



HOUSE OF LORDS

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UNACCOMPANIED MINORS IN THE EU

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Witnesses: Daphné Bouteillet-Paquet, Elona Bokshi and Hanne Beirens

Members present

Baroness Prashar (Chairman)
Lord Condon
Lord Soley

Examination of Witnesses

Daphné Bouteillet-Paquet, Senior Legal Office, **Elona Bokshi**, European Council on Refugees and Exiles—ECRE, and **Hanne Beirens**, Migration Policy Institute—MPI

Q110 The Chairman: Good morning. Thank you very much for coming. This is technically a public session so it is being recorded. There will be a transcript of what you say, which we will send to you. If there are any corrections that you want to make, or if you feel after you have read it that there is any supplementary evidence that you want to send us, please feel free to do so. Before we get into questions, I think it would be helpful if you could say a little about your organisations and how you are funded. It would be useful if you introduce yourselves as well.

Daphné Bouteillet-Paquet: My name is Daphné Bouteillet-Paquet. I work for ECRE, the European Council on Refugees and Exiles.

Elona Bokshi: My name is Elona Bokshi. I also work for the European Council on Refugees and Exiles.

Hanne Beirens: I am Hanne Beirens. I work for the Migration Policy Institute, which provides policy advice to policymakers and politicians at both national and EU level. We also do research. We are funded through a range of foundations and through our project work, sometimes with the European Commission.

Daphné Bouteillet-Paquet: ECRE is funded through a grant from the Commission for our projects. We also have funding from private foundations. We are an umbrella organisation with 90 members in 35 countries, including non-EU countries such as Turkey. Our core work is to do research. We publish AIDA reports. That is a database that collects information about the asylum systems in 17 EU countries and three non-EU countries. We also do litigation work through a network of lawyers, the ELENA network, and we have a database of both domestic and European case law (EDAL). We also do advocacy work. Thank you for working on the subject of refugee children. We discussed it a long time ago and I am very pleased to see that the topic has raised interest.

Q111 The Chairman: Perhaps we can start on the question of reliable data. We are picking up on a lack of reliable data, but I would like your perspective on whether there are data in terms of the numbers on age, gender and nationality of unaccompanied minors in the EU. If not, do you think that there is the potential for better co-operation among member state authorities and EU institutions together, resulting in reliable data?

Daphné Bouteillet-Paquet: Absolutely. For your information, yesterday I sent a document but I think you had already embarked on your visit. What I am going to say today is compiled in that document, which I guess will make things much easier. To come back to your question, there are data—that was one purpose of the EU action plan—but the data available are very fragmented. I draw your attention to the fact that we have data relating to asylum-seeking children. Regarding the children who come to Europe but do not seek international protection, it is extremely difficult to have an accurate picture of how many of them are staying without seeking asylum. We have found some data that are in the document we sent you, but they were published in 2013. Since then, of course, with the crisis the numbers are completely different. We call the phenomenon the “underground children”. This is something that should be a matter of priority. There is space to look at the Eurostat regulation and, probably, to encourage member states to provide more information about the profiles of those children, such as gender and age. Better collection of data for non-asylum-seeking children is an absolute priority. In Calais, many of the people staying in Grand-Synthe are children but they do not necessarily seek protection. This is a problem once you have a clear idea of how many there are.

Of course, the existing tools do not capture the high mobility of the asylum seekers, especially at a time of crisis. This has been a problem, especially when the Balkan route was still open. I think we have observed the phenomenon of double-counting, so the accuracy of registration and counting also has to be revisited in the light of the current crisis. As for profiles, it is also important that we have a better analysis of who those children are. The protection of Syrian children is acknowledged, but we are concerned that the protection of other children is overlooked. UNHCR and EASO have recently published detailed reports showing that a vast majority of children coming to Europe are Afghan. Some are coming from ethnic minorities and are fleeing persecution. This is also part of the collection and analysis of the data.

The Chairman: Is there anything that you wish to add?

Hanne Beirens: Yes. I agree that some information is already collected by Eurostat, the European Migration Network and national authorities. A lot is also done by UNHCR, the IOM and UNICEF. There are already some interesting profiles in terms of gender, nationality

and age. Some of the problems derive from the migration routes and from the fact that the EU asylum acquis requires that children are registered upon entering the first EU member state. If they know that their migration route has a destination such as Germany or Sweden, they will seek to avoid that registration. So there is also the question of how their migration route interacts with the asylum and migration frameworks that are available within member states. That is key.

Then there is the question of the reasons why children come to Europe in the first place. Some of them might indeed be seeking asylum but a lot of children are arriving from Nigeria, Senegal or other places with more of an economic objective. They want to be able to work as soon as possible to send money back, so they might not have an interest in applying for asylum and going through a long procedure if their aim is to be able to work as soon as possible.

Then of course there is a big problem with those who go missing, so that is another question relating to data. The European Migration Network did studies in 2009 and 2014, and in both cases there was a big problem with the data on missing children—how many go missing and what are the reasons for that? It is strange that even in 2014 when we were doing that study for the EMN, there were still member states saying, “We don’t actually know how many go missing”. In some cases the figure is one in two, sometimes it is 60%. Again, this is a problem with the mechanism and the methods for registration as well as with data collection, but it is also a matter of understanding what happens. I am sure that if you talked to the social workers working with those children, they could tell you a very different story. For me, it is also about understanding the agency of children. Why do they come here, what is their plan and how does that interact with the data? On the one hand there is the possibility of changing the regulation relating to Eurostat, but staff members at EASO who are working on data collection also say that it is important to work together with national authorities to really understand what data is collected and how it is being analysed. On the question of double-counting, how do you count? Do you check whether a child has already been registered somewhere? Those staff say that for them Eurostat does not go far enough to help them understand what is happening. EASO has a group for the provision of statistics that can do that and perhaps work with UNHCR, the IOM and national authorities.

Q112 The Chairman: Listening to both of you, it seems to me that it is there, but it is fragmented, so there is a need for better co-ordination, and that you think that can be done.

The second issue is identification of what kind of data you need, what are the obstacles and how they can be overcome. Would they be the three things: the fragmentation, what kind of data and how you deal with some of the obstacles in getting that data?

Daphné Bouteillet-Paquet: Yes, that is, in a sense, what we are saying.

The Chairman: Do you think that it is feasible? Do you think something can be done by the EU institutions in partnership with yourselves to get a better profile of what is happening?

Daphné Bouteillet-Paquet: The question of mobility is a challenge to national authorities. We cannot deny it. It is not necessarily that people do not want an accurate picture, but it is extremely difficult. As Hanne pointed out, children tend to avoid registration, and this is a problem. I think that there is space for improvement.

The Chairman: Exactly.

Daphné Bouteillet-Paquet: The situation in a front-line country such as Greece is a bit of a different scenario, but we understand that at the moment experts from other member states are deployed precisely to help the Greek authorities. Registration and identification of children should be a priority. We feel that there is a bit of a lack of visibility of children issues in the current context, although 54% of people arriving in Europe at the moment are women and children. We have also seen a great increase in the numbers of unaccompanied minors applying for asylum. One could wish that the college would not see it as an echo of a problem but as one of the core issues in the current crisis. If that message comes from your Committee, that would help different stakeholders and national Administrations see the need for better co-operation. That starts from that.

The Chairman: I look forward to reading what you have sent us, but it would be helpful, if we are minded to make a recommendation that there is a need for better data and better co-ordination, if you could pinpoint the kind of data needed, where the co-operation is and what the difficulties are. However, the difficulties should not prevent us collecting the data that can be collected. It would be very helpful if you could think about that.

Hanne Beirens: In data collection, there is indeed space for improvement, but there are different problems. There is the conceptualisation of what you are focusing on. For example, Norway has the idea that children who come as unaccompanied minors will be seeking only asylum, so the whole concept of them arriving without having that objective is absent. So there is room for that, but there is also the mechanism, the research methods used, the indicators and the available data sources. There are different problems.

The Chairman: I think stating that would be helpful, so could you supplement what you are telling us with that? It is no good just saying that there should be better data. One needs to go a little deeper.

Daphné Bouteillet-Paquet: But let us look at what we have—the Eurostat regulation—and at the possibility of revisiting it or using it better. That would be important. We have networks, such as the European migration network, which could be very useful in fostering co-operation and co-ordination among national authorities.

Q113 The Chairman: That has been very helpful. May I move on to examining the key challenges that face unaccompanied minors in the EU? Do they differ depending on gender and nationality?

Daphné Bouteillet-Paquet: The first challenge boils down to age assessment because we see great disparities in different methods used. A person could be identified as a child in member state X and as an adult in member state Y. This has not been sorted out. We really need to have better harmonisation of age assessment across EU member states.

Then, as you are well aware, there is the problem of access to protection and family unity under the Dublin regulation. There are ongoing debates about the reform of the Dublin system, despite the improvement in the Dublin III regulation that the principle of family unity should be used as the first criterion. Perhaps you have read the evaluation report published recently by the Commission that this provision remains a dead letter. It is a problem because the procedures are so lengthy and bureaucratic that children tend to move onwards by using the services of smugglers. It is interesting that in evaluation reports national Administrations have said that it is extremely difficult and costly to trace family members. There is a lack of co-operation and resource co-ordination. We have to think out of the box and have more transnational co-operation on those issues. More resources need to be put into family tracing. I am sure that it would be possible through EASO to develop this transnational co-operation. There is no real co-operation in relation to best-interests assessments and best-interests determinations. If national authorities complete a best-interests assessment, they do not necessarily have information from countries where the child has stayed previously. All the information collected by national authorities is lost. These two problems should be looked at and sorted, especially in the process of the new Dublin reform, if it is adopted.

So we have age assessment, access to protection and the problems related to reception, including the quality of reception services. Recently in the UK you have experienced an influx of unaccompanied minors. There have been interesting reports of evidence collected by your local authorities, especially in Kent, so you are well aware of the problem at national

level. There is the same problem across Europe. In almost all European countries, there is a system where local authorities are in charge of reception services for unaccompanied minors, but budgets are not necessarily resourced to meet the needs of the local authorities. Sadly enough, in France you see a game of pass the parcel between départements because they want to avoid the costs. The voices of local authorities will be key in this discussion about unaccompanied minors. I hope you have the opportunity to meet them because this is an ongoing problem.

Linked to that, there is guardianship. The system of guardianship is largely underresourced. It is completely dysfunctional in front-line states such as Greece and is very problematic in Italy. As you are well aware, there are no harmonised standards available right now, which means that transfer of guardianship is a key problem. We will come back to that later in our conversation, I think.

We also deplore the fact that detention can be used as a form of accommodation in countries. I think this is wrong. This is really a problem. The detention of children has been used massively in this way recently, especially because of the crisis. This is a key problem. I could not really say that it is more of a problem for one specific nationality than for others. But while talking about reception services, I would like also to point out the fact that, recently, we have seen an increase in female children coming to Europe. Until recently, it was predominantly young males. These young girls are not properly protected against sexual violence. In particular, I think there is a lack of awareness of the needs of these young women and also a risk of trafficking and exploitation linked to that. So this is also something that we would like to share with you.

In relation to legal representation, with ECRE, in the context of our ELENA network, we try to train lawyers to be able to better represent children. But due to the austerity measures, a lot of resources have been cut, and therefore this is still an ongoing, unresolved issue.

My last point would be integration and, in particular, access to education. We have pretty good standards with the reception conditions directive, but in many key destination states such as Germany and Sweden, because of the increase in numbers, it takes quite a while before children can access the education system. While it is clear that this is compulsory for primary education, there are still problems in accessing secondary school. One thing that would be very useful is to look at the experience of countries such as Sweden. They have really developed best practice in integrating refugee children in the regular schooling system. This best practice should be shared with other EU member states to encourage them to think in terms of integration, and not only the short-term needs of those children.

Elona Bokshi: I could just point out that ECRE is also involved in strategic litigation because of the cutting of funds. On legal representation we are also trying to reach pro bono lawyers. Of course, this is very new, but in some projects we try to involve them and to train them on children's issues and how to protect them. That is an angle that we are trying to look at. Sweden was mentioned as a good example but the situation is changing, so unfortunately things are not staying the same. That is also another thing that we should look at: the overwhelming numbers.

Hanne Beirens: Daphné has already given a wide range of issues that are really pertinent so I will just try to complement where I can. In the first instance, it is quite important to identify the fact that the EU asylum acquis is quite fragmented, incoherent and incomplete. That in itself is quite problematic, and remains an issue. In terms of incompleteness, for example, family found outside the country of origin does not fit within the definition that is used in the asylum acquis. For the moment, there is incoherence, in the sense that depending on which legal status the child has, their rights are very different.

A key issue is to what extent the EU asylum acquis perceives children as children first and foremost, or whether it is the migration acquis of the Migration Act that takes precedence over the Children's Act. In a number of member states, such as Belgium and Ireland, the Children's Act takes precedence. There, unaccompanied minors, whatever their status, have access to the same kind of services and advice as other children. That is key, because otherwise what happens is that, for example, as Daphné was saying, a child can be an asylum seeker and their education consists of some classes in a reception centre, which may be sometimes reduced to language course. Then they become a refugee and they have access to mainstream education. If they are subject to return, they may have access to education because the Return Directive says that they can be detained as a last resort, but also they can have access to education depending on the length of stay. So how do you interpret that? It still concerns the same child, but the child goes through all those different kinds of status. That is very problematic at the moment.

What happens when they turn 18 is also a key point. That is another thing that the EMN report picked up on: the transition to adulthood, both in terms of if you have gained a legal refugee status and are allowed to stay, but also if you are expected to return. When you are 18, in those cases where the Child Act takes precedence, the Migration Act kicks in. From that moment, you can be an irregular migrant. There are countries such as Belgium that are quite good in that they have projects where they prepare the child. The support that the children have—accommodation, budgets and all these things—disappears suddenly, when they are 18,

they are supposed to stand on their own two feet. If, in the worst cases, they have to be returned, Belgium also thinks about what that will mean and what they will do when they go back. That is quite an important point. Return is also key.

Q114 The Chairman: What we are hearing is that it is very different in different countries. Do you think that a common European response is actually feasible and in what areas do you think the EU can add value? Is the EU doing enough in those areas?

Daphné Bouteillet-Paquet: The implementation of the existing standards would be a great improvement.

The Chairman: Do you mean the implementation of the current standards?

Daphné Bouteillet-Paquet: Yes. Adoption of the asylum package has coincided with the economic crisis and the refugee crisis, and so a lot of what should be being implemented remains a dead letter. We see space, of course, for better implementation. It is important for the Commission to develop its qualitative monitoring of the transposition of the acquis. It is important for EASO to strengthen assistance to states that need it. As for whether the EU can do more, we have stressed the need for better early identification and registration of children—I come back to that point. We need, in front-line states in particular, better processing capacities to ensure the proper identification of children.

As you are well aware, we currently have a problem. I would like to go back to the question of disappearances, which Hanne raised earlier. Registration is carried out but only children over 14 years old are fingerprinted. Discussions on that are currently taking place. The EU Agency for Fundamental Rights is preparing a report, which could be of interest to your Committee, about the need to change that by collecting biometrical for the sake of their protection, provided of course that all the procedural safeguards are in place. Why? Because children can get lost and families are separated. At the moment it is extremely complex to find out who is who, especially if the children have not been fingerprinted.

Organisations such as Missing Children Europe also share this view. We really have a problem here and we need to protect children, so this is important.

We also have to address the problem of connectivity of the relevant databases. Many different registration processes are going on but the databases are not all connected. I am not sure of the reason.

The Chairman: Do you think that the EU could help to do that?

Daphné Bouteillet-Paquet: Yes, absolutely. There should be better connectivity. We should also harmonise the vulnerability criteria to ensure that, if a particular vulnerability is identified during registration and identification, this information can be shared throughout the

journey. EASO has developed a tool and I think that we should look at that and put it into operation.

Again, we need a chain of protection. The problem at the moment is that there are no standard operating procedures. The child is identified as a child—so what is going on? There is a problem with connecting identification and registration to the right services. The EU could also help to develop those procedures as a means of providing protection.

I have talked about the harmonisation of guardianship standards, and this is something that could be helpful. We have the Brussels IIA regulation, which is not specifically linked to refugee children. The Commission wants to revisit this regulation to have better harmonisation of guardianship standards, and better and faster transfer of guardianship when it is needed, and we think that that is certainly required.

Hanne Beirens: Thank you. I want to add a couple of things. First, in terms of the EU response, the experience differs very much. Some member states hardly have any cases. I was involved with the Dublin evaluation for the Commission, and a number of member states, including Latvia and Slovakia, said, “Well, actually we hardly have any cases of UAMs”. Others, such as Belgium, Greece, Hungary, Malta and Sweden, were overwhelmed with these kinds of cases. A basic framework should be available in terms of legislation but also in terms of training modules, with experts available. Now, the Balkan route has shifted because Hungary has suddenly built a new fence somewhere. So the route has changed and Slovenia suddenly has thousands coming in. EASO should be available to come in and say, “We can help and support you, and we can share this kind of knowledge with you. These are some of the training modules that are available. The AMIF can kick in—there’s funding available”. That needs to be in place. On the one hand, you need this kind of training, but on the other hand there are those who already have a lot of experience. I remember speaking to people from Austria and Sweden who said, “Our system is in place and it is working quite well”. For us, it is more about having extra funding to be able to deliver all the services that we need.

The Chairman: Would you say that EASO should have the capability, capacity and flexibility to go and help wherever there is a problem?

Daphné Bouteillet-Paquet: EASO is currently dependent on national experts. We discussed it with them and they said, “Yes, of course, member states send us experts but, for instance, they say, ‘This expert is available only for five days’”. How can you do anything in that time? It takes time for a person to be trained. As you might say, there is a hole in the bucket—you have to wait for a new person to be sent. You may also be aware that, because of the austerity measures, the Greek Administration is not allowed to hire people for more than three months,

so every three months the asylum system has to stop and shut down. Frankly, that is crazy and it has been going on for quite some time.

The Chairman: I have taken too much time, because this is very interesting. I think that we need to move on and I shall ask my colleagues to come in.

Hanne Beirens: Perhaps I may add one thing. Although we need that kind of framework, there is a need to mainstream certain things and a need to tailor certain elements, so there are always going to be limits to what the EU does.

Q115 Lord Soley: You have answered some of my points. You have given a very clear explanation of why you think the system is lacking. It is not so much whether there is a hole in the bucket as whether there is a bucket. You are aware of that. Having got that overall picture from you, perhaps I may ask you to say a bit more about the hotspots and relocation schemes. Not just the international organisations but other people have been saying that they are not adequate or working well but that the hotspots are necessary and so on. What is your view of them? Are they working reasonably well or not very well? Let us take hotspots first and then the relocation schemes.

Daphné Bouteillet-Paquet: The recent evolution of the hotspots came from the EU/Turkey deal. One concern that we have is that children were not even mentioned in that deal. That means that the return of children is likely to happen without the necessary safeguards. I think that your Committee should be well aware of this recent development.

More generally in relation to the hotspots and relocation, the irony is that the initial intention of relocation was right. It meant identifying people, registering them properly, detecting the most vulnerable and allowing them to move on regularly without using the services of smugglers. But that has not happened. Fewer than 10 unaccompanied minors have benefited from the whole programme since it started. So 10 children have benefited from relocation programmes since October. I am not aware that there have been more than that. Why is that? It is because of guardianship. Appointing guardians take three years in Greece or Italy, so you can forget that. Then transfer of guardianship is a problem. Also, member states have been extremely reluctant to pledge because they claim that their reception capacities are congested. Whether that is true or not, we do not know. There is also a problem of cost, because, of course, it is quite costly to accommodate children.

The whole idea of relocation has not worked in relation to children, unfortunately. We are extremely worried as well that in Greece the whole hot spot has now turned into closed detention centres, which is a concern in terms of conditions there and detention of children.

We think that as a matter of urgency there should be age-appropriate reception conditions within the framework of hot spots, but also that information should be made available to children in an age-appropriate way. The whole issue of information is a concern for us—also for adult asylum seekers, but in terms of children there is a clear gap.

We are also concerned that members of the team that is deployed are not child protection actors per se. Maybe they have had some short training on child rights—I do not know. But we think that it is important to deploy child protection actors; we need teams to conduct best-interest assessments, and officers who are deployed should be duly qualified professionals with a child protection mandate. This is really important.

Lord Soley: Do you want to come in on that? From your answer, I interpret that as saying that the problem with relocation is a problem with individual countries and how they determine who they will take and how they will take them rather than of the EU's overall control of it. Is that right?

Hanne Beirens: Yes. Normally, the relocation could build on the Dublin system—so it is the same kind of actors in Italy and Greece who are doing this at the moment. So in principle it should be able to work. It is more that the kinds of obstacles that we experience vis-à-vis children in the Dublin system are being replicated within the relocation system. But ultimately there is a hierarchy of criteria, so if the child has a family member somewhere they should be able to reunite. The whole process is about identifying, getting the evidence—all those kinds of things.

With the EU-Turkey deal, a Greek law has now been adopted which says that the kind of fast-track procedures that would be adopted for adult asylum seekers will not apply to children. But still, then, the issue is whether you have persons there who can undertake the interview with child-sensitive interview techniques and whether guidance is in place. We did a commentary on the situation of children in the EU-Turkey deal, and we worked with UNICEF to look at the situation of children across the EU and how they come in. There is an NGO in Greece called MetaDrasi, which is tackling the issue of the lack of guardians. But in the last seven months it has managed to train 15 guardians and support 256 children—but if you know that in February alone 150 unaccompanied minors arrived in Greece, you will know that there is a huge gap. So there is a big problem there.

Lord Soley: On hot spots, you said that they had become detention centres, in a way.

Daphné Bouteillet-Paquet: In Greece at least, yes.

Lord Soley: If they are held in one position, as they largely are in hot spots, should it not be possible to put in major resources—whether from the EU or the host country—to identify

children at a very early stage and give them a special procedure? I know that that ought to happen, but from what you are saying, it is not happening. Is that right?

Hanne Beirens: One issue is that before, sometimes children tried to avoid being identified as a child to avoid being detained so that they could move on. But in the current situation, where Greek law says that the fast-track procedures will not apply to children, it is also in their interest to say that they are a minor. So the age assessment comes in, which takes a lot of time, and it becomes problematic.

Lord Soley: We understand the problems with age assessment. You touched on that—I do not want to repeat it. Are you saying that hot spots need more resources, whether from the EU or somewhere else?

Hanne Beirens: Yes. The key problem for months, since the policy has been implemented, is that sometimes there are no machines to take the fingerprints, there are not enough staff and they can only do X number of interviews a day. The lack of co-ordination between them is a key issue as well. Therefore, indeed, it requires more input and more co-ordination.

Lord Soley: So there is an overall managerial problem and a finance problem.

Daphné Bouteillet-Paquet: Absolutely. The hot spot in Greece is operating in a country that is basically bankrupt. The problem is also how you operate this system in a country that is completely dysfunctional and where the public administration does not have resources. We should not put our head in the sand—there is a problem with having a functional hot spot system currently in Greece. I agree with Hanne that we need more resources to be deployed, but there is also a problem of having qualified professionals deployed for a reasonable amount of time, because you cannot achieve anything with short-term deployment.

Q116 Lord Soley: I would like to turn now to the European Union action plan. I know we have touched on it already, but should it be renewed—and if so, what do we need to do to make it better? You have implied that it is not exactly the cutting-edge machine we would like it to be.

Hanne Beirens: That is an interesting question for me—although not an easy one. I understand the value of action plans; I have worked with different EU action plans with the Commission, and I have also had to evaluate the EU action plan on drugs. I understand that they serve a purpose in the sense that it is a political declaration—“This is an important issue, it is on the top of our political agenda and it is something we will take seriously”—and it also helps actors at national level, politicians and NGOs, who have decided to make the case for change and action. It creates momentum and allows for monitoring and evaluation, so there is a follow-up. There was an implementation report in 2012, but if you look at that report, there

is a list of projects, some steps undertaken at national level and some legislation. So from a research perspective, I look at those and I sometimes wonder to what extent they are coherent: to what extent can you look at this and say, after X number of years, whether those objectives have been attained in the way they are formulated? So it is quite difficult.

Plus, for example, we just reviewed the situation in 28 EU member states and the Balkan countries, looking at children's legal entitlements for UNICEF. We already see how difficult it is for entitlements that have been laid down in EU and national law to be implemented in practice, so where do you start with enforcing an action plan? So it is important, it sends out a message, it can create funding initiatives, et cetera, but I question its value. My preference would be to have a smaller, better implementable focus—making sure that better legislation is implemented properly and investing time and effort in that. That is my personal view.

Lord Soley: Let me make sure that I understand you on that. Are you saying, in effect, that the structure, or skeleton, is good but that there is not enough meat on the bones to make it function—that the structure is basically okay but it cannot deliver because it has not got the functions?

Hanne Beirens: Yes, it is not really broken down sufficiently in actions—what you are going through. For me it is more that I find the enforcement element, the monitoring and evaluation, limited in terms of impact.

Lord Soley: No muscle, in fact.

Hanne Beirens: Yes, but you may find it very useful in your actions, I do not know.

Daphné Bouteillet-Paquet: I agree in part with what you are saying, but the value of this action plan has really been its divisibility. There is also a political commitment that says, “Yes, we see this as a key priority”. That is important because what is being discussed at the moment is the future of the action plan. We see little appetite, frankly, and there is a risk of just adopting an annexe or whatever rather than giving it formal endorsement by the college. That would not be a good sign if they do renew it. If they are to renew the EU action plan, what we need—and here I agree with Hanne—is not to reinvent the wheel. We have to build on the evaluation and look not only at what should be better implemented but at what should be strengthened. The EU action plan was strongly focused on trafficking: that was its primary angle. Building on that, it is important to develop concrete action in order to prevent children going missing. I suggested, for instance, that the existing regulations should be amended to allow for the fingerprinting of those under 14. A number of recommendations have been made by the organisation Missing Children Europe within the framework of the SUMMIT project. A report has been released which I think can be turned into concrete actions.

In terms of capacity building, again we see that a lot could still be done on training actors and strengthening transnational co-operation, while harmonisation of the guardianship system could of course be very important. What is currently missing in the action plan is what Hanne pointed out earlier: the transition to adulthood when someone turns 18 is not really visible in the plan—so perhaps this is something that the new action plan could look at. But unless you have resources and unless there is monitoring, an action plan is just one more document and not much will happen.

Hanne Beirens: I am sorry if I sound a bit cynical.

Elona Bokshi: I will just add a word on guardianship research. When minors or children turn 18, in most countries guardianship stops at that point. In some countries such as the Netherlands some assistance was being provided beyond that age, but now it has been stopped because of the legislation. This could be looked at as providing a good example, perhaps with a view to extending the age to 20. Hungary makes provision until the age of 24—so some countries are providing support beyond the age of 18. We could also look at this as a transition period. That would be very innovative.

Daphné Bouteillet-Paquet: But on the scope of the action plan, I do not think that we should limit ourselves to asylum-seeking children. It is very important that we look at the needs of non-asylum seeking children.

Q117 Lord Soley: I am very conscious of the time. I have one last question, and if you could get as close as you can to a yes or no answer, that would be helpful. Have the European Asylum Support Office and the European Union Agency for Fundamental Rights made a difference of any significance to the practices of the member states? Short answers, please.

Hanne Beirens: I think that they can do more.

Daphné Bouteillet-Paquet: They can do more, which means that they need many more resources. FRONTEX has a huge budget. If you compare the FRONTEX budget with those of EASO and EUAFR, you have your answer. They are small, but they need more resources in order to be effective operationally.

Lord Soley: But they have not in fact changed the practice of member states very much—is that what you are saying?

Daphné Bouteillet-Paquet: In a very limited way, I am afraid.

Hanne Beirens: The evaluation of EASO also shows that it has a greater impact in those countries which do not have a particular policy or legislative framework in place. In relation, for example, to age assessments, there was an age-assessment exercise and it came up with

guidelines. In those countries we can see a change, but in member states which already had a practice in place there has been a limited impact.

Q118 Lord Condon: I think you have probably largely answered the three points that I was going to raise, but perhaps this will give us another opportunity to see if there is anything more you want to add. Given that EU member states are already bound by international and European human rights obligations, do you see any real value in the extra protection offered by the EU *acquis*? If you do see that, how are the human rights of unaccompanied minors affected by the failure of EU member states to implement the *acquis*? Does the *acquis* add to international human rights?

Daphné Bouteillet-Paquet: Yes, it does, because it rationalises a number of standards that would otherwise be quite general: that is one thing. Also, the *acquis* goes beyond international borders when it comes to protecting the beneficiaries of such international protection, because there is a regime of subsidiary protection. So I think that it adds a layer of protection. We have not seen enough implementation of the standards: that is the problem.

Hanne Beirens: Yes, I agree. Having just looked with UNICEF at children's legal entitlements, we can see that it has been crucial. Standards would have been particularly low in some member states if the EU asylum *acquis* had not been transposed into national legislation—so it has been really important. The problem that remains, of course, is that on the one hand it pursues harmonisation, but so far the legislative instruments that have been put forward lay down minimum standards—and even then there is scope for interpretation. There are “may” clauses and “shall” clauses and it is formulated as a last resort for the shortest possible time. Perhaps I can add that I find that the phrase, “in the best interests of the child”, is inserted with the best of intentions, but the results can be detrimental in the sense that it remains very vague. All legislative instruments now incorporate the phrase, but what does it mean? What are the objectives? We now have durable solutions, but what is a durable solution for one specific child? It would be great to look at a case of a child with a similar background and a similar reason for coming here and look at how that child has been treated across different Member States. What has been identified as a durable solution that is in that child's best interests? Plus: The clause is there, but the question is whether it prevails over other clauses. How is it assessed? Which actors are involved and what options are explored? We have seen that in different member states. In some of them, the options that are explored are very limited. So one problem is that we have added to all these legislative instruments the phrase, “in the best interests of the child”, but the result has not necessarily been brought that about.

Lord Condon: Is there anything more that you would like to add to the comments you have already made about the family reunification directive? Has it had a real and positive effect on the member states that seem to be trying to implement it? Do you believe that opting in would benefit unaccompanied minors in the United Kingdom, where clearly we have not opted in to the directive?

Daphné Bouteillet-Paquet: What we see with family reunification is that in many countries there has been a restrictive trend. Recent legislative changes made in Sweden, Denmark and Austria are going down the road towards restriction. In our view reunification remains a tool for the integration of people, as well as it being the legal route within the EU. The instrument is under threat, I would say. There has also been a tendency to add other layers of requirements such as integration tests. That has been done in the Netherlands. Again, the test was developed with the good intentions but it should not then bar access to family reunification. So I am quite pessimistic about family reunification in the current context.

Hanne Beirens: I just wanted to add a few points. The legislation itself is quite positive in the sense that it lays down an obligation. There is a “shall” clause—it “shall” authorise. It has a broad definition of “family members”—one of the broadest in the EU asylum acquis—so it eases the way for unaccompanied minors to be reunited with legal guardians. But it is a “may” clause. In terms of the procedure of family reunification, the application cannot be rejected purely on the basis of a lack of documentary evidence. There is also the “best interests”. So it is very positive, but, as Daphné said, it is still very broad so it allows for the restrictions in Sweden and Belgium. In terms of legal certainty and procedural safeguards it is positive. One final comment: it is key that unaccompanied minors trust that the legal system in a member state will succeed in reuniting them with their family members in a swift manner. There have been cases of missing children who are deliberately separated by smugglers. We had a case where the mother went to the UK and the children were in Belgium. The minor said that they would rather trust the smuggler to get them there quickly than go through the whole Dublin procedure. That in itself is very problematic. You need to have a system in place that children can trust.

The Chairman: We have 10 more minutes.

Q119 Lord Condon: It was suggested to us by a government official in the United Kingdom that part of the reason why we have not embraced family reunification is that it could be abused and exploited—that families would send a child ahead in the hope of the rest of the family following on. Is that a fear that can be justified, or is it not borne out by what is happening in the real world?

Hanne Beirens: That is a difficult one. There is a real case for saying that this is important, because, as I said, smugglers use that tactic—not because of the family reunification directive or the Dublin regulation but because this is the greatest safeguard they have that the child will not talk if they are intercepted by the police. They say, “If you don’t talk, we will make sure that you get to your father or your mother”. So there is a need to allow these children to have legal recourse to a better system to be reunited. But on the other hand, the reality is that we have seen a change, with a shift to more children or women coming. They come because the situation in Syria and surrounding areas is terrible. They are also taking that risk. It is a strategy that they have seen in Belgium where unaccompanied children at the age of six are arriving. To travel they link up with other unaccompanied minors. Sometimes there are no links, but they are phoning back home. This is a way for them to get to Europe. If the other routes are closed, families will seek ways to get here. That is the reality we face.

Q120 Lord Condon: A final point from me. You have already mentioned guardianship, lack of standards and related issues. Is there anything more you want to add about the specific problems that unaccompanied minors face in obtaining legal representation and support? Is there anything more that we need to know about what is missing in terms of legal representation and support for unaccompanied minors?

Daphné Bouteillet-Paquet: On our side, we have stressed the lack of resources. There is a lack of guardians in many member states, so the guardian could have the custody of dozens or even hundreds of children. It is quite a distant relationship in many cases. The appointment of the guardian can take a very long time. That is a key problem. The FRA has done a useful study and produced a handbook. I am sure that you are well aware of it. But the problem of training guardians remains an issue. Even the quality of the service is often lacking in many countries. I was quite interested to see that you have guardians in the UK—but in Scotland, not in the rest of the country.

Lord Soley: We make it up as we go along for each part of the UK.

Lord Condon: Part of the Government Minister’s response and justification was that the numbers are so small in Scotland that it is manageable, but if guardianship was applied in the UK the caseloads would be so big as to make guardianship untenable, and that the needs are better looked after by foster parents and care workers—not that we were convinced by that argument. Am I right in thinking that, in general terms, the legal advice to unaccompanied minors, because of age-related issues and information and so on, is poorer than the legal advice for adults in the same situation?

Daphné Bouteillet-Paquet: Exactly. As we have said before, we really have a disparity between member states. Not all member states have great numbers of unaccompanied minors, so it does have an impact on the quality and presence of the services.

Elona Bokshi: Just to add, there are some other components that mean that legal advice is poor quality. It is also the lack of information that they get from the very beginning. For example, in the reception centres they would not have had proper information on how they go through the asylum procedures—the first instance and the second instance. You have the problem of interpretation. Sometimes the interpreter takes their own position and gives their own idea, so you have to train them. There is the child-friendly issue: although the lawyers might know the asylum procedure very well, they do not know how to communicate to children who do not know the language. So there are huge challenges to provide a good quality—and lack of funds remains crucial in many countries.

Hanne Beirens: We have already addressed a lot of issues, but I have two more things. The whole EU asylum acquis is built on the idea that all the safeguards and best interests are achieved through the guardian. You have member states that appoint a guardian only after the person has lodged the claim, which is problematic. Another issue is that some member states have legislation that if the person does not apply for asylum they can be sent back at the border. So it is key to have somebody there. Another issue is the change of guardian. When I was working at a university in the UK I researched the importance of having a single, key person you can tell your story to who will accompany you along the journey—not having five different people every so often and having to retell your story. That is also key. The rest we have identified already.

The Chairman: Thank you very much indeed. It has been very illuminating and very interesting. You have seen the questions that we are pursuing. What has come home to me is that we need to make much more specific and practical recommendations, so it would be useful if you could think a little bit more about specific things that we can say about where the EU can add value, what changes you would like to see and what kind of data need to be collected. Anything specific would be extremely helpful, but I cannot thank you enough, on behalf of the Committee, for your contribution this morning. Thank you for your time.