**ILPA evidence to the enquiry into the situation of unaccompanied and separated minors in Europe for the Human Trafficking Foundation**

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion.

ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations and also works with European institutions. Lawyers from ILPA travelled to the camps in Calais to provide legal advice and support to lawyers there and also worked on cases of children seeking transfer to the UK from the camps. ILPA is supporting the Athens Legal Advice Project which sends experienced UK asylum lawyers to support refugees and lawyers there.

This response draws heavily on ILPA's evidence, written and oral, to the House of Lords Select Committee on the European Union for its enquiry into unaccompanied children and we commend to this enquiry the report of that one.[1]

That Committee described 'a harrowing picture of the squalor, destitution and desperation unaccompanied migrant children face across the EU[2] and found that 'collectively, Member States are fundamentally failing to comply with their obligations under EU and international law to receive and protect children.'[3] It found that both the actions and omissions of EU Member States, in particular their failure to implement the existing provisions on family reunification, are contributing to an increased vulnerability of unaccompanied migrant children to smugglers, traffickers and organised crime.[4] The Committee deplored the continuing reluctance of the UK Government to show solidarity with its European partners in helping to relocate children.[5]

## 1. What are the present risks of exploitation including trafficking to separated children in Europe?

### What are the most significant risk factors faced by separated children and why?

The key challenges faced by unaccompanied and separated minors in the EU are challenges they share with all refugees. These can be summarised as:

- Border closures;
- Carrier sanctions;

[1] House of Lords European Union Committee, *Children in crisis: unaccompanied migrant children in the EU*, 2nd report of session 2016/17, HL paper 34, 26 July 2016 at: https://www.publications.parliament.uk/pa/ld201617/ldselect/ldeucom/34/34.pdf.
[2] Conclusions and recommendations paragraph 1.
[3] Conclusions and recommendations paragraph 2.
[4] Paragraph 205.
[5] Paragraph 92.

- The lack of safe and legal routes including:
    - the lack of humanitarian visas;
    - Restrictive criteria under which people can seek to be reunited with family members

See also ILPA's evidence to the House of Lords Select Committee on the European Union for its response to the EU Action Plan on Migrant Smuggling[6].

As a result, risks that affect all refugees, whether adults or children are, in particular:

- the risk of *refoulement*. The EU-Turkey deal violates international law;
- risks to their physical safety in trying to accomplish dangerous journeys (). Risks of inadequate food and shelter may be greater for children than adults as they may be less able to withstand these hardships. Children on the move are also subject to neglect and are at risk of destitution. Children, like adults, have faced extreme cold, lack of basic medical treatment and have been reliant on voluntary contributions for sustenance. Provision has not been made for basic needs and to ensure physical safety and emotional psychological support.
- Risks of exploitation by those who purport to offer to help them;
- Risks to their mental health from delay and the resulting limbo, and from feeling forgotten or unwanted. Children witness the despair and hopelessness of the adults around them.

In addition separated children face the following risks:

- Risks of not being treated as a person before the law. For example children in France who were relocated to centres across France (CAOMIEs) describe receiving only an oral briefing that they were not eligible to apply to come to the UK and not receiving responses to their attempts to appeal;
- Not being permitted to be reunited with parents in the UK. While adults recognised as refugees in the UK have rights under the UK Immigration Rules to family reunion with their minor children, children do not have rights to be reunited with their parents;
- Not being able to progress their education, including on turning 18, which casts a shadow backwards over education in their minority. In England and Wales, whilst those recognised as refugees qualify for student loans once they have been recognised as refugees, those granted humanitarian protection need to have been resident in the UK for a period of three years at the start of the academic year when their course begins to qualify for student loans. This delays their ability to start university or other higher education courses and may lead to them not entering higher education altogether

Many children have been unable to reach the EU, have drowned crossing an eight kilometre stretch of water between Turkey and Greece and many remain alone in Europe because they are prevented from joining family members elsewhere on the continent. The extent to which the failure of Europe's response has resulted in their *refoulement* or in their exploitation, has not been quantified.

The UN Committee on the Rights of the Child's General Comment No. 6 is not directed specifically at European States. States with many fewer resources were also within its purview.

[6] Op.cit.

But its summary of the protection gaps resonates with the risks faced by unaccompanied children in the Europe today:

> *The issuing of the General Comment is further motivated by the Committee's identification of a number of protection gaps in the treatment of such children, including the following: unaccompanied and separated children face greater risks of inter alia sexual exploitation and abuse, military recruitment, child labour (including for their foster families) and detention. They are often discriminated against and denied access to food, shelter, housing, health services and education. Unaccompanied and separated girls are at particular risk of gender based violence, including domestic violence. In some situations, such children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice. In many countries, unaccompanied and separated children are routinely denied entry to or detained by border or immigration officials, and in other cases they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age and gender sensitive manner. Some countries prohibit separated children who are recognized as refugees from applying for family reunification; others permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many such children are granted only temporary status which ends when they turn 18, and there are few effective return programmes.*

The census of separated children in the Calais camps, described below, illustrates how far EU States are falling short of this basic standard. A colleague who spent several months working on Lesvos also identifies

> *Poor identification of unaccompanied minors - it is still volunteers manning the beaches - they are better informed but nonetheless it's easy for kids to slip through the net…the whole way up the Balkan route there is also a lack of training on how to identify children.*

Where children are identified, the response should be immediate, as described in General Comment No. 6.

> *4.1 Wherever unaccompanied minors are detected, they should be separated from adults, to protect them and sever relations with traffickers or smugglers and prevent (re)victimisation. From the first encounter, attention to protection is paramount, as is early profiling of the type of minor, as it can help to identify the most vulnerable unaccompanied minors. Applying the different measures provided for by the legislation and building the trust are indispensable to gain useful information for identification and family tracing, ensuring that unaccompanied minors do not disappear from care, identifying and prosecuting traffickers or smugglers. Unaccompanied minors should always be placed in appropriate accommodation and treated in a manner that is fully compatible with their best interests.*

The Committee goes on to describe specific steps that should be taken including assessment of protection needs, of health needs, of needs deriving from exposure to violence trafficking or trauma. It urges that unaccompanied children be provided with their own personal identity documents and that tracing commence as soon as possible. The Committee emphasises:

> *21. Subsequent steps such as the appointment of a competent guardian as expeditiously as possible serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child and, therefore, such a child should only be referred to asylum or other procedures after the appointment of a guardian. In cases where separated or unaccompanied children are*

*referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.*

*…69. An asylum-seeking child should be represented by an adult who is familiar with the child's background and who is competent and able to represent his or her best interests ...The unaccompanied or separated child should also, in all cases, be given access, free of charge, to a qualified legal representative, including where the application for refugee status is processed under the normal procedures for adults.*

Article 31 of the recast qualification directive[7] reflects these obligations:

***Article 31 Unaccompanied minors***

*1. As soon as possible after the granting of international protection Member States shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order.*

*2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.*

*3. Member States shall ensure that unaccompanied minors are placed either:*

*(a) with adult relatives; or*

*(b) with a foster family; or*

*(c) in centres specialised in accommodation for minors; or*

*(d) in other accommodation suitable for minors. In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.*

*4. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.*

*5. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, Member States shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor's best interests. If the tracing has already started, Member States shall continue the tracing process where appropriate. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.*

*6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.*

The UK remains bound by the earlier directive 2004/83/EC. Article 30 therein is in the same terms save for the tracing provision which is expressed as follows:

5. *Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of the minor's family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.*

[7] Directive 2011/95/EC.

**Are there specific safety and protection needs of separated children that are not being met, or not adequately being met? In UK/elsewhere in Europe?**

**In Europe:**

Our experience of the camps in Calais was that while children in France were not at risk of *refoulement* during their minority, no child protection interventions were made although their location was known and children as young as eight were there for a period of months. Children were reliant on the efforts of volunteers to protect them during camp clearances and both witnessed and were caught up in the violence associated with those clearances and with other interventions in the camps. The situation is described in *R (ZAT et ors) v SSHD* [2016] UKUT IJR 00016 (IAT), [2016] EWCA Civ 810.

We do not consider that children in Greece are adequately protected from *refoulement* or adequately supported. We are seeing increasing delays in the making of take charge requests under the Dublin system by the Greek authorities although so far this has not affected the UK because the UK has Home Office staff situated in Greece. At particular risk in Greece are children who are not Syrian.

Age assessment is problematic throughout the European Union and the risks that the real age of children is not identified, and that children are treated as adults or as older than they are, is high. Age assessment procedures can also result in delay in processing the substantive claim. Some European countries routinely use ionising radiation in their attempts to establish the age of children.

The House of Lords Select Committee on the European Union called for authorities to observe their legal obligation to give young people claiming to be children the benefit of that doubt.[8] A failure to identify a person as a child or a dispute over age can throw all the protections guaranteed to a child into jeopardy and this protection is thus of primary importance. ILPA has long worked in this area and published the influential report, *When is a child not a child? Asylum, age disputes and the process of age assessment* in 2007.[9] One of the children in that report was a girl who did not know her age. Social workers assessed her as 16. She did not demur. The Home Office argued that she was an adult. When finally her birth certificate was obtained from her home country it was found that she was 12. We were delighted to see the Home Office cite the British Dental Association's assessment of the use of x-rays to assess age as 'inaccurate, inappropriate and unethical' and concur with this assessment. The same words could be used to describe the trial by television that has led to a range of unqualified commentators, who have spent no time with the children and young people concerned, passing judgment on their age. The *When is a child not a child?* report highlighted that as well as putting the child at risk, of accommodation with adults, of detention and of being put through adult procedures with which they could not cope, disputes about their ages were experienced as profoundly painful and threatening, not to mention as an injustice that banished all their faith in the asylum system.

Age assessment is not an exact science. It is a matter of comparing a child with a cohort and there is often no cohort data for the population from which the child originates. It is also difficult to compare a child who has had varied and extreme life experiences with any cohort which might otherwise be used. The margin for error is such that the possible range of accurate ages may

[8] Paragraph 55.
[9] http://www.ilpa.org.uk/pages/publications.html

encompass the child's actual age and an adult age. Children must be given the benefit of the doubt in all age assessment procedures.

Although the Home Office now tends to accept the professional judgment of social workers, this is not the case in the criminal justice system. The police do not necessarily accept the local authority decision on age if it comes after an arrest. A judicial review is really the only way to settle a dispute. Decisions not to prosecute, in cases, for example, of children working in cannabis factories, come too far down the line. More needs to be done with police officers at the first points of engagement.

Persons whose age is disputed must be afforded the protection offered to children until a dispute is resolved against them.

**In the UK:**
(See also above).

**Legal aid:** while there is legal aid for asylum there is not legal aid for most immigration cases, including for cases of children. There is no legal aid for refugee family reunion. While there is legal aid for trafficked persons, eligibility arises once it has been held that there are reasonable grounds for thinking that the person has been trafficked. There is no legal aid at the stage when the child is deciding whether or not to approach the authorities. In cases outside the scope of legal aid, legal aid can only be obtained by making an application for exceptional case funding, which involves finding a legal representative willing to do the work of making the application 'at risk', because this work will only be remunerated if funding is granted.

One of the test cases in the legal aid exceptional funding litigation *Gudanaviciene et ors v SSHD* [2014] EWCA Civ 1622 was the case of B, an Iranian national who was recognized as a refugee for her political activities on behalf of Kurds. She sought family reunion with her son, who was an unaccompanied child.

**Case of B, *Gudanaviciene et ors v SSHD* [2014] EWCA Civ 1622**

Following her departure from Iran, B's husband and their son, who was born on 2 June 1997, were arrested and interrogated. They were beaten and threatened and ordered on release to give the authorities information about the B. The Court of Appeal records:

> *…In the ordinary course the applicants and sponsor would be expected to provide proof of marriage, proof of parentage, proof of a de facto pre-flight family relationship which was still subsisting, and proof of the sponsor's UK refugee status. … (a).. the family did not have access to all documentation required to satisfy the requirements of the rules, on account of their separation and dispersal, (b) the son was a 16 year old now living separately from his parents and it could be contended that he was living an independent life, so that assistance was required with preparing a witness statement to set out what had happened, and submissions were required on the point of continued dependency; and (c) evidence was needed on the psychological/psychiatric impact of separation on members of the family. In addition, the family would need legal advice and assistance in order to make a concurrent application to expedite the family reunion applications, on the basis of factors including the best interests of the son.*

B's son had no passport and there were no facilities available in Iran to enable a visa to allow entry to the UK to be obtained there. B feared that if he approached the Iranian authorities for a

passport he would be arrest or ill-treated. The High Court records "The only way he could apply for the necessary documentation to enable him to achieve entry to the UK was to go unlawfully to Turkey and apply there".[10]

This he did. He was staying in Turkey unlawfully, afraid to go out, very distressed and suffering from mental health problems. The husband was at that time hiding in Iran and it was not clear when he would be able to go to Turkey. They had no financial resources. In the words of the Court of Appeal "B did not speak English, had no experience of UK immigration law and was herself in poor psychological health and without financial or practical resources. …"

Yet an application for exceptional case funding was refused. The refusal was the subject of a review decision, by the Head of the Exceptional Cases Team. He concluded B would not be incapable of submitting an application form without the assistance of a lawyer.
It took six months for the application, prepared without funding, to be decided. B's son was refused. The High Court comments: "Apart from the inexcusable delay in dealing with the application having regard to the circumstances in which the applicants were living in Turkey, the decision was extraordinary." The reasons for refusal were:

> *"You have not fully completed your Annex 4 of your application form, but according to your claimed father's application form you last saw your sponsor in February 2013. … You have provided a birth certificate, however apart from this, you have not provided any evidence that you were or are in a relationship with your sponsor. You have provided no photographs of the two of you together or any evidence of any contact … I acknowledge that you have provided your sponsor's Screening interview, but this does not mention you by name. If you had been in a relationship since you were born I would expect there to be overwhelming evidence of this. I am therefore not satisfied that you have been part of a family unit of your father at the time he left his country of his habitual residence in order to seek asylum."*

The Court of Appeal concludes:

> *… It is striking that even though the application on behalf of the son was prepared with legal advice and assistance, it was refused at first on the ground of failure to satisfy the entry clearance officer that the son was part of the family unit – … The resulting appeal and request for reconsideration added to the overall procedural complexity of the exercise. In relation to all of this, B was wholly unable to represent herself or her other family members. It was not simply that she was unable to speak English but that "[s]he did not have the first clue", as it was graphically put by IKWRO. Without legal advice and assistance it was impossible for her to have any effective involvement in the decision-making process"*

It found the refusal of exceptional case funding to be unlawful.

In B's case, the judge in the High Court held that refugee family reunion had been within the scope of legal aid all the time, because it was a right "arising from" the Refugee Convention and thus fell within the definition of "asylum" in Schedule 1 to the 2012. Following this the Legal Aid Agency reinstated legal aid for refugee family reunion. The Court of Appeal disagreed with the judge in the High Court and legal aid for refugee family reunion was again withdrawn.

The Government said in its response to the consultation on legal aid:

[10] *Gudanaviciene & Ors v Director of Legal Aid Casework & Anor* [2014] EWHC 1840 (Admin) (13 June 2014)

> "*Applications to join family members are treated as immigration cases, and are generally straightforward because they follow a grant of asylum. Respondents argued that these cases are akin to claims for asylum but if a person wishes to claim asylum it is open to that person to do so either as a dependant of a primary asylum claimant or to do so in his or her own right. Legal aid for any such asylum claim will be in scope.*"

This is incorrect. The family members are outside of the UK and hence cannot claim asylum. It would be unlawful[11] to assist them to do. To deny family reunion increases the risk that children make hazardous and clandestine journeys to the UK.

The Home Office record in dealing with these applications is especially poor, and belies the suggestion they are straightforward. Management information collected in 2008-2009 indicated that some 61% to 66% of refusals were overturned on appeal.[12] We are not aware of disaggregated statistics for later periods.

The House of Lords Select Committee on the European Union recommended:

> *…that the UK Government reconsider its restrictive position on family reunification. Legal aid should be available to unaccompanied migrant children for the purposes of proceedings for family reunification.*[13]

This should not await a review of legal aid. Action needs to be taken now.

Support for families who accept children who are family members, for example under the Dublin system or the operation of s 67 of the Immigration Act 2016 is not always adequate: social services may not receive any, or any prior, notice that the child is coming and families are not necessarily aware, or made aware, that they are entitled to special support. Without adequate support some placements have broken down.

A National Transfer Scheme for unaccompanied asylum-seeking children has been set op, whereby when a local authority places a child outside its area responsibility for that child can transfer to the area where the child is living. The House of Lords Select Committee on the European Union urged the Government to ensure that, in practice, decisions to disperse unaccompanied migrant children are made only in the best interests of the child, and take into account the facilities available in the destination local authority.[14]

We have particular concern about the availability of legal advice in the destination local authority. Neither the Legal Aid Agency nor the Home Office are taking the lead in mapping provision and ensuring that it is available in practice when looking for local authorities to accept transfers.

**Family reunion:** For legal aid aspects, see above. While adult refugees have rights to family reunion with their minor children, minor children recognised as refugees have no rights to family reunion with their parents in the UK.

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[11] Immigration Act 1971, s25A

[12] Management information collected by the UK Border Agency for 2009 and 2008, and shared with ILPA and others in discussion on refugee family reunion applications and policy. More recent evidence is not to ILPA's knowledge available. For further statistics, see *Hansard,* HC Report, 22 June 2010 cols 143-144W

[13] Paragraph 291 and conclusions and recommendations at 60.

[14] Paragraph 353 of the report.

Family members are expected to cross international borders if there is no Visa Application Centre in the country in which they are living. This can be impossible for those without documents, and dangerous for those who attempt the journey. Having got there they face the dilemma of whether to remain in that country while the application is processed, something which can take a considerable time.

ILPA has put detailed proposals to the Home Affairs Select Committee[15] on refugee family reunion[16] and these have been debated in the context of the Bill which became the Immigration Act 2016.

Since the House of Lords Committee on the European Union's report was published, the Chief Inspector of Borders and Immigration has issued his report on family reunion[17] and it is critical. He finds that the Home Office treat these as immigration applications and do not show sensitivity to the protection elements of the cases: family members may be in danger and the person waiting in the UK has been found to be in need of international protection yet this does not appear to affect how the Home Office conducts work on these cases. He calls for more understanding and compassion. He finds that the Home Office is too ready to reject applications on the basis that the person has provided insufficient evidence of their eligibility, without giving them the opportunity to provide such further evidence. The inspection found a number of cases where supporting evidence had been misread or misinterpreted or where not all the positive evidence had been considered when deciding to refuse. In other cases inadequate record keeping made it difficult to ascertain whether decisions were correct and there was evidence of apparent inconsistency. A minor had been refused for failing to provide evidence of their contact since fleeing their country with the family member in the UK and applications had been refused for failure to provide documentary evidence not specified in the guidance.

The withdrawal of Home Office commissioned and funded DNA tests is identified as a major reason for refusals of applications at first instance and the Chief Inspector is also critical of the lack of publicity given to the change of policy. The Government has agreed to review its policy on commissioning and paying for DNA evidence, which was one of the recommendations of the report and we urge the Foundation to follow up on this.

**Lack of guardians:** The requirement for a guardian is set out in Article 30 of the original qualification directive, Directive 204/83/EC by which the UK is bound but the UK has not recognized an obligation to appoint a guardian. We refer you in particular to the evidence given to the House of Lords Select Committee on the European Union for its enquiry into unaccompanied children in Europe, where the government presentation of the evaluation of the pilot of guardians in Scotland did not accurately reflect the conclusions of the researchers. This was discussed in oral evidence, including from ILPA:

> ***Q98 Baroness Pinnock**: Interestingly, earlier this week I was at the All-Party Parliamentary Group for Children. …*

[15] http://www.ilpa.org.uk/resources.php/31480/ilpa-briefing-for-house-of-commons-home-affairs-select-committee-inquiry-into-the-european-migration

[16] See http://www.ilpa.org.uk/resources.php/31480/ilpa-briefing-for-house-of-commons-home-affairs-select-committee-inquiry-into-the-european-migration

[17] http://icinspector.independent.gov.uk/wp-content/uploads/2016/09/An-inspection-of-family-reunion-applications-January-to-May-2016.pdf

***Baroness Pinnock**: It was about unaccompanied minors, and the report from Barnardo's was fascinating. They had done a pilot scheme on advocates, which, from what you are saying, is the equivalent of guardians.*
***Alison Harvey**: Yes, it is the nearest we have.*
***Baroness Pinnock**: What was disappointing was his report of the response from government about the use of guardians. Perhaps you would like to say a bit more about that.*
***Alison Harvey**: … The evaluation was done by the University of Bedfordshire; it was an independent evaluation. This related to guardians specifically for trafficked children and the overwhelming majority of, although not all, children under immigration control. The concern of the academic who led the study was that he felt his evaluation was overwhelmingly positive—that the guardians had made a positive difference. Peers who had been in a meeting with officials expressed surprise and dismay that that was not what the officials had relayed to them about the study. Officials had conveyed the idea that it was much more borderline and much less clear whether the guardians had made a difference. I am sure Baroness Pinnock will agree there was a sense of consternation in the room that perhaps the findings had not been presented in the way that those who had written the study would have expected. They felt that the evidence was very clear that this had made a significant difference.*

This was confirmed by the researchers in their oral evidence to the Committee:

***Professor Heaven Crawley** … I think it is pretty clear from our evaluation that that system is highly effective in helping to resolve some of the very many issues that we have identified during this conversation.*
***Professor Ravi KS Kohli**: I absolutely agree with that. I will just add a couple of headlines, if I may. Guardians provide clarity and coherence both for children and for other public authorities. They are the glue that binds things together in a child's life. The fact that they are independent of other public authorities is a core part of an effective guardianship service….*

The Committee concluded:

*305. In 2014 and 2015 the Government conducted a pilot, in partnership with Barnardo's, to assess the effectiveness of Independent Child Trafficking Advocates in England and Wales. Reflecting on the results, the Minister said:*

> *"There are some very positive elements to the pilot that we undertook that we want to learn from and reflect upon, but we also know that that pilot was inconclusive in determining whether the outcomes for those particular children had improved as a consequence of having that additional person involved in their lives. We also know that the prospect of them going missing from care did not reduce as a consequence of that guardian supporting them. So we are not convinced that this is the right way to go."*

*306. Ms Cronin, who conducted a study of unaccompanied migrant children in Scotland, strongly disagreed with the Minister's interpretation: "In Scotland, where these children had guardians, their cases were better prepared, their experiences of the process were significantly better and they had a better outcome. From our analysis of the data, that was incontrovertible". Prof Kohli, who carried out an evaluation of the Government's pilot came to a similar conclusion:*

> *"Does the UK need independent guardianship? The answer is yes. Does it need to be financed from a central government budget rather than cut into the budgets of children's services, for example? The answer is yes. Does it provide something that children themselves value over time?*

> *The answer is yes. There is much evidence, both in Europe and in the different countries of the UK, to support the notion of independent guardianship."*

It concluded:

> *… we are persuaded by evidence from England and Wales and from Scotland that the role of guardian should be independent, and should not be undertaken by social workers. We call on the Government to establish a guardianship service in England and Wales for all unaccompanied migrant chil*dren.[18]

In England and Wales, independent child trafficking advocates are being piloted in three 'early adopter' sites. The intention is to consider extending the scheme in 2019 if it is found to work well. The scheme should be extended earlier if there is evidence earlier that it is working. Efforts should be made to obtain such evidence. At the moment, the independent assessment panel has little ability to scrutinise the early adopter trials.

As concluded by the House of Lords EU Select Committee, if children are to be protected from trafficking and in particular identified as trafficked or at risk of trafficking, then all unaccompanied and separated children should have a guardian, not just children who may have been trafficked.

It is all very well to make reference to the State as a "corporate parent" but all too often this does not translate into an individual with responsibility for the child and indeed, in cases where States are trying to deter others from arriving or to husband resources, there may be a conflict of interest. The legal representative cannot play the role of guardian when a child is then expected to pass through an asylum determination procedure. A legal representative acts on instructions and is placed in an impossible position where a child client is not competent to give such instructions but is the only client in sight. We have seen cases where young children contend that the person they are with is their parent, while the State argues that the person is their trafficker. What case can the lawyer put forward in those circumstances and how can a legal representative protect the interests of the child?

Identified, and supported by a guardian and a legal representative, an unaccompanied child is in a position to build trust in the protection system and to engage with it. Even where children have been identified, without such support they are likely to disengage from protection systems. All too often in Europe this has meant that they have been lost to child protection systems also. Does this being allowed to happen in countries with functioning child protection systems suggest that systems are overwhelmed or that these children have not been a priority for such systems?

The case of *R (ZAT et ors) v SSHD* [2016] UKUT IJR 00016 (IAT), [2016] EWCA Civ 810 suggests the latter, for the systems in France and the UK are not overwhelmed. The three child claimants were living in France, a country with a sophisticated child protection system including a system of children's courts, guardianship and a Children's Commissioner[19]. The children had been living in France but were unknown to the authorities and had not, at the time of brining the action, made a claim for international protection. They were not in a family setting but were living in La Lande, the Calais "jungle" with informal support for from their fellow refugees and from volunteers.

The Upper Tribunal judgment in *ZAT* recorded evidence presented to the Tribunal that:

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[18] Paragraph 321.
[19] See

*21….Insufficient and inappropriate reception conditions for unaccompanied asylum seeking children were considered to impair their effective access to the asylum procedure….*

*22…. the detailed evidence of a practising French lawyer…draws attention to the unavailability of public funding for legal advice at the stage of preparing and formulating applications for asylum to the relevant local Prefecture. … Unaccompanied foreign minors are not legally competent to make a claim for asylum. Such claims must be made on their behalf through a specified State funded agency, followed by the appointment of a species of administrator or representative. The process of registering a child's asylum application takes at least three months. This is followed by a decision on whether the Dublin Regulation process applies. "Take charge" requests of another Member State are unlikely to materialise until almost a year has elapsed from the beginning of the process.*

The background to this is that in France it has been a requirement to obtain a temporary residence permit from a Préfecture before an asylum application could be lodged before the French Office for the Protection of Refugees and Stateless Persons (OFPRA). This creates a high risk of applicants, including children, being left in limbo. The Code de l'entrée et du séjour des étrangers et du droit d'asile was modified on 1 January 2015 to make provision for a person seeking asylum to attend offices of, for example, an NGO to make arrangements to register the claim and to attend the préfecture within a normal time of three days with provision for a delay of up to 10 days. It is when the person attends at the prefecture that the claim is registered. The change has however led to delays shifting from the prefecture to the initial attendance at the offices. The UN Committee on the Rights of the Child in its January 2016 *Concluding observations on the fifth periodic report of France*[20] was highly critical of the way in which these procedures operated in cases of unaccompanied children:

***Asylum-seeking, unaccompanied migrant children and refugee children***
*73. The Committee is concerned about the situation of unaccompanied migrant children in the State party who cannot access special protection and assistance measures. It is concerned that the State party does not sufficiently consider the best interests of the child as a guiding principle in all initial assessment processes and subsequent arrangements. The Committee notes with concern the difficulties to access child protection structures and legal representation, psychological support, social assistance, and education, especially for 17 year olds. The Committee is also concerned that the procedure set out by the circular of 31 May 2013 (for equitable distribution of services provided to unaccompanied migrant children) has been partially annulled by the Council of State (Conseil d'Etat) decision of January 2015 resulting in insufficient quality of care and protection of children and refusals by certain municipalities to provide such protection. It also notes with concern the number of children subjected to administrative detention in 2014, most of them in Mayotte, in degrading conditions and without access to a judge.*

*The Committee is also concerned about:*
*(a) The situation of unaccompanied migrant children automatically placed in waiting zones of airports or hotels, and other administrative detention facilities (locaux de rétention administrative), sometimes detained with adults, and reports of their removal, even before speaking to an ad-hoc administrator;*
*(b) The overreliance on bone tests to determine the age of children, and cases where the child's consent was left out, in practice.*

[20] UN Committee on the Rights of the Child (CRC), *Concluding observations on the fifth periodic report of France*, 29 January 2016, CRC/C/FRA/CO/5, available at: http://www.refworld.org/docid/56c17fb64.html [accessed 7 March 2016]

***74. The Committee recommends that the State party guarantee sufficient human, technical and financial resources throughout its jurisdiction to specialist and child specific support, protection, legal representation, social assistance, education and vocational training of unaccompanied migrant children and build the capacities of law enforcement officials in this regard.***

***It also recommends that the State party:***
***(a) Adopt the necessary measures, including those of a legal nature, to avoid the detention of children in waiting zones through increased efforts to find suitable alternatives to deprivation of liberty and place children in appropriate accommodation, and to fully respect non-refoulement obligations;***
***(b) Put an end to the use of bone tests as the main method to determine the age of children using instead other methods that are proven to be more accurate.***

*75. The Committee welcomes the State party's commitment to receive a large number of Syrian refugees, including children, over the next two years. However, the Committee is concerned at the precarious situation of children and their families in refugee camps in the northern part of the State party, such as in Calais and in Grande-Synthe, the refusal by authorities to register children and the insufficiency of venues and services to provide them with appropriate and adapted protection.*

***76. The Committee reminds the State party of its primary responsibility for the protection of children in accordance with its international obligations and urges the State party to ensure the rights of all children, including children living in refugee camps, to registration, humane living standards, and adequate health care services.***

Information purporting to guide refugees proliferates. But it is of very variable quality. Refugees lack a means to judge what is reliable and what is not. The Dublin regulation causes refugees to fear to cooperate with the asylum system in European countries. As the case of *ZAT* illustrates, this is true also of children although they may have much to gain from a correct application of the Dublin provisions. The Dublin Regulation (recast) provides:

***Article 8 Minors***
*1. Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.*

*2. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.*

*3. Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.*

*4. In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.*

*5. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3).*

*6. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).*

***Article 9 Family members who are beneficiaries of international protection***
*Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.*

***Article 10 Family members who are applicants for international protection***
*If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing*

***Article 11 Family procedure***
*Where several family members and/or minor unmarried siblings submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined on the basis of the following provisions:*
*(a) responsibility for examining the applications for international protection of all the family members and/or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;*
*(b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.*

We commend the study for the LIBE Committee of the European Parliament *Enhancing the Common European Asylum System: Alternatives to Dublin, paper for the LIBE committee of the European parliament*[21]. It identified needs for: humanitarian evacuation and transport; humanitarian visas; resettlement; and immigration visas. The study for the LIBE Committee also argues for mutual recognition of positive asylum decisions so that those recognised as refugees are free to move and is critical of the wrongful characterisation of the onward movement of persons seeking asylum as 'irregular secondary movement', asylum seekers and refugees are seeking a place of refuge and

[21] PE 519.234. Authors Professor Elspeth Guild; Dr. Cathryn Costello; Ms. Madeline Garlick, and Dr. Violeta Moreno-Lax. Professor Elspeth Guild is co-convenor of ILPA's European subcommittee.

access to reception standards and fair procedures in line with their entitlements under international and EU law.

The UK's support for the Dublin regulation has focused on its obligations under the "take back" provisions which push refugees rather than the "take charge" provisions under which children be transferred to the UK. Where the Dublin regulation operates, it is vital that States take as proactive an approach to their responsibilities to take charge as to their call for another State to take back. There is no reason why the UK could not preserve a willingness to 'take charge' post Brexit, even if it is excluded from the Dublin 'take back' system.

**Trafficking:** There is a lack of training for frontline social workers on slavery and referrals to the National Referral Mechanism. It is unlikely that the Safeguarding Strategy (delayed from 1 May 2017 due to the election) will effect a culture shift in the way local authorities approach trafficking cases given its focus. A lack of accountability and understanding is seen at the local level, of particular concern given the coming changes to Local Children's Safeguarding Boards and the lack of Multi-Agency Safeguarding Hubs in some areas. One of the biggest challenges is around integrating indicators across different settings, and understanding the chain of events and the priority to be given to protective responses) that need to happen once a potential victim is identified. See the extracts from the UN Committee on the Rights of Child's General Comment No.6 cited above.

**Private fostering:** Close relatives: grandparents, brothers, sisters, uncles or aunts (whether full blood or half blood or by marriage or civil partnership) or step-parents are not included within private fostering arrangements and nor are 'connected persons', those with a pre-existing relationship with the child. Even where private fostering rules apply, the duty is on the carer to notify the local authority about a child. There are no funding streams attached to privately fostered children for local authorities, and the Department for Education no longer collates data on private fostering from local authorities. No one has a duty to monitor the well-being of these children.

Article 18 of EU Directive on trafficking requires member States to take steps to prevent and reduce trafficking in human beings: to take measures to discourage and reduce demand and to train officials in identification. These preventative obligations are perhaps some of the most important for the protection of unaccompanied children in Europe. The Directive contains general provisions for all trafficked children and specific provisions for unaccompanied children who have been trafficked. It has particular importance for unaccompanied children who do not claim asylum or who are found not to be in need of international protection and thus do not benefit from the protection of the Directives on the Common European Asylum System. By bringing trafficked children within the scope of EU law it also ensures that the EU Charter of Fundamental Rights is applicable in their cases.

The EU Trafficking Directive provides for the appointment of guardians for trafficked children[22]. As described in our initial and oral evidence to the Committee, the UK has piloted guardians for trafficked children, who have been the first among unaccompanied children in the UK to benefit from guardians and, the pilot having been deemed inconclusive by government, although not by those carrying out the evaluation for Government, another pilot will be carried out.

[22] Articles 14(2); 16(3).

Article 16(2) of the Directive requires Member States to take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the unaccompanied child. All these protections are put at risk re Brexit. Will the gap left in protection filled?

**Is there sufficient recognition by UK authorities of the specific safeguarding and protection needs of young adults whose experience of migration or exploitation was as a separated child?**

No.

In the case of trafficked children, delays in delivering 'reasonable grounds' decisions continue to be significant. It is increasingly difficult to engage any agencies other than the police in pulling together proactive information on children ahead of a 'conclusive grounds' decision; in practice this responsibility sits with the child's solicitor.

In a recent case a client waited two years for a decision under the National Referral Mechanism, which came at the same time as the asylum decision. The quality of the national referral mechanism decision was poor and focused only information from the ongoing police investigation, and was clearly affected by credibility concerns arising from the asylum interview.

The lack of appeal rights, with judicial review the only route for review of decisions within the National Referral Mechanism makes it very difficult to challenge poor decisions. Immigration concerns are clouding the protective response. The National Referral Mechanism focuses on status rather than protection. . Radical change is needed to ensure that safeguarding comes first. The National Referral Mechanism cannot override decisions of the local authority on child protection needs: the local authority owes duties to children it deems to be at risk.

Few children recognised as trafficked are granted residence permits as trafficked persons because they tend to be given leave as unaccompanied children seeking asylum where a claim for asylum is not successful and they are not recognised as refugees or given humanitarian protection. This is in accordance with the Home Office policy of preferring the most favourable form of leave (terms and conditions of leave are the same, so the length of leave is the determining factor and, save for a child 16 ½ or over.

Because local authorities receive specific funding to support unaccompanied asylum-seeking children and not to support trafficked children there is an incentive for them to push for the child to claim asylum even where this is not the most appropriate claim. Asylum looks to risk on return whereas a finding that a person has been trafficked looks to past experiences.

Inadequate consideration is given to a durable solution for these children, in particular a grant of indefinite leave to remain which would give power to them because it would allow them to decide whether to stay or whether to leave.

**Is there evidence that separated children or young adults arriving in the UK from other EU Member States have been trafficked or re-trafficked in the UK?**

There are cases where separated children or young adults have made successful applications to the competent authority under the national referral mechanism and have been recognised to have been trafficked. There are cases where such children and young persons have made unsuccessful

applications but those representing and caring for them retain concerns that they have been trafficked. Data is also held at local authority level, where child protection services have concluded that a child has been trafficked.

## 2. Legal Options

**From your experience:**

**What have been the outcomes for separated children who travelled to the UK under Dubs/ Dublin/ other schemes operating to offer safe and legal passage from within European Member States? How does this vary from the outcomes for children who have made their way independently to the UK?**

Children travelling under s 67 of the Immigration Act 2016 (Dubs) are required to claim asylum in the UK. It is determined that it would be in their best interest to be in the UK.

Children transferred under the Dublin III regulation are also required to claim asylum in the UK if joining relatives with outstanding asylum claims.

Children coming to the UK for the purposes of family reunion, or who join parents with settled status in the UK may be given leave in line with those parents.

Children coming to the UK under the Syrian Vulnerable Persons Resettlement scheme (including as part of family units) are now being recognised as refugees as opposed to being given humanitarian protection as was previously the case. This is in the part the result of advocacy by ILPA and others in the context of the Higher Education Bill.[23]

We have not seen data on the outcome of these cases of disaggregated by cohort. There would in any event be a need to control such data for factors that might produce different outcomes (strength of asylum claim being the most obvious). The judicial review being brought by Help Refugees to the operation of the section 67 scheme, granted permission and subsequently heard in the High Court in May 2017, may yield more detailed information.

**Is there any difference between the level of support and assistance provided to children who have been relocated under Dubs or Dublin to those who have made their way independently to the UK?**

Very often children who come to the UK under the Dubs amendment or who are otherwise resettled or relocated to the UK are unaccompanied or separated elsewhere in Europe but are joining family in the UK. This results in different treatment.

We have seen, and have brought the attention of the Home Office, instances of poor coordination where, for example, the official overseas getting in touch with the family did not know to whom to turn to find out whether a family receiving local authority support would be entitled to larger accommodation or increased support as a result of the child coming. Where the family did not have adequate accommodation to house the child this risked resulting in a determination that it

[23] See http://www.ilpa.org.uk/resource/33156/higher-education-and-research-bill-house-of-lords-report-stage-proposed-amendment-february-2017

was not in the child's best interests to come to the UK, because they could not be housed adequately here.

We have seen instances where children relocated who have live asylum claims been deemed not to be eligible for legal aid because the means of the whole family with whom they are living is assessed and found to be over the threshold for legal aid. Other lawyers are taking the view that the means of the child should be assessed separately.

As described above, we have seen instances where family placements have broken down in the absence of adequate support. Children may have complex needs as a result of the persecution they have suffered and the rigours of their, often lengthy, journeys.

## 3. Pull Factor

**From your experience**
**- Is there any evidence that the UK's admission of children under Section 67 of the Immigration Act 2016 (commonly known as the 'Dubs amendment') is serving as a so called 'pull factor' to encourage traffickers?**

No. The House of Lords EU Select Committee held:

> *We found no evidence to support the Government's argument that the prospect of family reunification could encourage families to send children into Europe unaccompanied in order to act as an 'anchor' for other family members. If this were so, we would expect to see evidence of this happening in Member States that participate in the Family Reunification Directive.*
>
> *Instead, the evidence shows that some children are reluctant to seek family reunification, for fear that it may place family members in danger.*[24]

In the 25 January 2016 debate in the House of Commons it was identified that some 26,000 unaccompanied children had come to the European Economic Area. Any advantage to their prospects of family reunion that derive from remaining in the region of origin had thus already been lost, as Sir Eric Pickles MP reminded the Minister

> *I am pleased that the Prime Minister is looking at this matter again. He is quite right to try to keep children in the region, but to use one of those phrases, we are where we are. There are children at risk, and I urge the Government to look carefully at that.*

ILPA said in its evidence to that House of Lords EU Select Committee:

> *The people traffickers are not short of things to exploit. They have the situation in Syria; they have the dire situation in many countries through which refugees travel and where they end up. The idea that the UK's sharing responsibility within Europe will fundamentally alter the calculations of refugees seeking safety or those who exploit them is a proposition for which no evidence has been advanced and for which, we suggest, evidence is unlikely to exist to be advanced. ILPA has made this point to the House of Lords Committee on the European Union in its evidence to the Committee's enquiry into*

[24] Paragraph 62, and conclusions and recommendations at 59.

*The United Kingdom opt-in to the proposed Council Decision on the relocation of migrants within the EU and on the EU Action Plan on Migrant Smuggling*[25].

*In the report of that enquiry the Committee described itself as "not convinced" by the Government's reasoning. It held*

*31. … we heard arguments that the Government's concern that the proposal could act as a "pull factor", which would encourage further migration to the EU, was not supported by evidence. The migrants affected by the present proposal are those belonging to nationalities for which international protection is on average granted in at least 75% of cases—at present, those from Syria, Eritrea and Iraq. The situation in each of these countries is dire: it is clear that the vast majority of those leaving these countries are fleeing civil war or the imminent threat of persecution. This is underlined, for instance, by the presence of millions of Syrian refugees in camps in Jordan and Lebanon. The Government's argument that the relocation of 40,000 migrants who have reached Greece or Italy will somehow encourage more to leave their countries of origin is therefore unconvincing."*

*…ILPA concurs with the Committee. To describe the situation in terms of "pull factors" is to ignore that the push factors, persecution, war, torture, extra-judicial execution and overburdened countries of first asylum provide more than enough motive for persons to flee to the European Union. Conditions of insecurity in countries of first asylum, and basic needs not being met, are further push factors.*

**- Are there specific patterns of exploitation of separated children in Europe? Has anything changed since the introduction of the Dubs amendment?**

We are not aware of changes in patterns of exploitation of separated children in Europe since the introduction of the Dubs amendment.

## 4. Missing children

**Are you aware of any initiative to collect and share data on separated children who have gone missing?**

There are not reliable baseline data on separated children in the EU. This is not simply a problem of the collation of data. It is about fundamentals of refugee and child protection: identification and registration. Too many unaccompanied children are not being identified in the EU. They are not being registered. This has implications for every aspect of respect for their rights, their protection and care.

The House of Lords Select Committee on the European Union found that the lack of data exacerbates many of the specific difficulties faced by unaccompanied migrant children in the EU[26]. It identified opportunities for adequate data collection at European level including through the safe and ethical use of Eurodac[27], amendments to the Statistics Regulation[28] improvements to the

[25] HL Paper 46, 4th Report of Session 2015-2016, 27 October 2015
http://www.publications.parliament.uk/pa/ld201516/ldselect/ldeucom/46/46.pdf
[26] Paragraph 238
[27] Paragraph 274
[28] Paragraph 275

Schengen Information System[29] and monitoring compliance with the Returns Directive[30] These recommendations are a stark reminder of the extent to the UK's current opt-outs inhibit, and to which Brexit will further inhibit the UK's ability to protect trafficked and missing persons, including children.

In addition to the police cooperation on trafficking which stands to be lost, specific protection for trafficked persons under EU law will be lost post Brexit. The EU Directive on trafficking[31] and the EU Victims Directive [32] both contain safeguards which have the potential to protect unaccompanied children in Europe.

The observations of the UN Committee on the Rights of the Child in its General Comment No. 6 are applicable:

> *97. It is the experience of the Committee that data and statistics collected with regard to unaccompanied and separated children tends to be limited to the number of arrivals and/or number of requests for asylum. This data is insufficient for a detailed analysis of the implementation of the rights of such children. …*
>
> *98. Accordingly, the development of a detailed and integrated system of data collection on unaccompanied and separated children is a prerequisite for the development of effective policies for the implementation of the rights of such children.[33]*

The *EU Action Plan on unaccompanied minors*[34] stated in the introduction "Statistics on unaccompanied minors are not widespread or consistent." The examination of data in the second part provides more detail. Progress has been made and statistics on the number asylum applicants considered to be unaccompanied children in the EU is published, broken down by citizenship, age and sex[35]. But this data set is incomplete. The Asylum Information Database (AIDA) 2015 briefing on Asylum Statistics explains:

> *The Migration Statistics Regulation specifically requires Member States to provide Eurostat with the number of unaccompanied minors applying on their territory,15 albeit less periodically than for other applicants, as seen below.16 However, while all EU countries provide Eurostat with this information, not all countries include it in their respective national statistical reports. This is the case for Bulgaria, Germany, Ireland, Italy, Malta, Poland and Switzerland, for instance.*[36]

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[29] Paragraph 276.
[30] Paragraph 294.
[31] Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings.
[32] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA UK.
[33] UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: http://www.refworld.org/docid/42dd174b4.html. See further details in paragraph 99.
[34] Brussels, 6.5.2010 COM(2010)213 final
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:en:PDF
[35] http://ec.europa.eu/eurostat/en/web/products-datasets/-/MIGR_ASYUNAA
[36] Asylum statistics in the European Union: a need for numbers, AIDA Legal Briefing No. 2, August 2015

These are however data only on unaccompanied children seeking asylum. The European Asylum Support Office and the detailed statistics all focus on the asylum system and this will always mean that data can at best be regarded as incomplete.

Not all unaccompanied children in the EU, whether or not they have a claim for international protection, have advanced such a claim. For an example of this, see the discussion of *R (ZAT et ors) v SSHD* [2016] UKUT IJR 00016 (IAT)[37].

Reluctance to engage with the authorities or to give accurate information contributes to the inaccuracy of data.

A child may reluctant to reveal their route of travel for fear that they will be sent back to, or stuck in, under the Dublin Regulation, a country in which they do not wish to live. In the *ZAT* case, although the children has compelling claims to come to the UK under the Dublin regulation, they feared that if they claimed asylum in France they would be stuck in France for the foreseeable future and unable to join their families in the UK.

A family that on the move has taken in a child may be reluctant to reveal this for fear that the child will be separated from them again. Children who are perceived as part of a family unit on arrival in the EU may be attached, more or less loosely, to a family not their own.

UNHCR records that many minors on Lesvos declare that they are adults[38] to avoid the closed centres in which they would otherwise be placed as children.

UNHCR in its 3 March 2016 paper *Stabilizing the situation of refugees and migrants in Europe Proposals to the Meeting of EU Heads of State or Government and Turkey on 7 March 2016* identify a need to carry out proper registration in line with EU standards and specify:

- ***Establish the necessary processing capacities*** *to ensure identification, nationality screening, registration, fingerprinting, security checks, and channelling into respective follow-up procedures. The European Asylum Support Office (EASO) and FRONTEX, working with the Greek authorities, need to step up their support to registration, with EASO taking the lead on the matching processes to facilitate expedited relocation.*

- ***Address delays in securing connectivity to relevant databases*** *to ensure the effectiveness and credibility of the system.*

Problems were graphically illustrated in the legal challenge to the South part of "la Lande", the Calais "jungle. There was no official census of the camp; there was no comprehensive census carried out by an NGO. The Préfecture of Calais and the charity Help Refugees UK each carried out a census of the unaccompanied children in the South part on the eve of the demolition. The difference between the charity's survey and that carried out by the Préfecture of Calais was striking; in court when the eviction was challenged[39] the Préfète's representative had to acknowledge that when those carrying out her survey found a tent or other dwelling empty they marked the numbers of inhabitants as 0, whereas the charity took steps to establish how many people were living in each shelter. Help Refugees UK and L'Auberge des Migrants recorded 438

[37] The Secretary of State is appealing the case.
[38] http://reliefweb.int/report/greece/how-unhcr-helps-change-young-lives-lesvos
[39] Ordonnance du 25 février 2016, M. Sharifi A et autres, Tribunal Administratif de Lille N°1601386 et ors.

children in Calais of which some 326 were unaccompanied. Their survey recorded 2,808 men in that part of the camp and 183 women. The Préfecture had recorded 800-1000 persons in toto in that part of the camp. The judge indicated in court that she had considerable difficulty in reconciling the figures. Help Refugees UK recorded a quarter of the separated children they counted to be under 15, the youngest only ten. There are no comparable figures yet for the Grande Synthe camp in Dunkerque, although those working there suggest that there are more women and children in the Dunkerque camp.

The figures of 10,000 unaccompanied children lost with the EU horrifies those who see them as having fallen prey, as no doubt some have, to criminal gangs. It is no less shocking to envisage that in many cases, there may have been no such active efforts to thwart States intent on protecting theses children but instead, systems have failed these children and allowed them to disappear.

Being unaccompanied is not in all cases a static state. Families may become separated by conflict, and then come together again. Children may become attached to other family groups. The child may be seeking reunion with family members identified to be elsewhere in Europe but whom they are unable to join. As the *ZAT* case demonstrated, there are children living alone in Europe who have family members in other parts of the European Union, including in some cases parents, willing and able to take care of them.

The UN Committee on the Rights of the Child, in its General Comment No.6, identifies not only unaccompanied children but the wider group of "separated children":

> *"7. Unaccompanied children (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.*
> *8. Separated children are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.*

Where unaccompanied minors in the EU have family members elsewhere in the EU, reasons for the continued separation include:

i) As in *ZAT*, procedures for family reunion under the Dublin regulation are not working. This may be due (as in *ZAT*) to the length and complexity of procedures for making a request in the country where the child is to be found or (as in *ZAT* also) the child's lack of information about formal procedures and fear of engaging with formal procedures and the lack of legal assistance to do so;
ii) The relationship between the relative, who may be the only living relative, who is a refugee and the child is not one which falls within the rules for refugee family reunion in the country where the relative is;
iii) The family member is not a refugee but is a national of the State in which they are living or an EU citizen. There may be difficulties in identifying an appropriate application to make. Even if the relationship is one that can be brought within applicable immigration laws and rules and/or laws on free movement they may not be able to afford the application fee and may be unaware of the possibility of any fee waivers or not know how to apply for this. The family member may be unable to satisfy the applicable requirements.