\textsuperscript{70} Under the penal code\textsuperscript{71} it can be deduced that all guardians have the obligation to professional secrecy but this is not formally the standpoint of the Guardianship Service. Since 2011 Service Droit des Jeunes has seen the fusion of migration and reception instances under the same Secretary of State. Some questions have been raised on the position of guardians who work for an organisation (Red Cross) who also manages reception centres for SC. Also some questions are currently raised by the more extended collaboration between the Guardianship Service and the Foreigners’ Office and the impact this has on professional secrecy and the independence of the guardians. The guardians are supposed to share information with the guardianship service but it is still unclear how much and which information is then transmitted to the Foreigners’ Office. Many fear an indirect breach of professional secrecy and independence. The questions about the professional secrecy and independence of the guardian need to be officially clarified.

Resistance to pressure

\textit{“I think you have to be courageous to be a guardian. They have to hear about all your problems and then they have to solve them” - 17 year old separated girl from Guinea}

Guardians mentioned that they could face different kinds of pressures: a pressure to communicate information, a pressure of having to be in conflict with institutions who, according to the guardian’s assessment do not respect the rights of the child and an emotional pressure of having to deal with difficult human situations. In order to face different pressures guardians need a clear recognition of their role as a child rights defender and organised moments to relieve the emotional pressure with the possibility to share experiences and retrieve inspiration from others.

\textsuperscript{69} Article 3 of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002
\textsuperscript{70} ENGI, \textit{Towards a European Network of Guardianship Institutions}, Utrecht, February 2010, p.15
\textsuperscript{71} Article 458 of the Penal Code
Conclusion

The implementation of this standard confronts the guardian with a striking contradiction. On the one hand there is an important legal task to defend the rights of the minor and to be by his side every step of the way. On the other hand there is a lack of clarity on independence and professional secrecy which are the very preconditions to exercise the role of a child rights defender. The ATF-questionnaire reveals that overall the guardians do fulfil their role as a child rights defender, which is confirmed by the minors who felt defended by their guardians.

Recommendations for a way forward:

- Recommendation 14: Publish a clear and explicit statement on the obligation on professional secrecy of the guardians.
- Recommendation 15: Clarify and repeat to all actors in contact with the guardian that the guardian is an independent actor who only acts upon the interest of the minor and is bound to confidentiality.
- Recommendation 16: Organise ‘intervision’ sessions where the guardians can discuss their difficult cases or questions on how to deal with pressure from other actors.
- Recommendation 17: Establish a helpdesk which aims to relieve the emotional or other pressure of the guardian should be put in place, including a mechanism to quickly be able to relieve the pressure in urgent or very difficult situations.

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72 Intervision group: a group works through focused case studies with the help of a moderator. The peers take on a consulting role with one another.
STANDARD 5

The guardian is a bridge between and a focal point for the child and other actors involved.

Indicators:
The guardian:

A) Keeps in contact with and is the focal point for:
   • The lawyer,
   • Reception and social workers (mentors),
   • (Psycho)social and medical care givers,
   • Migration authorities,
   • School teachers,
   • Foster parents,
   • Social Services,
   • (Extended) family members in the host country and/or the country of origin,
   • Other relevant actors.

B) Informs the child about his/her rights and obligations in relation to the other actors.

C) Assists in establishing links with the child’s community and developing key one on one relationships that gives the child a sense of belonging to a family or group.

D) Ensures that he/she is informed about decisions which have an impact on the child and is present at key meetings and interviews where decisions are made.

“If you have a problem with a social worker (or any other persons) I call my guardian. He then organises a meeting with everybody so we can discuss the problem. It is important that I’m there and that social worker is there because you will not solve problems if you do not include everybody”. - 17 year old separated girl from Guinea

A case-managing role?

In the legislation several references are made to the other actors with whom the guardian is supposed to be in contact.73 The legislation mentions: the Guardianship Service, the Judge of the Peace, the lawyer, the reception centres, the accommodating family, migration authorities and “any other authority”. The legislation is less clear on (psycho) social or medical caregivers, school teachers or others as the guardian is legally obliged to “make sure that the minor has access to school, psycho-social and medical care” but the actual contacts can in theory (and often will in practice) be delegated to for example social workers74 in the reception centres. This room for interpretation can sometimes lead to difficulties regarding the allocation of responsibilities between certain actors. In general the guardians do feel that they have a case-managing role surrounding the contact and actors around the child. In the training sessions it appeared that the vast majority of the guardians do keep contact with the actors who are in regular contact with their wards(mainly those from indicators a to f). When it comes to other actors practices seem to vary more.

73 Articles, 9,10,11 of the Guardianship Act
74 By social workers we mean those who see the child once in a while and make decisions about their care needs and not the 24h/24h staff who is in charge of the primary needs of the minors.
The minors in the workshops found in general that the guardian kept contact with the actors around them, in particular with their social workers in the reception centres. Contact between the guardian and their family or friends seemed to be inexistent.

**Communication and collaboration with other actors**

To manage the communication with other actors there are several elements to take into account: the recognition of the role of the guardian (i); the mutual willingness to communicate (ii) and the capacity of the guardian to communicate adequately with persons with different personalities and functions (iii).

In the training sessions of the first and the second project it was unanimously mentioned that there were still actors who did not know about or recognise the role of the guardian. In the past some discussions have taken place to sign a protocol between the Guardianship Service and the reception centre to define the responsibilities of all actors but the protocol has never been finalised. There is no formal policy from the guardianship service to deal with the communication with the other actors or clarify communication procedures. The Vade-mecum does not mention methods or tips on how to communicate with other professionals. The directives that will be published in autumn 2013 will address this issue.

During the training sessions the absence of systematic information sharing between the guardians and other actors was mentioned as a recurring obstacle. Also several interviewed and participating guardians regretted that they were not trained in communication methods. The guardian has to deal with a variety of actors and the best way to communicate with certain actors or certain personalities can vary quite a bit. The guardian is expected to be versatile in his/her communication.

The unclear position on professional secrecy and shared professional secrecy also makes it difficult to know which information to share, with whom and why. This was mentioned as a recurrent problem with personnel of the reception centres and could be very problematic on (mental) health issues. Several examples were mentioned by the guardians of not being informed that their ward had for example attempted suicide, was HIV positive or had a tumour. At a minimum, the guardian or social worker should encourage the minor to share important information.

**Conclusion**

Through the training sessions it became apparent that standard implies two-way communication, but which can be hindered by the practice of certain guardians and also by the actors with whom the guardian interacts (incomplete mutual information, power struggle, etc). The recognition of the role of the guardian by other actors, a clear share of responsibilities and flexible and targeted communication methods are key to ensure his role as a bridge and focal point. The communication and collaboration with other actor’s needs to be formalised (further) and the methods to do so need to be addressed in the training of the guardians.
Recommendations for a way forward:

- Recommendation 18: Organise awareness raising sessions on the role and tasks of the guardians for the wider public, like social welfare institutions, police, schools, youth actors, etc.

- Recommendation 19: Organise regular moments of communication with all actors involved around the SC to have a holistic discussion on the basis of a set list of topics.

- Recommendation 20: Organise trainings on methods of communication which include verbal and non-verbal communication.

- Recommendation 21: Organise trainings for the guardians on how to develop and use a network.

- Recommendation 22: Clarify the issues that can be discussed under shared professional secrecy.
STANDARD 6

The guardian ensures the timely identification and implementation of a durable solution.

*Indicators:*

The guardian:

A) Challenges others to prove their proposed solutions and implementation plan take the best interest as a primary consideration, while taking at least the following into account:

- The child’s family situation,
- The situation in the country of origin,
- The adequacy of concrete care arrangements to ensure a safe and secure environment,
- The safety and risks the child is exposed to,
- The level of integration in the host country,
- The mental and physical health of the child,
- The possibilities of development in the various options.

B) Supports the reunification of the child with his/her family when this is in the best interest of the child taking into account any danger related to the exile grounds for the child or his/her family.

- The guardian has personal contact with family members and organizations in the country of origin after consent of the child, and checks their abilities to take care of the child in a safe and appropriate way,
- The guardian considers the signals of trafficking related to the role of family members.

C) Supports the integration of the child in the host country when this is in the best interests of the child, giving particular consideration to:

- Language,
- Social contacts,
- Education and employment.

D) Supports a safe return to the home country when this is in the best interest of the child.

- Depending upon the wishes of the child the guardian accompanies the returning child or he/she arranges somebody else to do this.
- The guardian oversees the preparation and monitoring of a life project/reintegration plan before and after the return.
- The guardian tries to be informed about the well-being of the child after he/she is returned to the home country.

E) Prepares the child for all predictable changes which will occur after he/she turns eighteen.
Article 11 of the Guardianship Act states that “The guardian takes every useful measure to search for family members. He makes opportune proposals for a durable solution in conformity with the minor’s (best) interest”. The only tool that guardians can have to do so is the Vade-mecum. The Vade-mecum indicates that “it is fundamental that the guardian acts independently and is only guided by the child’s best interest”. The question of durable solutions is intimately linked with the best interest assessment. The lack of a set methodology to determine best interest also has negative consequences on the durable solution determination. The Vade-mecum gives a few tools to help assess the durable solution. First of all it distinguishes situations in the country of origin where there is a risk for the minor (abusive family, security situation in the country, risk of persecution, risk of trafficking, etc) and those where such severe risks are not noted. In risk situations the durable solution “is likely to maintain the minor in Belgium”. In the case where there is no apparent risk factor the access to the rights listed in the CRC should be examined and compared. The minor has a right to live with his family if the family can educate and support the minor with regards to his or her development and wellbeing (art. 9 CRC). The minor “has the right to have an adequate standard of living allowing the minor to have a physical, mental, spiritual moral and social development (art. 2 CRC). The minor also has the right to maximise his survival and development (art. 6 CRC) through access to health care (art. 27 CRC), social security, schooling (art. 28 CRC), and play (art. 31 CRC). He also has the right to be protected from any type of economic exploitation (art. 34 CRC)”. According to the Vade-mecum all those rights should be considered by the guardian.

The Vade-mecum has not been updated since 2007 and therefore does not include the new procedure on durable solutions introduced by the law of 12 September 2011 or recent sources of information of countries of origin. In the workshop the guardians mentioned that finding reliable information on the country of origin still remained problematic. Also it puts a tremendous responsibility on the guardian to find information with little means compared to the information means that the Belgian authorities have.

When a guardian proposes a durable solution to the Foreigner’s Office (only for non-asylum seeking minors or refused asylum seekers) it does not mean that it will indeed be the durable solution that will be implemented. This is an enormous responsibility that is put on the guardian as they have the burden of proof to for example show that a the (family) situation in the country of origin does not offer the necessary guarantees for the minor. The Foreigner’s Office has the last word in the determination of the durable solution.

75 All guardians receive at the start of the guardianship the Vade-mecum of the guardian. This publication of more than 400 pages covers different subjects: what happens to the minors before the appointment of the guardian, the procedure of appointment of the guardian, the role of the Guardianship Service, the first tasks of the guardian after the appointment, the practicalities of the residence procedures, the role of the guardian towards housing, the education of the minor, the psychological support, the access to health services, the search for a durable solution, the management of the assets of the minor, the demand of help from public services, the control of the guardian, ethical questions, the responsibilities of the minor, the social and fiscal statute of the guardian and the end of the guardianship.

76 Service Public Fédéral Justice, Vade-mecum pour les tuteurs des mineurs étrangers non accompagnés, première édition-mise à jour le 31 août 2007, p.243

77 Service Public Fédéral Justice, op.cit, pp. 258-259

78 The Vade-mecum mentions articles 7,8,9,10,18,22,24,26,27,28,31 and 32 of the CRC.

79 Service Public Fédéral Justice, op.cit, p. 259

80 For asylum seeking children it is considered that the recognition as a refugee is a durable solution. The procedure under the law of the 12th September 2011 therefore only considers the durable solution determination of non-asylum seeking minors or refuses asylum seeking minors.
The guardian can then appeal against this decision at the Aliens’ Appeal Court.\textsuperscript{81} Between the 1\textsuperscript{st} of January 2012 and 31\textsuperscript{st} October 2012 there have been 30 appeals against 95 decisions of the Foreign Office who determined that the durable solution of the minor was the return to the country of origin.\textsuperscript{82} It is a written procedure but with the possibility to hear the guardian and the minor. The Court can annul the decision of the FO but does not formally oblige the FO to review their decision. Often the decisions are annulled because the FO did not thoroughly check the circumstances in the country of origin or did not provide a sufficient explanation as to why they did not follow the proposed durable solution of the guardian. A recurrent problem is that when a decision is annulled by the Court, the FO sometimes takes the same decision again without verifying the safeguards in case of return. The guardian then has to appeal the decision again which had already been annulled by the Court. This can last until the child turns 18 years, leaving them \textit{de facto} residency, without an effective durable solution, and the risk of detention and forced removal on their 18\textsuperscript{th} birthday.

\textbf{The guardian and the voluntary return and reunification of their ward}

\textit{“One time my guardian talked about return. I was so angry. I almost died there. I almost died coming here and then you want to send me back? It was bad. After I talked to him and told him I really could not go back and that I was angry at him. Only later I understood that talking about the possibility to return and having to return is a different thing” - 18 year old former separated child from Afghanistan}

Return can be considered a durable solution but it will not take effect before the legal maturity of the minor unless it is voluntary return. As separated children are considered to be vulnerable, the Belgian government decided not to forcibly return SC before their maturity, even when a removal order has been issued. There is more attention on return in the last years and it is considered a priority by the Secretary of State.\textsuperscript{83} Meetings were organised by the Guardianship Service to inform guardians on the voluntary return. The Secretary of State has also expressed interest in the ERPUM (European Return Platform for Unaccompanied Minors).\textsuperscript{84} Since 2013 Belgium is an observing member but ERPUM has not yet established any concrete plans or modified the policy with regards to return.\textsuperscript{85}

There are few effective voluntary returns. In 2012, 15 SC and 5 former SC went back to their country of origin through the voluntary return programme.\textsuperscript{86} There is little experience to really draw general conclusions. A voluntary return cannot be done without the consent of the guardian, the minor and his family. In the preparation of the voluntary return the guardian has an important role to play but there is no formal role for the guardian in the actual return or the monitoring. Certain guardians, travelled back on their own initiative with their wards to their family and some guardians keep contact to ensure that the minor is doing well.

\textsuperscript{81} Conseil du Contentieux des Etrangers/Raad voor Vreemdelingenbetwistingen
\textsuperscript{82} Source: Foreign Office, Courrier du 1er mars 2013 « votre demande d’information relatives à l’application de la loi du 12/09/2011 modifiant la loi du 15/15/198
\textsuperscript{83} Maggie De Block, Staatssecretaris voor Asiel en Immigratie, “ALGEMENE BELEIDSNOTA ASIEL & MIGRATIE”, 21 december 2012
\textsuperscript{84} European Return Platform for Unaccompanied Minors (ERPUM) is a European project. The project aims to find new methods for the return of unaccompanied minors that need to return after receiving a final rejection of their asylum application. http://www.migrationsverket.se/info/4597_en.html
\textsuperscript{85} Parliamentary question n°19121 by Karin Temmerman on ERPUM
\textsuperscript{86} Parliamentary question n°516 by Karin Temmerman on voluntary return
They can do this through the contacts of IOM and Caritas who in Belgium work on voluntary returns or keep direct contact with the minor by phone.

Through the workshops and trainings it became very apparent that talking about return is very sensitive and can compromise the relationship of trust with the minor if it is not clear that it is only envisaged as one of the possible durable solutions.

The guardian as an integration actor?

The minors who participated in the workshops were strongly in demand of more information on habits and customs of the people in Belgium and were in favour of integration courses. Guardians in the trainings did feel that they had a role to guide the minor in the host society but sometimes they lacked tools and time to do so.

After 18

“I'm a little scared (about becoming 18 and being without a guardian). I have gotten used to him. When I am with him I'm reassured. So I really do not like the fact that I'm going to lose him”. – 17 year old separated girl from Guinea

There is no legal or formal possibility to extend the role of the guardian. On an informal basis several guardians keep contact with their ex-ward and sometimes attend the asylum interview as a person they trust. A fifth of the interviewed minors had already been reassured about the fact that the guardian was willing to continue to be their person of trust that they could contact if they had problems. The role of the guardian before the legal maturity is fundamental to prepare the minor for the changes to come. The preparation of the child for all the predictable changes was assessed as a very difficult point in the first report of the Closing a Protection Gap project and in the training sessions with the guardians. This is confirmed by the assessment the guardians made during the training where the preparation for the “after 18 period” was coded “orange and red”.

It was considered to be one of the most difficult moments for the guardian to support the minor. First of all because there are a lot of changes to prepare at once (housing, education, end of guardianship, if no durable solution is found, etc). A second element is that there is little institutional support for the guardian at that moment because they often have to deal with actors who are less familiarised with separated children (banks, insurance companies) but also with actors who can have very different practices between local authorities (the social welfare is organised at local council level). Another difficulty that guardians face is when the minor does not have a permit when reaching the age of majority. Do you prepare for life in irregularity? How do you do this? On this, practices varied and tools were lacking.

Conclusion

Assessing, determining and implementing the durable solution is the ultimate goal of guardianship but is also the most complex task. On the one hand legislation sets out a very important role for the guardian. This encompasses the choice of the procedure (asylum or durable solutions), the search for country information, family tracing and preparing the minor for an independent adult life.
On the other hand the guardian receives few tools to make the best durable solution determination possible and little guarantee that it will indeed be implemented by the responsible authorities. Return remains the most sensitive topic to discuss with the minor while the preparation for the “after 18” period is the most difficult to organise.

**Recommendations for a way forward:**

- **Recommendation 23:** Put the burden of proof with regards to the durable solution on the decision making authorities and not on the guardian. Authorities have to prove that they have examined the access to all rights in the Convention of the Rights of the Child in the country of origin and in the host country and that they have made a reasoned evaluation balancing all options before determining a durable solution.

- **Recommendation 24:** Develop practical tools for the guardians to structure and to argue in favour of the durable solution that is in the best interest of the child.

- **Recommendation 25:** Develop a checklist for guardians on all elements to discuss with the minor before they turn 18. The discussion needs to include life in irregularity and return for the minors who did not receive a residence permit.

- **Promising practice 5:** The French-speaking guardian organisation “ATF –MENA” has developed a brochure for separated children to prepare them for their life after leaving reception centres and their 18th birthday. It should be updated and also be translated to Dutch.

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87 A.T.F.mena "Autonomie. Guide pratique -. It deals with issues around finding independent housing, insurances, administrative tasks, the management of money, employment and trainings, well being and general advice for example on how to organize the payment of their bills, etc.
"It is important that your guardian considers you as a human being... who has the same rights like everyone else" – 17 year old separated girl from Rwanda

In article 10 of the Guardianship Act it is stated that the guardian “sees to it that the political, philosophical and religious views of the minor are respected”. When we compare the assessment made in the study of ATF-MENA, the feedback in the trainings and workshops with the guardians and the separated children this standard seems to be the most generally applied and where the practices are overall seen as (very) positive.

A code of conduct /deontology for the guardians

The absence of a code of conduct /deontology for guardians is a great concern as all professions dealing with (vulnerable) children have one. The Vade-mecum from 2007 mentions the legislation with regard to professional secrecy but currently the Guardianship Service has no clear position on professional secrecy. Many guardians and NGO’s are very worried about this. No other elements of a code of conduct are addressed in the Vade-mecum or in the official trainings for guardians.

Complaint mechanism for the separated child

The minor can go to the justice of the peace. The minor can be helped by a person of trust, a person from the reception centres, etc. The national report of the first Closing a Protection Gap project revealed however that only a few minors knew that they could lodge a complaint and change guardian. It also revealed that there was no systematic information given to the minor about the possibility to change guardian by the guardian or other surrounding actors. In the workshops of the 2nd project only one minor did know how to change guardian. The information still seems to be lacking. In the workshops it was also mentioned that some SC were scared to launch a complaint procedure.

88 Please consult pages 19-20 of this report
A tailor-made approach?

Both the guardians and the separated children who were consulted in the workshops agreed that the tailor-made, or individualised approach gives the most effective results. Mentioned obstacles were the lack of time, lack of contact, heavy case-load and the variety of profiles of the minors implying a very broad and very specific knowledge of, among others, the minor’s countries of origin, their social and cultural backgrounds, their personalities and all the individual specific needs. All those elements can lead to varying practices and potential unequal treatment between minors.

Conclusion

The standard has only a limited explicit legal basis but the practices have been positively evaluated. According to themselves, other professionals and the children guardians apply this standard in general. A great concern is that there is no formal code of conduct which has been developed specifically for guardians. Another recurring issue is the lack of information given to SC about the complaint mechanisms in case there are problems with their guardian.

Recommendations for a way forward:

- Recommendation 26: Take the capacity to treat a child with respect and dignity into consideration when selecting potential guardians
- Recommendation 27: Develop a code of conduct/deontology which is specific and adapted to the role of the guardian.
- Recommendation 28: Give clear information to the separated child on the complaint possibilities and mechanisms. This coincides with the right to information as stated by article 13 of the CRC.

Promising practice:

- Promising practice 6: Generally speaking, guardians are considered by personnel of reception centres, other guardians and the separated children, to have a respectful attitude with due consideration to the dignity of the child.
STANDARD 8

The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

Indicators:
The guardian:

A) Knows the child personally.
B) Keeps all information about and from the child confidential unless it is necessary to break confidentiality to keep the child or another child safe and informs the child, when possible, about a confidentiality breach.
C) Does not judge the child’s reasons for exile or allow this to effect his/her relationship with the child.
D) Is always honest with the child and keeps his/her promises.
E) Gives clear information about his role and limitations in a way that the child understands and can recall.
F) Demonstrates to the child that he/she really cares for the child – that he/she works from the heart – and that he/she feels responsible for the child.
G) Makes clear to the child that a child who disappears is always welcome to return to the guardian.
H) Pays attention to verbal, nonverbal and emotional communication.
I) Is empathic towards the child and gives moral and emotional support.

A difficult relationship of trust

“Trust is something you gain. Trust is difficult. Now we know each other better. We talk about a lot of things. She gets to know me, I get to know her. I get to know her shortcomings but I also get to know mine...” – 17 year old separated girl from Guinea

The Guardianship Act in Article 11§2 states “The guardian has regular contact with the minor [...]He or she has contact with the minor to develop a relationship of trust....” The directives that the Guardianship Service is developing will probably set minimal amounts of visits for the guardian according to the stage of the journey of the minor (arrival, steps in the procedure, etc).

During the training sessions several obstacles were mentioned. To know a child personally implies that the minor wants to be known and that the guardian has enough time to get to know the minor. Both are not always the case. Often the relationship of trust is going to be related to the experience of the minor with adults but also the amount of contact, the (level of) trauma, the quality of the contact and the time with the guardian. In the training sessions all guardians agreed that the time element was a tricky issue: it depends on the case-load, on the location of all the wards (and thus the amount of travelling to do by the guardian).
The way the guardian and the minor communicate plays an important role in the building of a trusting relationship. In the trainings, several guardians wished that there were more trainings on methods of communication (verbal and non-verbal), to deal in an empathic way with the child and to receive more practical materials to facilitate the communication with the minor. Again the need for a clear code of deontology was stressed by the participants of the training with a clear statement on confidentiality.

“It helps if the guardian slowly arrives at the difficult questions, first talking about small stuff so you can relax or when he tells you something about similar situations he has already encountered and what has done for other children. This way you can know that he knows what he is talking about” – 17 year old separated girl from Rwanda

The separated children in the first workshop mentioned very strongly that the guardian had to gain the trust and had to prove him-/herself over and over again. All considered trust to be something that is “very difficult”. The fact that the guardian did not judge was important to them. It was a very important standard to them but also the one where the “recipe for success” was the most unclear. Overall they trust their guardian but it took a lot of time to do so. They all considered their guardian is (and has to be) bound by confidentiality.

Conclusion

Trust is a crucial and very challenging issue in the work of a guardian. Appropriate communication methods, the respect of confidentiality and regular contact appeared to be the central elements to build trust. Again the implementation varied according to practices of the guardians but also according to the level of traumatisation of the minor.

Recommendations for a way forward:

- Recommendation 29: Develop training for guardians on empathy and methods to provide for emotional support.
- Recommendation 30: Clarify the obligation of confidentiality of the guardians and systematically inform the minors about it.

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89 Trainings of 6th and 11th of June 2013: 9 participants
90 Workshop of the 19th of June: 4 participants
“I have a very good friend and he hasn’t seen his guardian for over 9 months. He calls and the guardian just hangs up, he calls.... the guardians hangs up.....What kind of guardian it that?” – 18 year old separated boy from Afghanistan

STANDARD 9

The guardian is accessible.

Indicators:
The guardian:

A) Sees the child as soon as possible after his/her appointment in a face to face talk.
B) Pays visits to the child on a frequent basis.
C) Can be reached easily by the child by phone or E-mail.
D) Communicates in a way which fits the age and development of the child.
E) Should make use of interpreters when necessary.
F) The guardian lives near enough to the child to be able to respond quickly to difficulties.
G) Informs the child where and when they can meet.
H) Contacts the child from time to time to keep in touch also when there is no specific need to do so.

Frequency of contacts

Article 11 §2 of the Guardianship Act states that “the guardian has regular contact with the minor”. The term ‘regular’ is not defined and the interpretation of ‘regular’ can vary quite a bit. The Guardianship service is currently drafting guidelines for guardians where they also specify the minimal amount of visits. They are not official yet.

It is difficult to quantify exactly the frequency of contacts as this frequency varies according to the facilities in which the minors stay, the geographical distance, the date of arrival of the minor (just arrived or already settled in), the emotional support needed by the minor, whether the interviews with the authorities already have been done or not, etc. The work load will also be a main factor which will influence the frequency and amount of contact between the guardian and his or her ward.

“I do not see my guardian enough, maybe once every month or two months. She doesn’t do her job very well. When she calls I’ll always say I’m doing fine, even when it is not true, because she does not seem to be really interested to know how I’m really doing”. – 17 year old separated girl from Guinea
According to the national report\textsuperscript{91} the interviewed guardians met the wards most often at arrival. The frequency of contacts revealed by the guardians, the minors, and the worker of the reception centre varied between several contacts a week to contact every two months. On average the interviewed guardians met their ward once every two weeks. The telephone played an important role in the contact between the guardian and his or her ward. The interviewed minors said that they could always contact the guardian by phone if they had problems. Guardians also used telephonic contact as a way to compensate for their physical absence when they have a lot of work, as a tool to keep regular contact and to be informed of any problems that the minor might have.

In the workshops of the current study with the separated children it was mentioned that half of them had not seen their guardian for several months, sometimes even when they were still at the beginning of their procedure. The feedback given on the questionnaire of ATF-MENA also indicated that frequency of contact remains an issue and/or that the practices widely vary. Only 10 of the 63 responded thought that the standard was “often” applied.\textsuperscript{92} None of the guardians of the interviewed minors had discussed the frequency of the visits with them. The minors stressed again that they wanted more social contact with their guardian. Most guardian only contact for practical/procedural reasons. The guardians confirmed in the training session that they put less time into social contacts with their ward, often due to time-constraints.

**Tools and challenges with regards to accessibility**

The guardians can ask the presence of an interpreter at any moment and the costs will be covered by the Guardianship service. There are specialised social interpreters who sometimes have received a specific training to translate for minors. Sometimes it can be more difficult to find an interpreter with a specific language or dialect or can be very complicated if the minor is blind or deaf.

As Belgium is a federal country with three national languages we regularly see SC who, for example, have their asylum procedure in one language and the reception centre in the other linguistic part of Belgium. This can be very difficult for the minor and the guardian. As a consequence you have guardians who have wards in reception centres close to the Dutch, German and French border who have to deal with the different languages and long distances. The long distances can influence the regularity of the contacts.

As the guardian in Belgium does not have any say in how far/close s/he lives from their wards, indicator F does not apply. The guardian can only try to refuse guardianship of minor who live far away but there is no guarantee that it will be taken into consideration.

**Conclusion**

The accessibility of the guardian seems the aspect where the practices vary the most. According to the responses on the ATF questionnaire it was considered to be the standard where to most improvement was needed.\textsuperscript{93}

\textsuperscript{91} Belgian National Report, 2010-2011 Closing a protection gap. “You need to earn the title of guardian”. Core standards for guardians of separated children in Europe.

\textsuperscript{92} Please consult pages 19-20 of this report

\textsuperscript{93} See pages 19-20 of this report
There are currently no guidelines regulating accessibility and many elements like travel distances, languages issues, case-load and the commitment of the guardian can affect accessibility. The lack of accessibility has an important impact on the realisation of all other standards as there will be no trust without regular and qualitative contact. There will also be no correct information, no participation and no effective best interest assessment and determination.

**Recommendations for a way forward:**

- Recommendation for the system 31: Ensure that the language of the procedure, the guardian, the reception centre and the school is the same.
- Recommendation 32: Include frequency and quality of visits and contacts in the annual evaluation of the guardians.

**Promising practices:**

- (Future) Promising practice 7: The inclusion of a minimal amount of visits in the future directives for the guardians
- Promising practice 8: Easy access to well-trained interpreters whose costs are covered by the Guardianship Service.

94 The publication if the directives for the guardians is expected in the last trimester of 2013
“You have to earn the title of “guardian”. It’s like a doctor. If he doesn’t cure, if he doesn’t help, then he is useless. That’s wrong. The guardians should know more their job. They are not just there for the interviews or to accompany you to the lawyer. They have to be there for the minor.” – Quote from the national report by a former separated girl from Guinea

The guardian is equipped with relevant professional knowledge and competences.

Indicators:
The guardian:
A) Has working knowledge about:
   • Children’s rights,
   • Migration and asylum law,
   • Child developmental psychology,
   • Trauma,
   • Trafficking,
   • Intercultural communication,
   • Child abuse and protection,
   • Social welfare,
   • The situation and life in the home country of the child.
B) Knows his/her personal and professional limits and is open to improve his/her knowledge, methodology and attitude.
C) Is proactive in identifying learning and development needs and requests training when necessary.
D) Manages his/her caseload to give due attention to all the children he/she works with.
E) Is well organized, keeps records and is accountable.
F) Can manage costs and available resources.
G) Works according to a set methodology.
H) Seeks support and counselling whenever necessary and exchanges experiences with his/her colleagues on a regular basis.
I) Is open to supervision and monitoring.
J) Reflects on his/her actions, role and motivation.

The training given by the Guardianship service and other organisations

The guardians can have a wide variety of educational and professionals backgrounds. According to the legislation on guardianship the guardianship service should organise a training regularly. All guardians receive five days of training from the Guardianship Service. The training which is offered consists of sections on immigration and asylum law, on the laws on youth protection, on the legislation concerning the management of assets, with regards to elements of psychology and pedagogy, including elements of how to deal with a multicultural work environment.

95 Belgian National Report, Closing a protection gap. “You need to earn the title of guardian”. Core standards for guardians of separated children in Europe, 2010-2011
96 Article 15 of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002
Only after this first training can a person become a guardian. Every year a 5-day course is offered to the guardians. Guardians should be able to prove that they have pursued, at least once a year, additional multidisciplinary and continued training “organised by the guardianship service or others if the guardianship service recognises that training”.

There is no official frequent training organised by the Guardianship Service. Several NGOs organise regular trainings which are followed by many guardians on a voluntary basis. Several other organisations propose training for guardians on procedures, mental health, reception, and communication with young people. In the national report of the first Closing a Protection Gap project, guardians indicated that they would have liked to have additional training in the handling of cases concerning human trafficking and would like also specific training on certain cultures, traditions and religions. Some updating sessions on the legislation and practices relating to the residence procedures were also welcomed. No significant changes in the format, content and frequency have been made with regards to training of guardians since 2010. The national report of the first project showed that guardians generally thought that the training was a good start but that too much information was given in too little time without enough practical elements. Also the lack of “life-long training” was brought up.

Several other services also organise training for guardians. Organisations that employ employee-guardians also organise regular training for their guardians and often involve more experienced guardians in the training in order to include practical knowledge. Those organisations are mandated by the Guardianship Service and the guardians employed by them have to answer to their employer and the Guardianship Service. Independent guardians have also arranged themselves within an organisation of guardians in order to share practical experience and organise additional trainings. Those organisations of guardians are however confronted with a lack of financing for their (training) activities.

All guardians receive at the start of the guardianship the *Vade-mecum* of the guardian. This publication of more than 400 pages covers different subjects: what happens to the minors before the appointment of the guardian, the procedure of appointment of the guardian, the role of the Guardianship Service, the first tasks of the guardian after the appointment, the practicalities of the residence procedures, the role of the guardian towards housing, the education of the minor, the psychological support, the access to health services, the search for a durable solution, the management of the assets of the minor, the demand of help from public services, the control of the guardian, ethical questions, the responsibilities of the minor, the social and fiscal statute of the guardian and the end of the guardianship. The *Vade-mecum* has, however, not been updated since 2007 and now lacks important actual information on legislation and useful contacts. In principle it could be a very useful and comprehensive tool but it will need a thorough update with the inclusion of practical tips, check-lists and a clear position on confidentiality and deontology.

**Methodology of guardians**

When discussing the methodology of the guardian we will use the following definition of methodology: “a body of methods, rules, and postulates employed by a discipline: a particular procedure or set of procedures”. The tasks of the guardians as defined in the legislation and in the *Vade-mecum* of the guardian give structure to the methodologies of the guardians.

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97 Article 16 of the Royal Decree of 22 December 2003 to implement Title XIII, Chapter VI “Unaccompanied minor aliens” of the Programme Law of 24 December 2002
98 A book of ready reference, a manual
99 Merriam-Webster Dictionary
100 Service Public Fédéral Justice, *Vade-mecum pour les tuteurs des mineurs étrangers non accompagnés*, première édition-mise à jour le 31 août 2007
The Vade-mecum does describe the different aspects of the role of the guardian but does not set a scheme of action for the guardians. As the Vade-mecum is outdated it is not used much.

The website of the Guardianship Service indicates that the recommendation of the Council of Europe on “life-projects serve as a methodological framework for the guardian”.

The following description has been given of a life project by the Council of Europe: “Life projects aim to develop the capacities of minors allowing them to acquire and strengthen the skills necessary to become independent, responsible and active in society. In order to achieve this, life projects, fully in accord with the best interests of the child, as defined in the Convention on the Rights of the Child, pursue objectives relating to the social integration of minors, personal development, cultural development, housing, health, education and vocational training, and employment. Life projects are individual tools, based on a joint undertaking between the unaccompanied migrant minor and the competent authorities for a limited duration. They define the minor’s future prospects, promote the best interests of the child without discrimination and provide a long-term response to the needs of both the minor and the parties concerned.” The life-project takes the form of a written agreement between the guardian, the minor and other parties which sets out specific commitments to realise open-ended objectives.

A life project should take into account the specific situation of each child. In particular the following elements:

i. the minor’s personal profile: age, gender, identity, legal status, culture of origin, level of education, mental development and maturity, possible traumas suffered, health, vocational experience and skills

ii. the minor’s migration itinerary: factors influencing his or her departure, circumstances of the journey, duration of residence and living arrangements in countries of transit and in Europe

iii. the minor’s family environment and particularly the nature of his or her family relations

iv. the minor’s expectations, wishes and perceptions

v. the situation in the country of origin: the political, legislative, socio-economic, educative and cultural context, the human rights situation (taking account of ethnic, religious and sex discrimination and other potential dangers), the availability of appropriate care and support, including reception

vi. the special guarantees afforded to unaccompanied minors seeking asylum, in particular regarding non-refoulement and the identification of durable solutions

vii. the situation in the host country: the political, legislative and socio-cultural context

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\[\text{Recommendation CM/REC (2007)9 of the Committee of Ministers to member states on life projects for unaccompanied minors, 12th of July 2007}\]
The interviewed and trained guardians in the 1st and 2nd project indicated that they were aware of the “life-projects” but that with no adaptation to the national context it was not possible to use it in practice.

With regards to methodology there were two trends within the guardians interviewed in the 1st project. There are the guardians who did not follow a specific methodology but followed the task description of the guardian as described in the legislation. Others did not only follow the task of the guardian but also added additional tools to prioritise their work and assess the best interest of the child. Several references to tools of methodology were mentioned: the checklist developed by Margrite Kalverboer and the pyramid of Maslow.

**Support and monitoring**

In the national report of the first project it was regretted that there was little support provided by the Guardianship Service. The Guardianship Service has informed the guardians in the summer of 2013 that they will appoint a ‘coach’ within the team of the Guardianship Service who will be the contact person for the guardian for the questions and help they might need. Also a yearly evaluation will be organised from now on. It is too early to see how this will work in practice but this initiative is certainly an important step to better support the guardians.

The guardians share their expertise or ask NGO’s for their support. The guardians have created several organisations (Gardanto, Maia, Oliv, ATF-MENA, A&A) for and by guardians to exchange practices and provide additional training to their members. They organise meetings with external experts to find inspiration for their practices, clarify collaboration, exchange encountered problems and solutions, exchange expertise of country of origin etc.

As already mentioned the guardian is controlled by the Guardianship Service and by the Judge of the Peace (JP) of the district of the residence of the minor. The GS performs an administrative control of the day to day material organisation of the guardian. The JP controls whether the guardian manages the assets of the minors and if the guardian does indeed search for the durable solution for the minor. The JP also settles conflict between the minor and its guardian. If the guardian fails to accomplish his or her mission with diligence or if there are grave divergences of view between the guardian and the minor, the JP can end the appointment of the guardian. In 2012 there have 145 changes of guardians and 11 revocations of the recognition as a guardian.

The guardians must also write several reports according to a set format: a first report after the first two weeks of guardianship, reports twice a year during the guardianship and a report at the end of a guardianship. Several concerns have been noted about these reports. The use made of these reports is unclear for guardians and other experts. In the national report of the first “Closing a Protection Gap project” all interviewed guardians were under the strong impression that those reports were never read. Further there were several concerns about the protection of the confidentiality of the information. Indeed some questions remained on the amount of information that should be given in those reports and if guardians were allowed to put in information in those reports that the minor did not want to be known. Several ethical questions remained unanswered.

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104 Belgian National Report, op.cit


107 Article 20 of the Guardianship Act

108 Source : statistics 2012 of the Guardianship Service
The monitoring of the monitoring authorities?

The Guardianship Service falls under the SPF Justice/FOD Justitie (ministry of Justice) which finances and supervises them. There is little information on how that is done. There is also no information on how or whether the Guardianship Service and the different Judges of Peace interact or collaborate on the supervision of the guardians, for example by sharing information.

Conclusion

Practical, continuous training and the development of a set methodology are conditions to implement this standard. The given training is considered as a good starting point but it is not enough. The development of a set methodology will give tools to the guardians, harmonise the practice and give a framework for the monitoring of the guardians. Some efforts have been made to improve the monitoring of the guardian which was very minimal and does not reflect the level of responsibility the guardians have in Belgium.

Recommendations for a way forward:

- Recommendation 33: Deliver trainings that are more complete and include practical elements.
- Recommendation 34: Develop continued trainings opportunities. Practical experience should be included in those trainings. Financial and human means should be made available to ensure the trainings can be carried out. Moments of exchange of practices should be developed and supervised.
- Recommendation 35: Design an individual training plan for each guardian, with the guardian, according to their specific learning needs.
- Recommendation 36: Develop and distribute each year a catalogue of trainings, supervision sessions and conferences to the guardians.
- Recommendation 37: Update the Vade-mecum with the inclusion of practical tips, check-lists and a clear position on confidentiality and deontology.
- Recommendation 38: Clarify the use of and the access to the reports of the guardians, provide regular feedback on the reports to the guardians and incorporate the reports in the annual evaluation meetings.

Promising practices:

- Promising practice 9: The guardians of the Red Cross have developed a coaching system for new guardians where new guardians can contact more experienced guardians for guidance and information.
- Promising practice 10: The appointment of a ‘coach’ within the Guardians Service who can be the identified contact person for the guardian in case of questions or problems.
- Promising practice 11: The work of the guardians’ organisations (Gardanto, Maia, Oliv, ATF-MENA, A&A) who exchange expertise, practices, solutions and tools within their network of guardians.
A benchmarking was done to evaluate the level of implementation of the Core Standards in legislation, policy and practice in Belgium based on the first national report on guardianship (2010-2011, desk research and workshops with guardians and separated children. The views and experiences of the guardians and of the children themselves were central in this study.

The guardian is the central actor who stands for the respect of the rights of separated children and accompanies the child in their formative years, from childhood to adulthood. The Belgian legal framework provides quite a strong protective framework as the Guardianship Act provides a comprehensive set of tasks for the guardian. Moreover, it underlines that the guardian has to primarily consider the best interest of the child in all his actions. The way that those tasks have to be fulfilled however is currently left to the individual interpretation of the guardian, leading to varying practices.

Indeed a first general conclusion is that the practices of both the guardians and the other actors involved with SC vary widely. In order to apply the standards the role and the responsibilities of guardians need to be known and recognised by other actors involved with separated children. Furthermore, tools for harmonisation need to be implemented. The directives the Guardianship Service is planning will hopefully be a first step in the right direction.

The tasks of the guardians as defined in legislation and in the Vade-mecum of the guardian\(^\text{109}\) give structure to the working methods of the guardians but do not set a scheme of action for them. In order to fulfil all those tasks a complete and adequate training is crucial. Basic training is provided but needs to be improved with more continuous as well as practical training. Trainings on fundamental issues like the detection of signs of violence and abuse, intercultural communication or mental health issues are needed in the very near future.

An apparent weakness is the lack of official recognition that guardians are subject to professional secrecy. Subsequently there is a very strong call for the development of a code of conduct and a set methodology. Those instruments could and should be used as practical tools for the guardians but also an instrument for the Guardianship Service to develop an effective evaluation mechanism. A variety of other tools are missing as well: information and participation tools for the minors; tools to determine the durable solution, etc. The Vade-mecum needs to be updated with those new tools.

Overall the participants mentioned that there is a heavy burden of proof on the child and the guardian and less on the authorities. The guardian has to help prepare and find proof in the asylum procedure. It is also the guardian who has to prove which durable solution is the most adequate according to the situation in the country and within the family. The guardian however does not have the same means as the government to find information. This point was also raised during the first ‘Closing a protection gap’ project and it was then considered that the burden of proof should primarily lie with the government, especially since the governmental authorities have the final say with regards to asylum, the assessment of the durable solution and reception.

\(^{109}\) Service Public Fédéral Justice, *Vade-mecum pour les tuteurs des mineurs étrangers non accompagnés*, première édition-mise à jour le 31 août 2007
Accessibility of the guardian remains an issue. Some guardians are faced with a heavy case-load, physical distances, unclear guidelines and difficulties to attend all their wards equally, culminating in a difficult accessibility of the guardian. This lack will have a strong (negative) impact on the separated child. Feeling unsafe, being unsafe, lacking trust, lacking follow-up of the access to fundamental rights can all be consequences of a lacking accessibility of the guardian.

The assessment of the (level of) implementation of the Core Standards in legislation, policy and practices gives us an interesting overview of the current situation but also a new starting point for the future. The recommendations and promising practices revealed in this national report and in the reports in the eight partner countries are a useful basis for the development of a practical toolkit. This toolkit for guardians can aim to increase the level of implementation of the Core Standards and tools for policy makers to improve the legal and institutional context in which the guardian work. Harmonised qualitative practices on national and European level are the key to improve the protection of those, very vulnerable but also very resilient, children.
The why and the how of the ‘Closing a protection gap 2.0’ project

There are approximately 8 separated children who arrive each day in Belgium\textsuperscript{110}. Separated children have the right to a guardian who protects their rights and best interests. Not only do separated children have to live without their parents in a country they don’t know, but in some countries, they also run the risk of being detained because of their residence status or run the risk of being exploited by traffickers. Separated children can face risks in their country of origin, during their journey and in the host country.

The guardian is the central actor who stands for the respect of the rights of separated children and accompanies the child in its most formative years, from childhood to adulthood. The type of protection and care a separated child receives from a guardian depends upon the country which the separated child has (often randomly) entered and it can differ depending on whether or not a separated child asks for asylum.

The first ‘Closing a protection gap for separated children in Europe’ project aimed to harmonise the protection separated children receive from their guardian by focusing on the qualifications of a guardian. From December 2012 until December 2014 nine project partners\textsuperscript{111} work on the project ‘Closing a Protection Gap 2.0: Implementing the Core Standards for guardians of separated children in Europe in practice, feeding into policy and legislative instruments on guardianship’.

The goal of this report, which frames in Closing a protection gap 2.0, is to assess whether and to what degree the core standards on guardianship are implemented in legislation, policy and practice in Belgium based on the input from workshops with separated children and guardians and desk research of the existing laws, policies and methodologies. Each of the standards has been used to benchmark the legislation, the policies and the practices.

Standard 1: The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

Legislation is quite comprehensive in the sense that it sets the best interest of the child as the primary concern for guardians and defines a comprehensive role for the guardian. Unfortunately the law does not give guidelines to interpret the practical extent of the role. A crucial element that is missing is a set methodology to assess what the best interest is. The lack of guidelines and methodology causes practices to vary widely, leading to differentiated and unequal treatment amongst SC by the guardians. The lack of recognition of the role of the guardian by certain actors and/or the lack of appropriate institutional possibilities can limit the effective implementation of the decisions in the best interest of the child.

Standard 2: The guardian ensures the child’s participation in every decision which affects the child.

The legislation sets a role for the guardian that encompasses informing, explaining and listening to the views of the child. The practices of the guardian vary quite a bit. Several efforts have been noted by institutions, NGO’s and individual guardian to develop child-friendly information.

\textsuperscript{110} Average of the numbers between 2008 and 2012 according to the statistics of the Guardianship Service
\textsuperscript{111} The project partners are: Defence for Children-ECPAT the Netherlands (coordinator), Asylkoordination Österreich, Bureau d’accueil et de défense des jeunes (Service Droit des Jeunes), HFC “Hope For Children” UNCRF Policy Center, Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.v., Irish Refugee Council Ltd., Defence for Children International Italia, Conselho Português para os Refugiados, Slovenska filantropija.
A creative toolbox should be developed and made accessible to all guardians to help them communicate with their wards, in particular with those with specific needs. In general it seems that separated children are involved in decision-making but it can be a struggle for the guardian to assess the level of maturity and the extent to which the minor can indeed decide on his own.

**Standard 3: The guardian protects the safety of the child.**

There are almost as many positive as negative assessments on the application of this standard. This is problematic, as physical and mental safety is a fundamental issue. The lack of training on recognising signs of trafficking, abuse or self harm is mentioned in the previous report and is still very real. Even when the guardian identifies a dangerous situation it is not certain that the guardian will receive the adequate institutional response (for example by the youth welfare, psychiatric service) as they are submerged by work and not always very familiar with separated children.

**Standard 4: The guardian acts as an advocate for the rights of the child.**

The implementation of this standard confronts the guardian with a striking contradiction. On the one hand there is an important legal task to defend the rights of the minor and to be by his side every step of the way. On the other hand there is a lack of clarity on independence and professional secrecy which are the very preconditions to exercise the role of a child rights defender. The ATF-questionnaire\(^\text{112}\) reveals that overall the guardians do fulfil their role as a child rights defender, which is confirmed by the minors who felt defended by their guardians.

**Standard 5: The guardian is a bridge between and focal point for the child and other actors involved.**

This standard implies two-way communication, but which can be hindered by the practice of certain guardians and also by the actors with whom the guardian interacts (incomplete mutual information, power struggle, etc). The recognition of the role of the guardian by other actors, a clear share of responsibilities and flexible and targeted communication methods are key to ensure his role as a bridge and focal point. The communication and collaboration with other actor's needs to be formalised (further) and the methods to do so need to be addressed in the training of the guardians.

**Standard 6: The guardian ensures the timely identification and implementation of a durable solution.**

Assessing, determining and implementing the durable solution is the ultimate goal of guardianship but is also the most complex task. On the one hand legislation sets out a very important role for the guardian. This encompasses the choice of the procedure (asylum or durable solutions), the search for country information, family tracing and preparing the minor for an independent adult life. On the other hand the guardian receives few tools to make the best durable solution determination possible and little guarantee that it will be implemented by the responsible authorities. Return remains the most sensitive topic to discuss with the minor while the preparation for the “after 18” period is the most difficult to organise.

\(^{112}\) During the summer of 2013 guardians of the network of guardians “ATF MENA” have started a self-evaluation through sending questionnaires on the practices of the guardians to migration officials, reception centre personnel and lawyers. A part of the questionnaire used the Core Standards as a tool to benchmark the current practice.
**Standard 7:** The guardian treats the child with respect and dignity.

The standard has only a limited explicit legal basis but the practices have been positively evaluated. According to themselves, other professionals and the children guardians apply this standard in general. A great concern is that there is no formal code of conduct developed specifically for guardians. Another recurring issue is the lack of information given to SC about the complaint mechanisms in case there are problems with their guardian.

**Standard 8:** The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

Trust is a crucial and very challenging issue in the work of a guardian. Appropriate communication methods, the respect of confidentiality and regular contact appeared to be the central elements to build trust. Again the implementation varied according to practices of the guardians but also according to the level of traumatisation of the minor.

**Standard 9:** The guardian is accessible.

The accessibility of the guardian seems the aspect where practices vary most. There are currently no guidelines regulating accessibility and many elements like travel distances, languages issues, case-load and the commitment of the guardian can affect accessibility. The lack of accessibility has an important impact on the realisation of all other standards as there will be no trust without regular and qualitative contact. There will also be no correct information, no participation and no effective best interest assessment and determination.

**Standard 10:** The guardian is equipped with relevant professional knowledge and competences.

Practical, continuous training and the development of a set methodology are conditions to implement this standard. The given training is considered as a good starting point but it is not enough. The development of a set methodology will give tools to the guardians, harmonise the practice and give a framework for the monitoring of the guardians. Some efforts have been made to improve the monitoring of the guardian which was very minimal and does not reflect the level of responsibility the guardians have in Belgium.

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\[113\] The publication if the directives for the guardians is expected in the last trimester of 2013. Through sending questionnaires on the practices of the guardians to migration officials, reception centre personnel and lawyers. A part of the questionnaire used the Core Standards as a tool to benchmark the current practice.
8. BIBLIOGRAPHY

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Parliamentary questions:

Parliamentary question n°19121 by Karin emmerman on ERPUM
Parliamentary question n°516 by Karin Temmerman on voluntary return

Brochures:


Commissioner General for Refugees and Stateless persons: Kizito (JPG, 42.18 Kb)
The comic strip is a means of communication which, through its form and content, is aimed at minors. It aims to be an accessible, attractive instrument of learning for unaccompanied minors who make an application for asylum.

Commissioner General for Refugees and Stateless persons :’Women, girls and asylum in Belgium. Information for women and girls who apply for asylum’ (JPG, 3.43 MB)
This brochure was drawn up for female asylum seekers and does not only contain information about the asylum procedure itself, but it also treats other more specific themes such as health, the issue of equality between men and women, violence within the family, the problem of female genital mutilation, human trafficking...

Guardianship Service: Brochure Guardianship Service

9. RECOMMENDATIONS AND PROMISING PRACTICES FOR IMPLEMENTATION OF THE CORE STANDARDS ON NATIONAL LEVEL

RECOMMENDATIONS:

FOR THE MEMBERS OF PARLIAMENT (MEASURES NEEDING A CHANGE OF LEGISLATION):

Recommendation 1: Modify the Guardianship law and the definition used in Belgian legislation in order to include the European unaccompanied minors. Also the guardian should remain appointed until the 18th birthday of the SC without regards to the administrative status of the minor.

Recommendation 2: Establish the limit of case-load at 20 wards for a full-time working guardian. Only if the guardian motivates explicitly that he can take on more wards and only with the informed consent of the Guardianship Service the case-load can be increased to 30 wards. Financial means should be made available to ensure that the guardian can make a decent living with this case-load.

FOR ALL STATE AUTHORITIES:

Recommendation 3: Develop an independent multidisciplinary process to assess and determine the best interest of the child. This needs to be informed by the new Guidance by UNHCR and UNICEF on the assessment and determination of the Best Interest of the Child that will be published end 2013.

Recommendation 6: When possible and advisable, give a reasonable amount of time for the guardians to discuss the choice of the procedure and to prepare the interviews. To obtain the most reliable information it is necessary to develop the relationship of trust, which takes time.

Recommendation 13: Start an in depth research on the causes and consequences of the disappearances of separated children in Belgium.

Recommendation 19: Organise regular moments of communication with all actors involved around the SC to have a holistic discussion on the basis of a set list of topics.

Recommendation 23: Put the burden of proof with regards to the durable solution on the decision making authorities and not on the guardian. Authorities have to prove that they have examined the access to all rights in the Convention of the Rights of the Child in the country of origin and in the host country and that they have made a reasoned evaluation balancing all options before determining a durable solution.

Recommendation for the system 31: Ensure that the language of the procedure, the guardian, the reception centre and the school is the same.
For the Guardianship Service or specialised services employed by them:

*Those recommendations can also be implemented by the organisations of guardians*

**Selection and evaluation of guardians**

Recommendation 26: Take the capacity to treat a child with respect and dignity into consideration when selecting potential guardians

Recommendation 28: Give clear information to the separated child on the complaint possibilities and mechanisms. This coincides with the right to information as stated by article 13 of the CRC.

Recommendation 32: Include frequency and quality of visits and contacts in the annual evaluation of guardians.

Recommendation 38: Clarify the use of and the access to the reports of the guardians, provide regular feedback on the reports to the guardians and incorporate the reports in the annual evaluation meetings.

**Trainings**

Recommendation 8: Organise trainings on intercultural communication and on how to discuss difficult topics with minors.

Recommendation 10: Organise trainings on signs and forms of child abuse, trafficking and self harm.

Recommendation 20: Organise trainings on methods of communication which include verbal and non-verbal communication.

Recommendation 21: Organise trainings for the guardians on how to develop and use a network.

Recommendation 29: Develop training for guardians on empathy and methods to provide for emotional support.

Recommendation 33: Deliver trainings that are more complete and include practical elements.

Recommendation 34: Develop continued trainings opportunities. Practical experience should be included in those trainings. Financial and human means should be made available to ensure the trainings can be carried out. Moments of exchange of practices should be developed and supervised.

Recommendation 35: Design an individual training plan for each guardian, with the guardian, according to their specific learning needs.

Recommendation 36: Develop and distribute each year a catalogue of trainings, supervision sessions and conferences to the guardians.

**Tools and methodology for the guardians**

Recommendation 4: Develop a methodology to assess and determine the best interest. Guardians should receive practical tools to do so. It should be included in an updated version of the Vade-mecum.

Recommendation 7: Develop and disseminate techniques to help the guardian to obtain the life narrative of the minor.
Recommendation 16: Organise ‘intervision’ sessions\,\textsuperscript{14} where the guardians can discuss their difficult cases or questions on how to deal with pressure.

Recommendation 17: Establish a helpdesk which aims to relieve the emotional or other pressure of the guardian, including a mechanism to quickly relieve the pressure in urgent or very difficult situations.

Recommendation 24: Develop practical tools for the guardians to structure and to argue in favour of the durable solution that is in the best interest of the child.

Recommendation 25: Develop a checklist for guardians on all elements to discuss with the minor before they turn 18. The discussion needs to include life in irregularity and return for the minors who did not receive a residence permit.

\textbf{Awareness raising}

Recommendation 5: Raise awareness on the role and the tasks of the guardian of all actors involved with separated children.

Recommendation 11: Organise awareness raising session for guardians on the risks taken during the travel to Europe and the dangers arising from the presence of the traffickers in Belgium.

Recommendation 18: Organise awareness raising sessions on the role and tasks of the guardians for the wider public, like social welfare institutions, police, schools, youth actors, etc.

\textbf{Confidentiality and deontology}

Recommendation 14: Publish a clear and explicit statement on the obligation on professional secrecy of the guardians.

Recommendation 15: Clarify and repeat to all actors in contact with the guardian that the guardian is an independent actor who only acts upon the interest of the minor and is bound to confidentiality.

Recommendation 22: Clarify the issues that can be discussed under shared professional secrecy.

Recommendation 27: Develop a code of conduct/deontology which is specific and adapted to the role of the guardian.

Recommendation 30: Clarify the obligation of confidentiality of the guardians and systematically inform the minors about it.

Recommendation 37: Update the Vade-mecum with the inclusion of practical tips, check-lists and a clear position on confidentiality and deontology.

\textsuperscript{14} Intervision group: a group works through focused case studies with the help of a moderator. The peers take on a consulting role with one another.
For reception authorities (Fedasil-Aide à la Jeunesse-Bijzondere Jeugzorg):

Recommendation 9: The reception centres should have access to cultural mediators to deconstruct the “migration myths and other incorrect information” when the minors arrive in order for the guardian to start informing the wards without incorrect information ‘polluting’ the participation of

Recommendation 12: Create and provide specialised and adequate reception for minors who are in danger.

PROMISING PRACTICES:

Promising practice 1: Guardians use visual material like drawings, diagrams and timelines to explain procedures to the minors and to help the minors express themselves.

Promising practice 2: The Guardianship Service and the Commissioner General for Refugees and Stateless persons have developed child-friendly tools to help minors understand their rights and the procedures, which are regularly used by the guardians.

Promising practice 3: The use of the DVD and the brochure115 for the SC on their rights and the roles of the actors around them.

Promising practice 4: Guardians organise evaluation meetings with their former ward after the end of the guardianship in order to evaluate themselves.

Promising practice 5: The French-speaking guardian organisation “ATF –MENA” has developed a brochure for separated children to prepare them for their life after leaving the reception centres and their 18th birthday116. It should be updated and be translated to Dutch.

Promising practice 6: Generally speaking, guardians are considered by personnel of reception centres, other guardians and the separated children, to have a respectful attitude with due consideration to the dignity of the child.

(Future) Promising practice 7: The inclusion of a minimal amount of visits in the future directives for the guardians117.

Promising practice 8: Easy access to well-trained interpreters whose costs are covered by the Guardianship Service.

Promising practice 9: The guardians of the Red Cross have developed a coaching system for new guardians where new guardians can contact more experienced guardians for guidance and information.

Promising practice 10: The appointment of a ‘coach ‘within the Guardians Service who can be the identified contact person for the guardian in case of questions or problems.

Promising practice 11: The work of the guardians’ organisations (Gardanto, Maia, Oliv, ATF-MENA, A&A) who exchange expertise, practices, solutions and tools within their network of guardians.

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115 The DVD and the brochure, developed by the Platform Minors in Exile, address the rights of separated children in Belgium in a child-friendly way.

116 A.T.F.mena “Autonomie. Guide pratique »deals with issues concerning finding independent housing, insurances, administrative tasks, financial management, employment and trainings, well-being and general advice (e.g. how to pay bills, etc).

117 The Guardianship will issue global and binding directives to harmonise the practices of the guardians. The publication is expected in the last trimester of 2013.
Based on the information received from separated children and guardians, the project partners call upon State authorities to ensure that:

1. The term guardian is included in all European regulations and directives which concern unaccompanied minors instead of ‘legal representative’ or any other wording.

2. All European regulations and directives which concern unaccompanied minors specify that the guardian is an independent, trained professional who advocates for all decisions concerning the child should to be taken in his best interest.

### ANNEX

Knowledge and skills of the guardian in drawing: the results of the workshops and trainings

<table>
<thead>
<tr>
<th>According to the guardians</th>
<th>According to the separated children</th>
</tr>
</thead>
<tbody>
<tr>
<td>A necessary combination of knowledge and skills</td>
<td>S/he has a lot of knowledge</td>
</tr>
<tr>
<td>Capacity to make decisions</td>
<td>S/he defends me</td>
</tr>
<tr>
<td>Capacity to find and give information</td>
<td>Kind</td>
</tr>
<tr>
<td>Open mind</td>
<td>S/he helps me</td>
</tr>
<tr>
<td>Empathic</td>
<td>S/he knows the procedures and explains it to me</td>
</tr>
<tr>
<td>Honesty</td>
<td>Attentive</td>
</tr>
<tr>
<td>Active and passive listening</td>
<td>Nice to me</td>
</tr>
<tr>
<td>Verbal and non verbal communication</td>
<td>“we want to be really be considered by our guardian”</td>
</tr>
<tr>
<td>Hand-on approach</td>
<td>Smiling</td>
</tr>
<tr>
<td>Physical shape to travel the distances</td>
<td>Informs me on how it works here</td>
</tr>
<tr>
<td>Curiosity</td>
<td>Courageous to deal with our problems</td>
</tr>
<tr>
<td>Willingness to fight</td>
<td>Patient</td>
</tr>
<tr>
<td>---------------------</td>
<td>---------</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>Contacts me to know how I am</td>
</tr>
<tr>
<td>Capacity to deal with a lot of frustration</td>
<td>Reassuring</td>
</tr>
<tr>
<td>Tailor-made approach: flexibility, creativity and alertness</td>
<td>Organised</td>
</tr>
<tr>
<td>Present, engaged and accessible for the minor</td>
<td>Gives structure</td>
</tr>
<tr>
<td>Resistance to stress and capacity to put things into perspective</td>
<td>Smart</td>
</tr>
<tr>
<td>Capacity to multitask</td>
<td>Open (does not judge)</td>
</tr>
<tr>
<td>A good balance between a supple and strict attitude</td>
<td>Generous</td>
</tr>
<tr>
<td>Capacity to work in a network</td>
<td>Close to youngsters</td>
</tr>
<tr>
<td>Organised, precise and capacity to plan</td>
<td>Has an individual approach for each minor</td>
</tr>
<tr>
<td>Professional work method allowing a certain distance</td>
<td>Accessible, has time for me</td>
</tr>
<tr>
<td>Know yourself and your limits</td>
<td>Trustworthy</td>
</tr>
<tr>
<td>Pedagogical role/ lead by example</td>
<td>You can exchange views to arrive together at the best result</td>
</tr>
<tr>
<td>Intercultural mediation</td>
<td>Understanding of my (cultural) way of thinking</td>
</tr>
<tr>
<td>A lot of motivation</td>
<td>The capacity to make you feel welcome</td>
</tr>
<tr>
<td>Respect</td>
<td>Works with me on the future</td>
</tr>
</tbody>
</table>
Core Standards for guardians of separated children in Europe:

Standard 1 The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

Standard 2 The guardian ensures the child’s participation in every decision which affects the child.

Standard 3 The guardian protects the safety of the child.

Standard 4 The guardian acts as an advocate for the rights of the child.

Standard 5 The guardian is a bridge between and focal point for the child and other actors involved.

Standard 6 The guardian ensures the timely identification and implementation of a durable solution.

Standard 7 The guardian treats the child with respect and dignity.

Standard 8 The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

Standard 9 The guardian is accessible.

Standard 10 The guardian is equipped with relevant professional knowledge and competences.

“I think you have to be courageous to be a guardian. They have to hear about all your problems and then they have to solve them”

www.corestandardsforguardians.com