

STUDY OF THE APPROACHES TO UNACCOMPANIED FOREIGN MINORS FOLLOWING STATUS DETERMINATION

SPAIN 2017



GOBIERNO
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MINISTERIO
DE ASUNTOS EXTERIORES, UNION EUROPEA
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The European Migration Network (EMN) is an initiative of the European Commission. The EMN has been established via Council Decision 2008/38/EC and is cofinancially supported by the European Union.

Its objective is to meet the information needs of EU institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. The EMN also serves to provide the general public with such information.

To that end, the EMN has a network of National Contact Points (NCPs).

The Spanish NCP is composed by experts from the Ministry of Labour, Migrations and Social Security, Ministry of the Interior, Ministry of Foreign Affairs, European Union and Cooperation, and Ministry of Justice and the General Prosecutor's Office, It is coordinated by the Deputy General Directorate for Legal Affairs of the Directorate General for Migrations, General Secretariat for Immigration and Emigration, Secretariat of State for Migrations.

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2017 MONOGRAPHIC STUDY OF THE EUROPEAN MIGRATION
NETWORK

Drawn up by the National Contact Point of the European Migration
Network in Spain

I. EXECUTIVE SUMMARY

According to the latest data taken from the Prosecutor General's Report for 2017, in Spain there is a total of 3,997 Foreign Unaccompanied Minors (hereinafter, UAM) in the custody or care of the child protection services. Most of them are between 16 and 17 years old, are boys (3,470) and are from Morocco (2,620).

The number of UAMs in this country is a growing phenomenon; in 2016 there were 588 UAMs, 42% more than in 2015 and 163% more than in 2014. Those who arrived in 2016 were mostly boys (95.01%), from Algeria (37%), Morocco (31.29%), Ivory Coast (10.54%) and Guinea (5.44%).

In spite of these figures, there is no discussion among the public in Spain about UAMs because:

- All minors, regardless of their migratory status, have the rights of children.
- There is a general consensus on the priority of acting, in all cases, in the best interests of the child.

Their best interests are determined by looking at the applicable circumstances: (i) the child's own wishes, (ii) the opinions of those who look after their interests and (iii) the various factors involved. They are subject to Organic Law 1/1996, of 15 January, on the Legal Protection of Minors, a partial modification of the Spanish Civil Code and Civil Procedure Act.

It should therefore be stated that, in Spain, in regard to UAMs, their status as children takes precedence over their status as foreigners.

Even though no legislative changes are planned in the short term, because of the prevailing circumstances, movements towards better management of the UAM phenomenon are occurring. Although the adoption of measures at the state level cannot be ruled out (an inter-ministerial group has been looking into their affairs since 2017), for the time being, the actions are limited to the Autonomous Regions, the bodies on which the powers for integrating UAMs have been devolved by the state.

In this context, in Spain, UAMs can have one of the following three migratory statuses:

- Beneficiaries of international protection.
- Beneficiaries of a residence permit or a residence and work permit.
- Be entrusted to the child protection services.

In any of these cases, UAMs have **legal residence** and the right to education, healthcare and basic social services and benefits, under the same conditions as Spanish children.

In Spain **there is no specific protocol on the transitioning to adulthood** because, among other factors, (i) each child protection service is governed by the regulations of its own particular Autonomous Region and (ii) pathways to integration are sought that fit each specific case, without prejudice, of course, to the fact that measures for this transition may be adopted. In any case, the children are informed of the alternatives

available to them for continuing to live in this country (when they reach the age of majority) by having the corresponding residence permit or residence and work permit, which are provided by the immigration laws. Obviously, UAMs who are beneficiaries of international protection do not lose this status when they reach their majority.

In regard to other circumstances analysed in the report, it is considered appropriate to highlight the following:

1. Care for UAMs.

All children, once they are classified as such, have a legal status with special protection. To guarantee this status for UAMs, regardless of their migratory status, their legal guardianship, care, custody or provisional protection is entrusted to a child protection service (mixed or specifically for UAMs) that provides them with comprehensive coverage of their needs.

It should be noted that children do not share space with adults; therefore, in theory, they remain at the same centre until they reach their majority. However, there are transition programmes to adult life at semi-autonomous units that prepare them for independence, in addition to resources for those no longer in care.

2. Integration of UAMs.

In Spain, the integration of all children is a priority and for UAMs it is revealed in the following:

- Access to healthcare.

They have comprehensive access to the National Health System under the same conditions as Spanish children.

This access may continue when they reach their majority or not, depending on their migratory status. However, a reform is being planned for universal access to healthcare.

- Access to education.

They have a right (and if they are under 16 years of age, also a duty) to education under the same conditions as Spanish citizens.

In general, there are no educational resources specifically designed for UAMs in addition to those for foreign children in general: language courses, integration courses, etc. The need for these is assessed by the teachers (under the supervision of the Public Prosecutor's Office).

Should they reach their majority during the school year, they retain their right to education until it ends. In addition, foreign adults who are residents of Spain have a right to education under the same conditions as Spanish citizens.

- Access to employment.

They have the right to work in Spain under the same conditions as Spanish children (the minimum working age, generally, is 16), provided that the opportunity has been evaluated by the body that has their guardianship or custody.

When they reach their majority, they may have access to a residence and work permit.

- In regard to **family reunification**, it is necessary to distinguish between:
 - UAMs who are beneficiaries of international protection: The rules in Directive 2003/86/EC and Law 12/2009 apply.
 - UAMs who are not beneficiaries of international protection: Family reunification is sought in their place of origin.
Once they reach their majority, the general immigration laws on family reunification apply to them.
- Access to **social services**.

In theory, UAMs are assisted by the child protection services.

Once they reach their majority, (i) they will enjoy the assistance available to beneficiaries of international protection, where appropriate, and/or (ii) the general immigration laws that guarantee access to these benefits for foreign residents of Spain will apply to them, under the same conditions as Spanish citizens.

3. The return of UAMs.

In accordance with international regulations on the rights of children, the policy on UAMs focuses on returning them to their country of origin; however, during their stay in this country, an effort will be made to develop and integrate the child.

The return process follows a specific channel, different from that for voluntary or forced returnees, which is designed to protect, in all cases, the best interests of the child.

There are very few cases in which UAMs are repatriated and the majority remain in this country.

4. Disappearance of UAMs.

This is a source of concern that is, in some ways, linked to the procedures for obtaining their migratory status.

Section 1: International and Community legal framework

This section is drawn up by the European Migration Network.

Section 2: Overview of the situation of UAMs in Spain

Q1. Please provide an overview of the current **public debate** with regard to unaccompanied minors who have received a final decision on their application for asylum/ another status in your (Member) State.

In Spain there is no public debate focusing on UAMs, apart from how to manage a phenomenon of increasing importance and proposals regarding whether it is necessary to make legislative or practical changes.

In any case, it is socially, politically and administratively assumed that, when dealing with UAMs, the priority is the "**best interests of the child**", and concerted work is being done in

this area.

It should be mentioned that in Spain there is an intense debate about the value that the evidentiary tools must have when determining their age, in particular, medical tests and authentic public documents when they contradict this evidence.

Q2. Are unaccompanied minors that fall in this category a **national policy priority**, including those turning 18 years of age? Has this changed over the last few years, i.e. since 2014 onwards? Has there been a shift in focus within policy issues concerning unaccompanied minors?

The concept of a national policy priority is ambiguous. In all cases, it is true that in Spain there is **obvious concern about children in general**, not just for UAMs. This concern led in 2015 to an improvement in the legal protection instruments, essentially through (i) the adoption of Law 26/2015, of 28 July, modifying the protection system for children and adolescents, and (ii) the reform of Organic Law 1/1996, of 15 January, on the Legal Protection of Minors, a partial modification of the Civil Code and the Civil Procedure Act (hereinafter the Organic Law on the Legal Protection of Minors), with the aim of clarifying their legal status and protecting their interests.

In the specific area of UAMs, they receive priority through the concept of a "vulnerable group", so that any policy or measure that can affect them places them in this category. Therefore, article 10.2 of the Organic Law on the Legal Protection of Minors establishes that *"foreign minors who are in Spain have a right to education, healthcare and basic social services and benefits, under the same conditions as Spanish children. The Public Administrations shall ensure that particularly vulnerable groups such as foreign unaccompanied minors, those who have a need for international protection, minors with disabilities and those who are the victims of sexual abuse, sexual exploitation, child pornography, the smuggling and trafficking of human beings, guaranteeing compliance with the rights provided for in law".*

It should also be emphasised that in the Framework Protocol on Protection for Victims of Human Trafficking, special mention is made of the needs of UAMs.

Q3. a. Please provide an overview of **recent changes to law, policy and practice** in relation to what happens with unaccompanied minors after they have received a final decision on their application for asylum/ another status in your (Member) State since 2014 onwards. Please provide an account of such changes also in relation to those unaccompanied minors turning 18 years of age, as well as unaccompanied minors disappearing from guardianship/ care and/ or following a return decision.

There were no new developments in this area since there is already a solid legal and administrative practice in place in Spain to protect UAMs. However there have been changes aimed at **improving the management of the phenomenon**.

Therefore, in July 2014 the Framework Protocol on certain actions relating to UAMs (known as the Framework Protocol on UAMs), which was intended to coordinate the involvement of all the institutions and administrative departments affected, from tracing minors or supposed minors to identifying them, determining their ages, turning them over to the public child protection service and giving them documentation.

In recent years, the practical application of the Framework Protocol has been strengthened in the various regions in different ways. In Galicia a regional protocol was drawn up; in Vizcaya the provincial protocol was adapted to include some specific aspects; Granada and Cuenca

opted to hold coordination meetings with the institutions with powers in this area to examine the dysfunctions identified in the application of the Framework Protocol and set criteria for their solution.

Therefore, the efforts being made by the different Spanish administrative departments to manage a phenomenon that is on the rise as efficiently as possible should be highlighted.

b. Please indicate **any planned changes** to law/ policy/ practice regarding the care/ integration/ return of unaccompanied minors going forward.

No changes are planned in the legal UAM protection system.

Q4. What **statuses** does your (Member) State typically grant to unaccompanied minors and in what circumstances (e.g. asylum, humanitarian protection, temporary/ tolerated status, etc.)? Please do not provide details here on the different status determination procedures (as this is not the focus of the Study), but rather on what status(es) they result in for unaccompanied minors.

UAMs in Spain can have one of the following *migratory statuses*:

- **Beneficiaries of international protection:** when they meet the general requirements pursuant to Law 12/2009, of 30 October, regulating the right to asylum and to subsidiary protection (their application will be processed as urgent).
- **Beneficiaries of a residence permit:** when it has been proven that it is impossible for them to return to their family or country of origin and, in all cases, nine months have elapsed since the child was handed over to the competent child protection services (articles 35.7 of the OLFN¹ and 196 of the ROLFN²).

In addition, under certain circumstances (*see below*) UAMs may have access to a work permit.

- **UAMs entrusted to the juvenile services of the Autonomous Regions:** While the handing over of these children to their families or the diplomatic representation of the country of origin is being processed or, where appropriate, the procedure for international protection is being processed, the children remain in the protection of the public child protection service of that Autonomous Region. It should be noted that, in all cases, in Spain children who are in the custody of a government department or, because of a court decision, of some other body, are considered legal residents (article 35 of the OLFN).

In addition, it is important to bear in mind that the absence of a residence permit does not prevent the recognition and enjoyment of all the rights that correspond to these minors because they are children (ex. Article 35.7 of the OLFN).

Q5. a. Please provide any further qualitative information available in your (Member) State on the **characteristics of unaccompanied minors**, as follows:

¹ Organic Law 4/2000, of 11 January, on the rights and freedoms of foreign nationals living in Spain and their social integration.

² Royal Decree 557/2011, of 20 April, approving the Regulations for Organic Law 4/2000, on the rights and freedoms of foreign nationals living in Spain and their social integration, after its amendment by Organic Law 2/2009.

- Are unaccompanied minors **mostly close to the age of majority** when a final decision on their application for asylum/ another status is issued, or (much) younger?

The majority of UAMs who are in Spain are young people aged between **16 and 17**.

- Are they **boys or girls** predominantly?

Boys.

According to the Prosecutor General's annual Report, on 31 December 2016 a total of 3,997 minors who were in the custody or care of the protection services were recorded in the UAM Register (527 girls and 3,470 boys).

- Are they **resettled and/ or relocated** unaccompanied minors whose right to reside in your (Member) State has been clarified?

Unaccompanied minors who were part of relocation processes (a total of 13 from Greece and Italy, not counting separated minors) have the same guarantees and procedures as other children seeking asylum.

Unaccompanied minors resettled in Spain arrive with international protection (refugee status or subsidiary protection) already granted and, therefore, they have residence as beneficiaries of this protection. However, it should be noted that the arrival of resettled UAMs constitutes an exception.

- Please provide any other qualitative information available *not covered above, for example*, unaccompanied minors not presenting themselves to the authorities, etc.:

According to data provided by the Prosecutor General's annual Report, (on 31 December 2016), most UAMs in this country were Moroccan (2,620), followed at a great distance by Algerians (220), and it is notable that 160 were nationals of European Union Member States.

There are no data on minors who did not appear before the authorities, as in Spain there is a general duty of notification (section one of the UAM Protocol). Therefore, any authority, institution or body that locates, takes in or receives a foreign minor must notify the National Police Provincial Brigade of Alien Affairs and Borders, the corresponding Government Delegation or Sub-Delegation and the Public Prosecutor's Office, which must, whenever possible, enter the minor in the UAM Register.

b. Please complete the Excel document in Annex 1 (including data as well as metadata) if you have **national statistics** on:

- The total number of accepted/ rejected applications for asylum by unaccompanied minors in 2014-2016 and, where available, the first half of 2017, if possible disaggregated by sex/ country of origin of the minor;
- The total number of residence permits issued to unaccompanied minors on grounds such as asylum, humanitarian protection, etc. in 2014-2016 and, where available, the first half of 2017, if possible disaggregated by sex/ country of origin of the minor;
- The total (estimated) number of unaccompanied minors not seeking asylum and their respective statuses, e.g. those who entered irregularly and victims of trafficking, etc. in 2014-2016 and, where available, the first half of 2017, if possible disaggregated by age/ sex/ country of origin of the minor;

- The total number of unaccompanied minors issued temporary/ alternative statuses, tolerated stay, etc. in 2014-2016 and, where available, the first half of 2017, if possible disaggregated by sex/ country of origin of the minor;
- If available, data pertaining to specific integration outcomes for unaccompanied minors in 2014-2016 and, where available, the first half of 2017, if possible disaggregated by age/ sex/ country of origin of the minor (e.g. unaccompanied minors enrolled in primary/ secondary education, traineeships/ internships, training, labour market programmes or any other targeted measures; unaccompanied minors who have completed successfully any (civic) integration courses; unaccompanied minors registered with leisure associations (e.g. football/ cricket federation, scouting, etc.); cases of successful family reunification involving unaccompanied minors). *If such data are not available, please provide below any existing qualitative information in relation to outcomes for unaccompanied minors;*
- The total number of unaccompanied minors with enforceable return decisions and/ or number of unaccompanied minors returned (through voluntary and forced returns), including data on AVR(R)-programmes targeting unaccompanied minors in 2014-2016 and, where available, the first half of 2017, if possible disaggregated by age/ sex/ country of origin of the minor;
- The total (estimated) number of unaccompanied minors disappearing from care/ guardianship and/ or following a return decision, if possible disaggregated by age/ sex/ country of origin of the minor.

Please do not here include the Eurostat data mentioned above, as this information is available publically and can therefore be analysed centrally for the Synthesis Report.

All the information available is included in the annex.

Q6. a. Please provide a general overview of what happens with unaccompanied minors in your (Member) State **when they turn 18 years of age**, including a brief description of the approach (e.g. transitional measures/ plans) of your (Member) State:

- when an unaccompanied minor has received **a final negative decision** on his/ her application for asylum/ another status as a minor (please elaborate below):

As noted in Q4, if a minor is not recognised as having the status of a refugee or a residence permit, he or she would fall into the category of "*minors over which a child protection service has legal guardianship, custody, provisional protection or care*" and would therefore be a legal resident of this country.

On reaching their majority, these minors may be granted a temporary residence permit due to exceptional circumstances, for which the requirements are more favourable than those normally demanded, since the integration or wish to integrate of the former minor into Spanish society will be given a positive evaluation (ex. article 198 ROLFN). In any case, they will have access to any other authorisations or residence permits that exist in this country.

- when an unaccompanied minor is **granted a status as a minor** (please elaborate below):

When accompanied minors are granted refugee status or subsidiary protection, they do not lose this status on reaching their majority. For the purposes of residence, in all cases, like any beneficiary of international protection, they have a residence and work permit. Therefore, reaching adulthood does not lead to any change of status.

Minors who have a residence permit may request its renewal in accordance with the procedure for renewing non-lucrative temporary residence permits, with some special features that make it more flexible. In addition, when reaching their majority or at any time

after this, they may apply for a residence and work permit (ex. Article 197 ROLFN) or any other authorisations or residence permits that exist in this country.

b. Please describe how unaccompanied minors who are approaching 18 years of age are **identified** in your (Member) State so that transitional measures/ plans can be introduced as part of their care/ integration/ return. How often is this review being done, e.g. every month, etc.?

In this country, UAMs are under the guardianship, care, custody or provisional protection of the child protection services, which provide integration plans and programmes suitable for their ages. In addition, they inform them of the alternatives on reaching their majority.

c. When are **transitional measures/ plans** for those unaccompanied minors turning 18 years of age likely to commence in your (Member) State, e.g. how many months / years before? And for how long can such measures continue after the unaccompanied minor reaches adulthood, e.g. is there any age threshold?

The child protection services tend to adapt the integration plans and programmes to fit the children's ages as they are seeking to prove **individualised pathways to integration**.

They therefore offer support programmes for transition to adult life with semi-autonomous units preparing them for independence (with educators in attendance in varying degrees).

In Spain, the measures tend to match the specific cases.

Section 3: Attention to UAMs and its continuance when they come of age.

Overview of care provisions and organisational set-up in the (Member) State

Q7. a. What **priority** is given to the care for unaccompanied minors in your (Member) State (over their return, for example)? When does the care for unaccompanied minors commence, i.e. before or after status determination?

As already noted, in Spain, the priority is to safeguard the "best interests of the child", only repatriating them when these best interests are not affected.

In Spain, care for the children and their best interests starts **as soon as it is determined that they are minors** (regardless of their migratory status) and it includes legal guardianship, custody, provisional protection or care from a child protection service.

b. Please provide a summary overview of the provisions in place in your (Member) State for the **care** of unaccompanied minors following their status determination, including accommodation, guardianship, etc., indicating in particular how the legal status of the unaccompanied minor defines his/ her specific care arrangements (e.g. refugees, unaccompanied minors not seeking asylum, etc.).

UAMs (**regardless of their status**) are included in **Spain's general child protection system**, either by sending them to special UAM resources or to mixed homes (for minors).

The children are offered comprehensive coverage of their needs; accommodation, maintenance, education and training (i.e., directed toward employability), social assistance and health care.

In some cases, they are offered programmes specially designed for this group, which focus on language learning or cultural issues.

c. Please describe the procedure (if any) in place in your (Member) State to determine the **best interests of the child** with regard to the care for unaccompanied minors following a positive decision on status. Is this set out in legislation or any other internal administrative regulations?

The determination of their best interests is based on adopting motivated decisions, which in turn are based, first of all, on **listening** to all the parties so that the right decision can be made in the best interests of the child.

In the case of UAMs, it is essential to listen to: (i) the child, provided he or she has the judgment to do this, (ii) the Public Prosecutor’s Office, as the key defender of their best interests, (iii) the centre responsible for the legal guardianship, care, custody or provisional protection, as they know the child best, and (iv) the child’s legal representative, where appropriate.

It should be noted that article 2.5 of the Organic Law on the Legal Protection of Minors emphasises that “*all measures in the best interests of the child must be adopted while respecting the due guarantees of the process and, in particular:*

a) *The rights of the child to be informed, heard and listened to, and to take part in the process pursuant to current legislation.*

b). *the involvement in the process of **qualified professionals or experts** [...].*

c) *The participation of the **parents, guardians or legal representatives of the child or a defence counsel** if there was a dispute or disagreement with them and the **Public Prosecutor’s Office** in the process in defence of their interests.*

d) *The adoption of a decision that includes in its motivation the criteria used, the elements applied when pondering the criteria among themselves and with other present and future interests, and the procedural guarantees respected.”*

In all cases, it must be borne in mind that the child protection services tend to adapt the integration plans and programmes to fit each child as they are seeking to provide **individualised pathways to integration** in their best interests, by evaluating all the attendant circumstances.

See below (Q14 and Q25)

Q8. Which **national/ regional/ local authorities and organisations** (including NGOs where relevant) are responsible for the care of unaccompanied minors following status determination? Please describe in particular the competent authorities responsible for the provision of accommodation, guardianship, etc., what their specific remits and roles are, any authorities specifically ensuring the principle of the ‘best interests of the child’ is taken into account, etc.

Name of national competent authority/ organisation	Brief description (e.g. remit/ role, etc.)	Main activities/ responsibilities
<i>Please add rows as necessary.</i>		
Autonomous Regions	They have policy-making autonomy at the infra-state level (sub-state territorial powers).	They provide the material care for the child, essentially through the child protection services. They are

General State Administration	Central power (state).	<p>responsible for their guardianship. They promote residence permits.</p> <p>They are responsible for processing the repatriation of the children when this is in their best interests. It is also the government department responsible for producing a report on the children and entering them in the UAM Register. They grant international protection or, where appropriate, a residence permit.</p>
Public Prosecutor's Office	<p>The mission of this body is to promote the workings of justice in the defence of the rule of law, of citizens' rights and of the public interest, as safeguarded by the law, and to protect the independence of the courts and secure before them the satisfaction of social interest. In regard to children, it brings suits to protect their basic rights and imposes measures (automatic guardianship, care, foster care) that the competent public bodies adopt to protect children who are without parental care, and intervenes in challenge proceedings.</p>	<p>They take part, where appropriate, in determining the best interests of each child. They oversee the Autonomous Regions and the State in defence of the best interests of the child. They determine the age of the children when this is necessary. They coordinate the UAM Register.</p>

Accommodation arrangements

Q9. a. Please provide information on the **accommodation** options available for unaccompanied minors in your (Member) State following status determination, as follows:

- Accommodation specifically for minors? Y/ N

Yes.

- General accommodation with special provisions for minors? Y/ N

No.

- Specialised accommodation for unaccompanied minors with specific identified needs? Y/ N

Yes.

- Specialised accommodation for (unaccompanied) minor victims of trafficking? Y/ N

No.

- Accommodation with a foster family? Y/ N

This is a possibility that has been contemplated but in practice it does not occur.

- Other types of accommodation for unaccompanied minors, e.g. accommodation with adults if the unaccompanied minor is over 16 years of age, etc.? Y/ N

It is not planned to accommodate them with adults.

At times, they may be accommodated in semi-autonomous units (with the occasional attendance of educators) for transitioning into adult life.

b. Please provide an estimate of the **costs** associated with the accommodation of unaccompanied minors, as well as how these are measured/ defined in your (Member) State, e.g. per day/ child, etc.

Not available.

c. Please provide information on the **staff** responsible for the care of unaccompanied minors, for example, main tasks, any child-specific training received, etc.

These details are included in the legislation and practices of each Autonomous Region, so that no data or centralised practices exist.

d. What are the implications of unaccompanied minors' **transition** from the age of minority to 18 years of age for their accommodation arrangements up to that stage?

- Do these unaccompanied minors turning 18 years of age change accommodation, or do they stay in the same accommodation, for example, until they reach a certain age? If so, what is the age threshold?

In theory, they remain at the same centre until they reach 18 years of age.

However, support programmes for transition to adult life are offered with semi-autonomous units that prepare them for independence.

- Does your (Member) State have any measures in place to support the unaccompanied minor before the transition, e.g. information provision, etc.? Y/ N

Support programmes for transition to adult life are offered with semi-autonomous units that prepare them for independence (with educators in attendance in varying degrees).

- Does your (Member) State have any measures in place to support the unaccompanied minor during the transition, e.g. pathway plan, personal adviser, etc.? Y/ N

Support programmes for transition to adult life are offered with semi-autonomous units that prepare them for independence (with educators in attendance in varying degrees).

- Does your (Member) State have any measures in place to support the unaccompanied minor after the transition, e.g. formal follow-up or after-care service, open-door policy at accommodation facility, etc.? Y/ N

A variety of resources are provided to those no longer in care.

e. Is there any research available in your (Member) State on:

- The **standards of accommodation** provided to unaccompanied minors? Y/N
- The **effects** of accommodation arrangements on the integration of the unaccompanied minors, including those turning 18 years of age (as conducted by relevant authorities, academics, NGOs, etc.)? Y/ N

If yes, please briefly describe the main findings and conclusions of such research and provide a full reference to the source (e.g. based on existing studies/ evaluations/ other sources or information received from competent authorities).

Not known.

Guardianship arrangements

Q10. a. Please describe the arrangements for **guardianship** of unaccompanied minors in your (Member) State following status determination, specifying in particular who can become a guardian to an unaccompanied minor, the guardian's role, e.g. legal representation, etc., which unaccompanied minors (e.g. asylum/ non-asylum seeking) are entitled to a guardian and until what age, etc.

In theory, there will be Autonomous Region child protection services that take on the guardianship, care, custody or provisional protection of the children.

These entities must ensure the overall welfare of the children (satisfy their basic needs, education, promote their integration, etc.).

All UAMs come under this protection, regardless of their status, until they come of age.

b. What are the implications of unaccompanied minors' **transition** from the age of minority to 18 years of age for their guardianship arrangements up to that stage, e.g. are these unaccompanied minors still entitled to a guardian and until what age, or are they expected to become fully autonomous, also in terms of finances, etc.? What measures (if any) are in place to support the unaccompanied minor before, during and after the transition, e.g. information provision, informal follow-up with guardians, etc.?

The children are entitled to a guardian until they reach majority, unless they have some kind of disability that makes it necessary to extend this guardianship.

The bodies responsible for their guardianship provide the mechanisms for transition to adulthood.

c. Is there any research available in your (Member) State on?:

- The **standard of guardianship** provided to unaccompanied minors? Y/ N
- The **effects** of guardianship on the integration of the unaccompanied minors, including those turning 18 years of age (as conducted by relevant authorities, academics, NGOs, etc.)? Y/ N

If yes, please briefly describe the main findings and conclusions of such research and provide a full reference to the source (e.g. based on existing studies/ evaluations/ other sources or information received from competent authorities).

Not known.

Consequences of a temporary residence permit on the care arrangements for unaccompanied minors

Q11. What impact does the expiration of a **temporary residence permit** have on the above-mentioned care arrangements for unaccompanied minors in your (Member) State, e.g. unaccompanied minors disappearing from care, etc.?

All children, whether or not they have a residence permit, are considered to have the status of administrative legality, so that their legal status as a minor remains the same.

In all cases, there are mechanisms for renewing their residence permits so that such cases do not occur.

Challenges and good practices

Q12. Please indicate the main **challenges** associated with the care of unaccompanied minors in your (Member) State experienced by both unaccompanied minors, including those turning 18 years of age, and/ or the competent authorities (e.g. based on existing studies/ evaluations, information received from competent authorities, NGOs/ IGOs, case law, etc.) and how these challenges could be overcome. Please provide references.

The fact that there are 17 different systems hinders drawing any overall conclusions or making evaluations.

Q13. Please describe any examples of **good practice** in your (Member) State concerning the care of unaccompanied minors, including those turning 18. *Please identify as far as possible who considers the practice in question as successful, since when the practice has been in place, its relevance and whether its effectiveness has been proven, e.g. through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, information received from competent authorities, NGOs/ IGOs, etc.).*

The fact that there are 17 different systems hinders drawing any overall conclusions or making evaluations.

Section 4: Integration of UAMs, transition actions when they are approaching their majority.

Overview of integration provisions and organisational set-up in the (Member) State

Q14. a. What **priority** is given to the integration of unaccompanied minors in your (Member) State (over their return, for example)?

In Spain, there is general concern about integrating children properly. As has been indicated, repatriation only occurs in a few cases, in which their best interests show that this is the path to take.

b. Please provide a summary overview of the provisions in place in your (Member) State for the **integration** of unaccompanied minors following their status determination, indicating in particular how the legal status of the unaccompanied minor defines his/ her specific integration trajectory (e.g. refugee, beneficiary of subsidiary protection, other statuses granted, etc.).

While the children are in Spain, whatever their migratory situation, what is sought is their care and integration, without there being, in principle, alternative channels for integration that depend on their migratory status.

b. Do the above provisions **differ** from those for accompanied minors, as well as for adults and if so, how?

The channels for the integration of all children (accompanied or unaccompanied) focus on integration through education, so that, in principle, all children have similar paths to

integration. This must not prevent the child protection services from designing complementary paths for the UAMs that are in their care.

It is obvious that the provisions for the integration of adults are different since their needs, priorities and expectations are different. The integration of adults centres on employability, which increases in importance for the UAMs as they become older.

Both in the case of children and adults, language education is considered essential.

c. Please describe the procedure (if any) in place in your (Member) State to determine the **best interests of the child** with regard to the integration of unaccompanied minors. Is this set out in legislation or any other internal administrative regulations?

The best interests of the child are evaluated, in all cases, by looking at the specific circumstances. In Spain, some general criteria have been regulated that must be applied flexibly so as to adapt them to each specific case.

Therefore, article 2.2 of the Organic Law on the Legal Protection of Minors states that "*for the purposes of interpreting and applying to each case the best interests of the child, the following **general criteria** shall be taken into consideration, **without prejudice to those established in the specific applicable legislation and those others that may be considered appropriate depending on the specific circumstances of the case:***

a) *The protection of **the child's right to life, survival and development** and the **satisfaction of their basic needs**, material, both physical and educational and emotional and effective.*

b) *the consideration of the **child's wishes, feelings and opinions**, as well as his or her right to participate increasingly, depending on his or her age, maturity, development and personal growth, in the **process of determining his or her best interests**.*

c) *The benefit of having his or her life and development take place in a **suitable family environment that is free of violence**. Remaining with his or her family of origin will be prioritised and the maintenance of family relationships will be preserved, whenever this is possible and positive for the child. Should a protective measure be agreed to, family placement will take priority over residential care. When the child was separated from his or her nuclear family, the possibilities and benefits of return shall be evaluated, bearing in mind the evolution of the family since the protective measure was adopted and always prioritising the interests and needs of the child over those of the family.*

d) *The **preservation of the child's identity, culture, religion, convictions, sexual orientation and identity and language**, in addition to non-discrimination because of these or any other conditions, including disability, guaranteeing the harmonious development of his or her personality."*

Therefore, there are certain factors involved in determining what the best interests of the child are which must be applied in all cases in accordance with the circumstances. In addition, section 3 of this same law establishes **mechanisms for weighing** the preceding criteria, which must be evaluated together, in accordance with the principles of necessity and proportionality, so that the measure that is adopted in the best interests of the child does not restrict or further limit the rights that he or she has. These indicative mechanisms (which are

not a numerous clauses) are as follows:

"a) The **age and maturity** of the child.

b) The need to guarantee his or her **equality and non-discrimination** due to his or her special vulnerability, whether this is due to the lack of a family environment, suffering mistreatment, disability, his or her sexual orientation and identity, his or her status as a refugee, asylum seeker or beneficiary of subsidiary protection, belonging to an ethnic minority, or any other relevant characteristic or circumstance.

c) The **irreversible effect of the passage of time on his or her development**.

d) The need for **stability** in the solutions that are adopted to promote the effective integration and development of the minor in society, in addition to minimising the risks that any change in his or her material or emotional situation may cause to his or her personality and future development.

e) The **preparation for the transition to adulthood and independence**, in accordance with his or her capabilities and personal circumstances."

Therefore, in Spain, when evaluating the best interests of the child, it is necessary to take into account the criteria listed in the law, regardless of the necessary flexibility that needs to be applied when all the parties have been heard (see above Q7.c).

Q15. Which **national/ regional/ local authorities and organisations** (including NGOs where relevant) are responsible for the integration of unaccompanied minors following status determination? Please describe in particular the competent authorities responsible for the provision of education, employment support, etc., what their specific remits and roles are, any authorities specifically ensuring the principle of the 'best interests of the child' is taken into account, etc.

Name of national competent authority/ organisation	Brief description (e.g. remit/ role, etc.)	Main activities/ responsibilities
<i>Please add rows as necessary.</i>		
Autonomous Regions	They have policy-making autonomy at the infra-state level (sub-state territorial powers).	They are responsible for everything relating to the integration of children.

Access to healthcare

Q16. a. When providing access to **healthcare** to unaccompanied minors in your (Member) State following status determination, how are the following aspects dealt with?

- Is access to healthcare **automatic** for unaccompanied minors upon obtaining a permit to stay which is **not** covered by the Qualification Directive (as it is for refugees and beneficiaries of international protection)? Does this group of unaccompanied minors have the same right to healthcare as nationals of the (Member) State? Y/ N

Yes, all children who are in Spain have comprehensive access to the National Health System (article 3.3 of Law 16/2003, of 28 May, on the coherence and quality of the National Health System).

- Please describe what this access to healthcare **includes**, for example, emergency treatment, and basic medical care, essential or specialised medical care, counselling, etc.? Y/ N

Yes Foreign minors aged eighteen will receive healthcare under the same conditions as Spanish citizens (article 3.3 of Law 16/2003, of 28 May, on the coherence and quality of the National Health System).

- Does the (Member) State undertake any form of **individual assessment** to ensure that the medical care provided to unaccompanied minors corresponds to the minor's specific physical, as well as mental health needs? Y/ N

The appropriate medical protocols are applied.

The best interests of the child are considered in the terms listed above.

- Please provide any **other important information** in relation to the healthcare available for unaccompanied minors *not covered above*.

Nothing to report.

b. What are the implications (if any) of unaccompanied minors' **transition** from the age of minority to 18 years of age for their access to healthcare, including counselling up to that stage? What measures (if any) are in place to support the unaccompanied minor before, during and after such a transition, e.g. information provision, etc.?

It will depend on what their residence situation is in this country; however, they no longer enjoy their special protection as minors.

In all cases, work is currently being done on a Royal Decree on universal access to healthcare.

c. Is there any research available in your (Member) State on?:

- The **quality of healthcare, including counselling**, provided to unaccompanied minors? Y/ N
- The **effects** of the access to healthcare on the integration of unaccompanied minors, including those turning 18 years of age (as conducted by relevant authorities, academics, NGOs, etc.)? Y/ N

If yes, please briefly describe the main findings and conclusions of such research and provide a full reference to the source (e.g. based on existing studies/ evaluations/ other sources or information received from competent authorities).

Not known.

Access to education

Q17. a. When providing access to **education** to unaccompanied minors in your (Member) State following status determination, how are the following aspects dealt with?

- Is access to education **automatic** for unaccompanied minors who have obtained a status which is **not** covered by the Qualification Directive (as it is for refugees and beneficiaries of international protection)? Does this group of unaccompanied minors have the same right to education as nationals of the (Member) State? Y/ N

Yes.

Foreigners under the age of sixteen have the right and duty to education, which includes

access to free, basic, compulsory education. Foreigners under the age of eighteen also have a right to post-compulsory education. This right includes obtaining the corresponding academic diploma and access to the public scholarship and aid system under the same conditions as Spanish citizens (ex. article 9 of the OLFN)

- Does the (Member) State undertake any form of **individual assessment** to ensure that the education provided to unaccompanied minors is adapted to the age, level of education in the country of origin, degree of language barrier of the unaccompanied minor, etc.? Y/ N

Schools apply their own criteria, paying attention to the best interests of the child.

The Public Prosecutor's Office oversees their guardianship, which includes receiving a proper education.

- Are any **special measures** to support access to education specifically for unaccompanied minors available in the (Member) State, in particular language training*, guidance regarding the national education system, etc.? Y/ N

* Are there specialised institutions for the language training of unaccompanied minors? Does language training take place in public schools, in specialised language courses for unaccompanied minors or minors in general, or within adult language learning programmes for foreign citizens?

There are no programmes designed specifically for UAMs; they are designed for any children who face these difficulties.

- Do unaccompanied minors receive **education in accommodation centres**, or as part of the **mainstream schooling system**? Or are there **other education arrangements** for unaccompanied minors in your (Member) State? Y/ N

Regardless of any special classes decided by child protection centres, UAMs attend Spanish schools.

- Please provide any other important information in relation to access to education for unaccompanied minors *not covered above*.

Nothing to report.

b. What are the implications (if any) of unaccompanied minors' **transition** from the age of minority to 18 years of age for their access to education up to that stage, e.g. do unaccompanied minors have the possibility to continue compulsory education post-18, to progress to third-level education, vocation studies and training, etc.? What measures (if any) are in place to support the unaccompanied minor before, during and after such a transition, e.g. information provision, education pathway/ plan, personal adviser, etc.?

Should they reach the age of eighteen during the school year, they retain their right to education until the school year ends.

Foreigners over the age of eighteen who are in Spain are entitled to education in accordance with educational legislation. In all cases, foreign residents over the age of eighteen are entitled to access the other post-compulsory stages of education, to obtain the corresponding diplomas, and to the public scholarship system under the same conditions as Spanish citizens.

c. Is there any research available in your (Member) State on?:

- The **quality of education** provided to unaccompanied minors? Y/ N

- On the educational performance of unaccompanied minors? Y/ N
- The **effects** of the access to education on the integration of unaccompanied minors, including those turning 18 years of age (as conducted by relevant authorities, academics, NGOs, etc.)? Y/ N

If yes, please briefly describe the main findings and conclusions of such research and provide a full reference to the source (e.g. based on existing studies/ evaluations/ other sources or information received from competent authorities).

Not known.

Access to (support to) employment

Q18. a. When providing **access to employment**³ to unaccompanied minors in your (Member) State following status determination, how are the following aspects dealt with?

- Is access to employment **automatic** for unaccompanied minors upon obtaining a permit to stay which is **not** covered by the Qualification Directive (as it is for refugees and beneficiaries of international protection)? What does the access include, e.g. internships, traineeships, vocational preparation, etc.? Is this subject to rules generally applicable to the profession and to the public service? Is this conditional upon obtaining a work permit, etc.? Y/ N

UAMs may have access to a work permit when they are of an age to work at activities that, in the opinion of the child protection body with which they are linked, promote their integration into society.

Once they enter the labour market, they will be treated under the same conditions as Spanish citizens (article 40.1.i of the OLFN).

- Is the access to employment for unaccompanied minors **limited** in any way, for example, open only to unaccompanied minors of a certain minimum age after status determination, or restricted for a certain period and/ or limited to a maximum number of days per year? Are these limitations for unaccompanied minors same as those applied to minors who are nationals of the (Member) State? Y/ N

They have **the same limitations as Spanish children**; the labour regulations also apply to them.

Therefore, article 6 of the Workers Statute, approved in Royal Legislative Decree 2/2015, of 23 October, establishes that:

- "1. Admission to employment is forbidden to children under sixteen years of age.*
- 2. Workers under eighteen years of age may not work at night or in activities or jobs for which limitations have been set to their hiring pursuant to Law 31/1995, of 8 November, on the Prevention of Workplace Risks, and in the applicable regulatory provisions.*
- 3. Minors under 18 years of age are forbidden to work overtime.*

³ Please note that this need not apply to unaccompanied minors who are still in full-time education.

4. *The involvement of those under the age of sixteen in public spectacles will only be authorised in exceptional cases by the labour authority, provided that it does not present a danger to their health or to their personal development and education. The permit must be given in writing and for specific acts."*

In addition, throughout the text of this law special measures are established for the rest time of minors.

- Are any **special measures** to support access to employment specifically for unaccompanied minors available in the (Member) State, in particular vocational guidance, jobseeker allowance for unaccompanied minors not able to find employment, etc.? Y/ N

There are no special measures, regardless of the fact that they may be adopted, in each specific case, by the child protection services to focus the education of UAMs on employability. In any case, access to the labour market is provided to them as an integration measure, as indicated above.

- Please provide any other important information in relation to access to employment for unaccompanied minors *not covered* above.

Nothing to report.

b. What are the implications (if any) of unaccompanied minors' **transition** from the age of minority to 18 years of age for their access to employment up to that stage? What measures (if any) are in place to support the unaccompanied minor before, during and after the transition, e.g. on-going employment support as part of integration pathway/ plan, personal adviser, etc.?

Once they reach their majority, UAMs have access to the labour market, as adults, through the appropriate residence and work permit.

c. Is there any research available in your (Member) State on?:

- The **quality of employment access support** provided to unaccompanied minors? Y/ N
- The **effects** of the access to employment on the integration of unaccompanied minors, including those turning 18 years of age (as conducted by relevant authorities, academics, NGOs, etc.)? Y/ N

If yes, please briefly describe the main findings and conclusions of such research and provide a full reference to the source (e.g. based on existing studies/ evaluations/ other sources or information received from competent authorities).

Not known.

Family reunification of unaccompanied minors

Q19. a. Please provide here any updated information on the **possibility for family reunification** for unaccompanied minors since the 2016 EMN Focussed Study on "Family Reunification of Third-Country Nationals in the EU plus Norway: National Practices," including any information on the effects of family reunification on the integration of unaccompanied minors in your (Member) State (e.g. based on existing studies/ evaluations/ other sources or information received from competent authorities).

It is necessary to distinguish between:

- UAMs who have international protection: The rules on family reunification in Directive 2003/86/EC, of the Council, of 22 September, on the right to family reunification for refugees and Law 12/2009, of 30 October, regulating the right to asylum and subsidiary protection, are applied.
- UAMs who do not have international protection: Family reunification is sought after the repatriation of the child to his or her country of origin.

b. What are the implications (if any) of unaccompanied minors' **transition** from the age of minority to 18 years of age for their access to family reunification up to that stage, for example:

- Is there any cut-off of family reunification rights when unaccompanied minors reach 18 years of age? Y/ N

It is necessary to distinguish between:

- Beneficiaries of international protection: The rules on family reunification in Directive 2003/86/EC, of the Council, of 22 September, on the right to family reunification for refugees and Law 12/2009, of 30 October, regulating the right to asylum and subsidiary protection, are applied.
- Those who have another type of residence permit: The general legislation on family reunification (OLFN and ROLFN) is applicable.

- Does your (Member) State have any measures in place to support the unaccompanied minor before, during and after such a transition (please specify these measures)? Y/ N

Not applicable.

- Please provide any other important information in relation to family reunification for unaccompanied minors *not covered above*.

Nothing to report.

c. Is there any research available on the **effects** of family reunification on the integration of unaccompanied minors, including those turning 18 years of age (as conducted by relevant authorities, academics, NGOs, etc.)? Y/ N

If yes, please briefly describe the main findings and conclusions of such research and provide a full reference to the source (e.g. based on existing studies/ evaluations/ other sources or information received from competent authorities).

Not known.

Social welfare supporting unaccompanied minors

Q20. a. Does your (Member) State provide any **social welfare/ assistance** to support unaccompanied minors? Y/ N

If yes, please provide information on this below, citing any evidence on the **effects** of social welfare/ assistance on the integration of the unaccompanied minors where available (e.g. based on existing studies/ evaluations/ other sources or information received from competent authorities).

UAMs are assisted by the child protection services.

b. What are the implications (if any) of unaccompanied minors' **transition** from the age of minority to 18 years of age for their access to social welfare/ assistance up to that stage, for example:

- Is there any benefits cut-off when unaccompanied minors reach 18 years of age? Y/ N

UAMs who have reached their majority stop being in the custody of the child protection services. In these cases:

- They benefit from the assistance provided as beneficiaries of international protection, where appropriate.
- The general legislation on immigration applies. Therefore, it should be highlighted that article 14 of the OLFN states that:

"1. Foreign residents are entitled to access the benefits and services of the Social Security under the same conditions as Spanish citizens.

2. Foreign residents are entitled to access social services and benefits, both the general and basic benefits and specific ones, under the same conditions as Spanish citizens. In any case, foreigners with disabilities, under the age of 18, who have their normal residence in Spain, shall be entitled to receive the treatment, services and special care required by their physical or psychological condition.

3. Foreigners, whatever their administrative situation, are entitled to basic social services and benefits."

All of the above is without prejudice to the services that may be set up for those no longer in care, where appropriate.

- Does your (Member) State have any measures in place to support the unaccompanied minor before, during and after such a transition (please specify these measures)? Y/ N

- Please provide any other important information in relation to social welfare for unaccompanied minors *not covered above*.

Nothing to report.

c. Is there any research available on the **effects** of social welfare on the integration of unaccompanied minors, including those turning 18 years of age (as conducted by relevant authorities, academics, NGOs, etc.)? Y/ N

If yes, please briefly describe the main findings and conclusions of such research and provide a full reference to the source (e.g. based on existing studies/ evaluations/ other sources or information received from competent authorities).

Not known.

Further monitoring of unaccompanied minors' transition to adulthood

Q21. Further to any information on after-care already provided above, please describe any (other) **monitoring mechanisms/ reviews/ evaluations** ensuring the effective transition of unaccompanied minors to adulthood,

including the types of measure(s) undertaken and the duration of the monitoring period after unaccompanied minors reach 18 years of age.

Nothing to report.

Consequences of a temporary residence permit on the integration of unaccompanied minors

Q22. What impact does the expiration of a **temporary residence permit** have on the above-mentioned integration measures for unaccompanied minors in your (Member) State, e.g. possibility for education-related extension of a temporary residence permit originally granted on grounds of international/ humanitarian protection, etc.?

As has been noted, in Spain, all children, whether or not they have a residence permit, are considered to have the status of administrative legality, so that their legal status as a minor remains the same.

In all cases, there are mechanisms for renewing their residence permits so that such cases do not occur.

Challenges and good practices

Q23. Please indicate the main **challenges** associated with the integration of unaccompanied minors in your (Member) State experienced by both unaccompanied minors (including those turning 18 years of age), and/ or competent authorities (e.g. based on existing studies/ evaluations, information received from competent authorities, NGOs/ IGOs, case law, etc.) and how these challenges could be overcome. Please provide references.

The challenges come essentially from the need for more resources and capabilities.

At all events, the fact that there are 17 different systems hinders drawing any overall conclusions or making evaluations.

Q24. Please describe any examples of **good practice** in your (Member) State concerning the integration of unaccompanied minors – including those turning 18 – identifying as far as possible who considers the practice in question as successful, since when the practice has been in place, its relevance and whether its effectiveness has been proven, e.g. through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, information received from competent authorities, NGOs/ IGOs, etc.).

At all events, the fact that there are 17 different systems hinders drawing any overall conclusions or making evaluations.

Section 5: The return of UAMs

Overview of the return procedure and its legal and organisational set-up in the (Member) State

Q25. a. Does your (Member) State foresee the **return** of unaccompanied minors? Y/ N

If so, please provide a brief overview of the provisions in place in your (Member) State with regard to the **return** of unaccompanied minors to the country of origin when the minor receives a negative decision on his/ her application for asylum/ another status:

- Possibility for an unaccompanied minor to return to the country of origin through a **voluntary return**? Y/ N

If yes, please describe the procedures/ processes under which an unaccompanied minor may be returned voluntarily to the country of origin according to national legislation/ policy and practice, including any challenges.

Yes, the policy for UAMs focuses on family reunification in their country of origin or wherever their family lives or, where appropriate, returning to their country when this is in their best interest. Also, according to the United Nations (i.e., the Declaration of the Rights of the Child and the Convention on the Rights of the Child), priority must be given to the development of children in their own families or in an environment in which their own traditions and cultural values have an important presence, all this without prejudice to the fact that all these factors may not concur, in which case returning would not be in the interests of the child.

Cases of return are regulated by a special procedure named "*repatriation of a minor*", which is different from voluntary or forced return and takes into consideration the best interests of the child.

Preliminary stage: The competent authorities (Government Delegation or Sub-Delegation) request information on the family circumstances of the child in his or her country of origin from the diplomatic authorities of the country of origin or, in their absence, through the consular and immigration services.

Initial stage: The start of the process.

The formal opening must be communicated to (i) the child, (ii) the Public Prosecutor's Office and (iii) the body responsible for the legal guardianship, custody, provisional protection or care.

In accordance with the information obtained in the preliminary stage, it will be decided whether (i) the child must be reunited with his family or (ii) must be turned over to the protection services in his or her country of origin.

Argumentation stage: The purpose of this stage is to collect all the information needed to make a value judgement on what is the best interest of the child that must be taken into account, depending on his or her judgement and age, to determine that interest.

During this stage, both the child (or his or her legal representative, where appropriate) and whoever must protect his interests, i.e., the Public Prosecutor's Office (which issues a report) and the body responsible for the legal guardianship, custody, provisional protection or care (which must issue a report) are heard.

In addition, a report is requested from the child protection service on the child's situation in Spain and any family or personal details, etc. that are considered important.

Trial period: Should it be necessary, a trial period will begin.

Hearing stage: This stage allows the child to make a statement about all that has been presented during the proceedings.

During this stage, after all the reports, arguments etc. have been presented, the child is heard, if he or she has sufficient judgement. The Public Prosecutor's Office, the guardian and, when appropriate, the legal defendant or representative assigned to the minor are summoned to this hearing.

Decision: In accordance with the best interests of the child, the competent authority (Government Delegate or Sub-Delegate decides whether (i) the child must be reunited with his or her family, (ii) must be turned over to the protection services in his or her country of

origin or (iii) must remain in Spain.

Appeals: The decision may be appealed before the courts of justice.

- Possibility for an unaccompanied minor to return to the country of origin through an **assisted voluntary return**? Y/ N

If yes, please describe the Assisted Voluntary Return and Reintegration (AVRR) programme available in your (Member) State and the procedures/ processes under which an assisted voluntary return of an unaccompanied minor may be carried out, including any challenges.

See above: There is only one procedure, for the repatriation of the child.

To perform the repatriation, the child is accompanied at all times by the appropriate staff from the child protection service to which he or she is answerable.

The signing of bilateral agreements with the country of origin is sought so as to promote this assistance. There is therefore an agreement with Morocco on this issue (*see below*).

- Possibility for an unaccompanied minor to return to the country of origin through a **forced return**? Y/ N

If yes, please describe the procedures/ processes under which an unaccompanied minor may be subject to a forced return to the country of origin according to national legislation/ policy and practice, including any challenges.

See above: There is only one procedure, for the repatriation of the child.

b. Please describe the procedure (if any) in place in your (Member) State to determine the **best interests of the child** once a negative decision has been reached. Is this set out in legislation or any other internal administrative regulations? Please cross-reference/ summarise here any aspects of the *BID* procedure for unaccompanied minors subject to a return decision already covered under the EMN study on return (*see above*) and provide any additional information).

As noted above, the best interests of the child are evaluated throughout the process so that if repatriation is not in his or her interests, it does not occur and the child remains in Spain. If repatriation is decided on, it is because it was concluded that one of the following is in his or her best interests: either (i) reunification with his or her family, or (ii) turning him or her over to the child protection services of his or her country.

Q26. Which **national authorities and organisations** (including NGOs where relevant) are responsible for the return of unaccompanied minors? Please describe briefly the competent authorities involved in return, family tracing, etc., as well as any other stakeholders concerned, what their specific remits and roles are, any authorities specifically ensuring the principle of the 'best interests of the child' is taken into account in the return of the minor, etc.

Name of national competent authority/ organisation	Brief description (e.g. remit/ role, etc.)	Main activities/ responsibilities
<i>Please add rows as necessary.</i>		
General State Administration	Central power (state).	It takes steps to understand the child's situation. It opens proceedings and makes the decisions on repatriation.

As noted above, a repatriation decision is only made in the child's best interests so that, in principle, there will be no negative effect on his or her well-being.

Q29. a. Please provide an overview of key arrangements for the **return of unaccompanied minors** to the country of origin, in particular information, support, services and preparation before departure, safeguards for unaccompanied minors during the operation, transfer of custodial care, etc.

Given the few cases of repatriation, no general protocol exists beyond the adoption of all the measures required to protect the best interests of the child in each case.

Bilateral agreements tend to be adopted with the country of origin.

b. Please describe the policy/ practice of your (Member) State with regard to **family tracing** in the country of origin, including when such measures are taken, which authority/ organisation is responsible, as well as the contribution and responsibility of the guardian.

This is done through the diplomatic authorities of the country of origin or, in their absence, through the consular and immigration services.

In addition, the public child protection body to which the UAM is answerable will take all steps to investigate the circumstances (if the child should be a beneficiary of international protection, possible reunification, the family, etc.). An attempt is made in these investigations to involve experts in the culture and customs of the UAM's country of origin (section 1.2 of the Framework Protocol on UAMs).

This is not a simple process and is one of the reasons for the low number of repatriations.

c. How does your (Member) State interpret the term '**adequate' reception facilities** in the country of origin, as one of the requirements for removing an unaccompanied minor from EU territory according to the Return Directive?⁴ Does your (Member) State return unaccompanied minors to care centres or parents, relatives, etc.?

Attention is paid to what the authorities in the country of origin say and in all cases the written consent of the competent authority in the country of origin is required in order to take on the responsibility for the child.

d. Please indicate any **special/ transitional arrangements** for the return of unaccompanied minors approaching 18 years of age. *Please do not cover here any aspects of the return of former unaccompanied minors, i.e. adults, as this is subject of a separate EMN study on return (see above).*

The repatriation process is the same for all UAMs, regardless of their age (always under 18). With the special feature that UAMS with sufficient judgement are heard (in principle, this is understood to be over the age of 12).

e. Please provide information on the **follow up** of unaccompanied minors once they have returned, such as duration of such follow up, competent service, etc.

⁴ Art. 10(2) of Directive 2008/115/EC stipulates that before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that s/he will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

f. Please elaborate on any **existing cooperation arrangements** between your (Member) State and countries of origin when it comes to the return of unaccompanied minors, such as bilateral readmission agreements concerning unaccompanied minors.

The most important agreement that exists on this subject is the Agreement signed on 6 March 2007 (in force since 2 October 2012) between the kingdoms of Spain and Morocco in cooperation in the area of preventing the legal emigration of UAMs, their protection and their coordinated return.

In this context, the subject of UAMs continues to be handled through the Permanent Spanish-Moroccan Group, which has a sub-committee on children. The last meeting on this topic was held in April 2018.

In addition to specific measures, there is a channel for constant communication and cooperation between Spain and Morocco in which the priority is to seek the most appropriate measures for safeguarding the best interests of the child.

In addition, there is cooperation on minors with other countries of origin, such as Senegal.

Q30. a. Does your Member State provide any **reintegration assistance** to unaccompanied minors returning to their countries of origin (*please cross-reference/ summarise here to any aspects of the reintegration support for unaccompanied minors already covered under the EMN study on return (see above) and provide any additional information*):

- through **voluntary return**? Y/ N

If yes, please describe the kind of supports available before, during and after the voluntary return of an unaccompanied minor.

Not applicable in Spain.

- through **assisted voluntary return**? Y/ N

If yes, please describe the kind of supports available under the Assisted Voluntary Return and Reintegration (AVRR) programme available in your (Member) State before, during and after the assisted voluntary return of the unaccompanied minor.

Not applicable in Spain.

- through **forced return**? Y/ N

If yes, please describe the kind of supports available before, during and after the forced return of an unaccompanied minor.

Not applicable in Spain.

b. Please describe the **monitoring mechanisms** (if any) in place in your (Member) State to ensure the effective reintegration of unaccompanied minors, including the types of measure undertaken and the duration of the monitoring period.

Alternatives to return

Q31. Does your (Member) State provide for any **alternative solutions to stay** for unaccompanied minors, such as regularisations, etc.? How do you **inform** unaccompanied minors of such possibilities to stay following a negative decision on their application for asylum/ another status?

See above:

Dealing with unaccompanied minors who cannot be immediately returned

Q32. a. Please describe the procedure of dealing with **unaccompanied minors who are not/ cannot be returned immediately** in your (Member) State, specifying the circumstances whereby the enforcement of a return decision has been deferred/ postponed, for how long such a deferral/ postponement is possible, where unaccompanied minors are housed during the deferral/ postponement period, whether unaccompanied minors have the possibility to be granted a status/ right to stay in the (Member) State (e.g. tolerated status), etc.

See above:

b. What is the impact of a deferred return decision on the **well-being** of unaccompanied minors (as cited in existing evaluations/ studies/ other sources or information received from competent authorities, please provide references)? Does your (Member) State provide any state-guaranteed healthcare, including counselling, guardianship, etc. to the unaccompanied minor during this state of limbo?

See above:

c. Please provide any other information available in your (Member) State on the **well-being** of unaccompanied minors during the above-mentioned state of limbo, such as instances of unaccompanied minors transferred to another reception facility because of disciplinary reasons, unaccompanied minors involved in incidents, number of consultations with psychologists, school absenteeism or school drop-out rates, etc.

See above:

Minors may not be prosecuted as adults under any circumstances. If they commit a crime, they cannot be judged like an adult.

Challenges and good practices

Q33. Please indicate the main **challenges** associated with the implementation of the return of unaccompanied minors in your (Member) State experienced by both unaccompanied minors, including those turning 18, and/ or competent authorities (e.g. based on existing studies/ evaluations, information received from competent authorities, NGOs/ IGOs, case law, etc.) and the measures (that could be) taken to overcome these challenges. For example, do boys face different challenges than girls (and vice versa) when it comes to return and if so, how does your (Member) State deal with such challenges?

The challenge of international cooperation on this subject should be emphasised.

Q34. Please describe any examples of **good practice** in your (Member) State concerning the return of unaccompanied minors. *Please note that, in order to comply with children's rights and EU policy positions,⁵ good practices in return of unaccompanied minors should only include voluntary return following a robust, individual BID procedure with all procedural safeguards, as well as holistic support, preparation and reintegration assistance.*

⁵ For example, the Commission Recommendation on making returns more effective when implementing the Directive 2008/115/EC, C(2017) 1600 final, see above.

Please identify as far as possible who considers the practice in question as successful, since when the practice has been in place, its relevance and whether its effectiveness has been proven, e.g. through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, information received from competent authorities, NGOs/ IGOs, etc.).

The Public Prosecutor as the guarantor of the protection of children.

Section 6: The disappearance of UAMs from child protection services that have been entrusted with their care or guardianship.

Q35. Is the **disappearance of unaccompanied minors** an issue in your (Member) State? If so, can this be linked to i) the decision on their application for asylum/ another status in terms of the point in time, i.e. before/ after a decision on status is issued, and ii) in terms of the outcome of the procedure, i.e. positive/ negative decision?

Any child whose whereabouts are unknown is a source of concern. There is no link whatsoever with the decision on their status.

Q36. If your (Member) State has recorded cases of **unaccompanied minors disappearing from accommodation facilities and/ or guardianship care** following a decision on status, what are the possible **reasons** for such disappearances (e.g. running away from guardianship/ care facilities, expiration of a temporary residence permit, etc. as cited in existing evaluations/ studies/ other sources or information received from competent authorities, *please provide references*)?

Also, what are the **consequences** of their disappearance on their permit to stay? For example, can their status and/ or residence permit be withdrawn?

Continuing their migratory process. Their desire to travel to another country.

The disappearance of a child is not a reason for the withdrawal of his or her residence permit since running away from or leaving the child protection centre is not a reason for the protection to end.

Q37. Does your (Member) State have any procedures/ measures in place to?:

- **Prevent and react** to disappearances of unaccompanied minors from guardianship/ care facilities, e.g. support services, national hotlines for missing children, missing persons alerts in the Schengen Information System, Missing Children Europe and its member organisations, fingerprinting/ photographing unaccompanied minors as an aid for tracing, etc.? Y/ N

The protection centres are open; there are no physical barriers.

The most important preventive measure is to provide information to the UAMs on the risks of continuing their journey and the opportunities that they have in this country.

- **Report and respond** to disappearances of unaccompanied minors from guardianship/ care facilities, e.g. protocols among authorities, standardised procedure for dealing with disappearances, etc.? Y/ N

Any authority, institution or local or regional body that locates a UAM must report this in the shortest time possible to (i) the Police (National Police Provincial Brigade of Alien Affairs and Borders), (ii) the corresponding Government Delegation or Sub-Delegation (central

administration in the Autonomous Regions) and (iii) the Public Prosecutor's Office.

Q38. If your (Member) State has cases of **unaccompanied minors disappearing following a return decision**, please describe the actions (if different from the above) taken by your (Member) State to decrease the **risk of such disappearances**, as well as any **follow-up measures** in case of disappearances.

Q39. Please indicate the main **challenges** associated with the disappearance of unaccompanied minors in your (Member) State for the competent authorities, as well as the minors themselves and the measures (that could be) taken to overcome these challenges. For example, do you have evidence of instances of disappearances of unaccompanied minors linked to any negative consequences for the minors (e.g. exploitation, radicalisation, etc.)? *Please base this information on existing studies/ evaluations, information received from competent authorities, NGOs/ IGOs, case law, etc. and provide references.*

Q40. Please describe any examples of **good practice** in your (Member) State concerning the issue of disappearances of unaccompanied minors. *Please identify as far as possible who considers the practice in question as successful, since when the practice has been in place, its relevance and whether its effectiveness has been proven, e.g. through an (independent) evaluation. Please reference any sources of information supporting the identification of the practice in question as a 'good practice' (e.g. evaluation reports, academic studies, information received from competent authorities, NGOs/ IGOs, etc.).*

Annex 1 National statistics (in Excel)

Q41. With reference to **Q5.b.** above, please complete the following table with national statistics on the (estimated) number of unaccompanied minors in your (Member) State, if available.

Please provide here a brief explanation of the metadata, describing for example the population covered, the method used to reach the estimates, any caveats as to their likely accuracy, etc. It should be noted, given the differences in methods used to make the estimates, that it will not be possible to synthesise this information to produce a 'total EU estimate' for the Study.

Please provide your answer by completing the Excel document provided below. NB that statistics provided in another format (e.g. Word) would not be processed centrally.

Please do not here include the Eurostat data mentioned above, as this information is available publically and can therefore be analysed centrally for the Synthesis Report.



EMN-UAMs-
Annex-

To the extent possible, the statistics provided here will be presented under the main sections of the Synthesis Report (rather than as an annex as they are requested in this Common Template).



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Y COOPERACIÓN

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