



## Questionnaire on the implementation of the 2017 Commission Communication on the protection of children in migration in Luxembourg

Reference year: 2019

Luxembourg



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The European Migration Network, created by Council Decision no. 2008/381/EC of 14 May 2008, has the objective of supplying up-to-date, objective, reliable and comparable information on migration and asylum in the Community institutions, to the authorities and institutions of the Member States and to the general public with a view to support policy- and decision-making with the European Union.

## Preface

The information provided in this questionnaire reflects the situation in Luxembourg in 2019. For following years dedicated questionnaire on the implementation of the 2017 Commission Communication on the protection of children in migration will not be prepared. The information for this purpose will be gathered through the Annual Report on Migration and Asylum. The opinions expressed in this report are those of the authors. They do not necessarily reflect the positions of the Ministry of Foreign and European Affairs of Luxembourg.

The present questionnaire was drafted by Adolfo Sommarribas, staff member of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Prof. Dr. Birte Nienaber. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Christiane Martin (Directorate of Immigration, Ministry of Foreign and European Affairs), Charlie Klein (STATEC), Pascale Millim (Ministry of Justice) and Pietro Lombardini (ONA, Ministry of Foreign and European Affairs).

# Questionnaire on the implementation of the Commission Communication on children in migration

Final version – 31 January 2020

LUXEMBOURG's contribution

## Reference period

For all replies to the questions below, please refer to the situation during 2019.

## Scope of questionnaire

EMN studies have focused in the past on unaccompanied minor applicants for international protection, whereas the Commission's Communication that underpins this questionnaire uses the term 'child' which covers all third-country national children who are forcibly displaced or migrate to or within the EU territory, together with family or alone, whether or not they are seeking asylum. Thus, the scope of the questionnaire is much broader than normal for an EMN output. Legal and family migration are excluded from the scope of the questionnaire.

## Definitions:

In accordance with the EMN Glossary,<sup>1</sup> relevant terms for the purpose of this questionnaire are defined as follows, and in all cases refer to nationals of third countries or stateless persons:

**Child:** Every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier or later.

**Minor:** In a legal context and in contrast to a child, a person who, according to the law of their respective country, is under the age of majority, i.e. is not yet entitled to exercise specific civil and political rights.

**Please note:** for the purpose of this questionnaire, 'child' and 'minor' are used interchangeably. In the child-protection field, the term 'child' is used, whereas in migration field, 'minor' is more common.

**Adult:** Every human being aged 18 years and older (unless majority is attained later under the law applicable to the adult).

**Accompanied minor:**<sup>2</sup> A minor who is accompanied and effectively taken into care of an adult responsible for him or her by law or by the practice of the Member State concerned.

**Families with minors/children:** Minors who are accompanied by one or both parents or by their legal or customary primary care-giver.

**Separated child:** A child under 18 years of age who is outside their country of origin and separated from both parents or their previous legal / customary primary caregiver.

**Unaccompanied minor:** A minor

- ★ who arrives on the territory of an EU Member State unaccompanied by the adult responsible for them by law or by the practice of the EU Member State concerned, and for as long as they are not effectively taken into the care of such a person; or
- ★ who is left unaccompanied after they have entered the territory of the EU Member State.

**Durable solutions:**<sup>3</sup> A durable solution in the context of the unaccompanied or separated child is a sustainable solution that ensures that the unaccompanied or separated child is able to develop into adulthood, in an

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<sup>1</sup> EMN Glossary, Version 7.0, [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en)

<sup>2</sup> This definition is derived from the definition of 'unaccompanied minor' provided in the Reception Conditions Directive (2013/33/EU).

<sup>3</sup> This definition is taken from UNHCR-UNICEF Safe & Sound publication, 2014. Available at: <https://www.refworld.org/docid/5423da264.html>

environment which will meet his or her needs and fulfil his or her rights as defined by the Convention on the Rights of the Child and will not put the child at risk of persecution or serious harm. Because the durable solution will have fundamental long-term consequences for the unaccompanied or separated child, it will be subject to a best interest determination. A durable solution also ultimately allows the child to acquire, or to re-acquire, the full protection of a state.

**Migration:** In the EU context, the action by which a third-country national either:

- (i) establishes their usual residence in the territory of an EU Member State for a period that is, or is expected to be, of at least 12 months, having previously been usually resident in another EU Member State or a third country; or
- (ii) having previously been usually resident in the territory of an EU Member State, ceases to have their usual residence in that EU Member State for a period that is, or is expected to be, of at least 12 months.

For the purpose of this questionnaire the scope has been limited to the categories corresponding to the aims of the Commission Communication, which are protection oriented and outlined in the box below.

**In the answers to all below questions, information has been differentiated between the following groups of minors, if applicable:**

- ★ accompanied minors/families with children
- ★ separated children
- ★ unaccompanied minors recorded within the asylum system,
- ★ unaccompanied minors not applying for asylum but recorded within other migration procedures,
- ★ unaccompanied minors not applying for asylum who remain outside the asylum/migration/(child)

## 1. Swift and comprehensive identification and protection

### 1.1. IDENTIFICATION AND REGISTRATION OF MINORS

- 1.1.1. During the identification and registration procedure of a minor, does your Member State ensure that an official with adequate training in dealing with minors is present?<sup>4</sup>  
If yes, please briefly explain.

YES ☒

NO ☐

Explanation	Applicable groups of minors*
<p>In accordance with the amended Law of 18 December 2015 on international protection and temporary protection (Asylum Law)<sup>5</sup>, the application of an unaccompanied minor (UAM) can only be treated by an agent with the necessary knowledge of the particular needs of minors.</p> <p>In the case of accompanied minors, this is not necessary as the parents are dealing with the application.</p> <p>There are some other possibilities under which an UAM can stay in the country:</p> <ul style="list-style-type: none"><li>- residence permit for private reasons based on humanitarian reasons of exceptional gravity;<sup>6</sup></li><li>- if the UAM is a victim of human trafficking, they can be granted a residence permit with a duration of 6 months and that is renewable;<sup>7</sup></li><li>- in the cases of postponement of removal.<sup>8</sup></li></ul>	<p><input type="checkbox"/> accompanied minors/families with children</p> <p><input type="checkbox"/> separated children</p> <p><input checked="" type="checkbox"/> UAM recorded within the asylum system</p> <p><input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</p> <p><input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system</p>

- 1.1.2. Please describe the procedure used for the registration and identification of minors, including safeguards? Are there any specific procedures in case when a minor with specific protection needs is identified (e.g. a victims of violence and abuse, unaccompanied minor, minors with acute healthcare needs). For victims of trafficking – please reply in the questions 1.3.

Normally, UAMs apply for international protection because there is no specific legal status for UAMs, outside of the international protection procedure. Consequently, they benefit from the procedural guarantees and reception material conditions adapted to their specific needs as foreseen in the Asylum Law and in the Reception Law (amended law of 18 December 2015 on the reception of applicants for international protection and temporary protection)<sup>9</sup>. UAMs are considered as a 'vulnerable population' not only by the Asylum Law,<sup>10</sup> but also by the Reception Law and in consequence they are entitled to specific procedural and reception needs.

<sup>4</sup> According to the Commission Communication, "children should be prioritised in all border-related procedures and receive adequate support from specialised staff in the process of identification and registration. They should notably apply child-friendly and gender-sensitive approaches when collecting fingerprints and biometric data".

<sup>5</sup> Article 3 (2) paragraph 2 of the Asylum Law.

<sup>6</sup> Article 78(3) of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law)

<sup>7</sup> Article 95 (1) and (2) of the Immigration Law.

<sup>8</sup> Article 125bis (1) and (2) of the Immigration Law.

<sup>9</sup> Article 15 of the amended law of 18 December 2015 on reception of applicants for international protection and temporary protection.

<sup>10</sup> Article 19 (1) in accordance with 20 (1) of the Asylum Law.

The procedure starts when the UAM files the international protection application at the Directorate of Immigration of the Ministry of Foreign and European Affairs.<sup>11</sup>

An agent with the necessary knowledge of the particular needs of minors processes the request.<sup>12</sup> The law authorizes the UAM to present or register their request personally or through their representative (if an ad-hoc administrator has already been appointed).<sup>13</sup> However, in order to be able to lodge the application, the ad-hoc administrator has to be appointed and to be present to sign all the documents related to the application. The UAM cannot lodge the application without their ad-hoc administrator.<sup>14</sup> Within three days of making the application, the UAM receives a document issued in their name attesting to their international protection applicant (IPA) status and their right to remain on the territory throughout the procedure.<sup>15</sup>

Considering the best interests of the child, starting from the stage of the making of the application, the family court judge appoints an ad-hoc administrator to the UAM as soon as possible.<sup>16</sup> Usually, the ad-hoc administrator is a court lawyer, but the designation may also fall on an organization. The ad-hoc administrator represents and assists the minor during the procedures relating to their application for international protection and performs all legal acts on their behalf.<sup>17</sup>

The judicial police proceeds to make a verification of the identity of the UAM<sup>18</sup> and of their itinerary.<sup>19</sup>

After the making of the application of the UAM, the Minister is responsible for proceeding within a reasonable time frame and before a first instance decision is taken, to an assessment of the special procedural guarantees which may prove necessary for the UAM.<sup>20</sup>

The UAM is informed in a language that they understand, or which it is reasonable to assume that they understand, about the procedure to be followed and their rights and obligations during the procedure as well as the consequences of non-compliance with their obligations or refusal to cooperate with the Minister in charge of Asylum. The UAM is informed of the timetable, the means at their disposal to fulfil the obligation to present all the elements for their claim, as well as, the consequences of an explicit or implicit withdrawal of the request.<sup>21</sup>

Once an ad-hoc administrator is appointed, they inform the UAM of the rationale and the consequences of the personal interview in which the UAM must explain the reasons for their application.<sup>22</sup> Thus, if necessary, the ad-hoc administrator must ensure that the latter is prepared for this interview.<sup>23</sup> The UAM, as well as the ad-hoc administrator must personally be present during the interview. The interview is conducted by an agent who has the knowledge and adequate training in order to treat the application according to the age and the vulnerability of the minor.<sup>24</sup> They must adapt the questions to the presumed age of the applicant and ask them in a simple and understandable manner. In addition, the agent can allow the lawyer or ad-hoc administrator to ask questions or make observations within the framework that the agent has pre-established.<sup>25</sup>

The Asylum Law establishes that the Minister in charge of Immigration and Asylum can grant priority

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<sup>11</sup> Article 5 (4) of the Law of 18 December 2015 on international protection and temporary protection.

<sup>12</sup> Article 3 (2) paragraph 3 of the amended law of 18 December 2015 on international protection and temporary protection (Asylum Law).

<sup>13</sup> Article 5 (4) in accordance with article 20 (1) of the Asylum Law.

<sup>14</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 29 May 2020.

<sup>15</sup> Article 7 (1) of the Asylum Law.

<sup>16</sup> Article 20 (1) of the Asylum Law.

<sup>17</sup> See Sommarribas, Adolfo, *Les mineurs en exil : Cadre juridique concernant l'accueil des mineurs non accompagnés au Luxembourg*, 2017, Forum, 364, p. 10.

<sup>18</sup> Fingerprints are only allowed to be collected if the UAM is older than 14 years of age. Article 100 (3) of the Immigration Law.

<sup>19</sup> Article 6 (3) paragraph 2 of the Asylum Law.

<sup>20</sup> Article 19 (1) of the Asylum Law.

<sup>21</sup> Article 11 (1) of the Asylum Law.

<sup>22</sup> Article 20 (2) of the Asylum Law.

<sup>23</sup> See Sommarribas, op. cit., p. 10.

<sup>24</sup> Article 3 (2) paragraph 2 in accordance with article 14 (3) e) of the Asylum Law. See also article 20 (3).

<sup>25</sup> Article 20 (2) of the Asylum Law.

to the decision of the international protection applications made by UAMs<sup>26</sup> and as a basic principle, the Directorate of Immigration tries to apply this possibility.<sup>27</sup>

Generally, the UAM can only be subjected to the accelerated procedure if:

- they are from a safe country of origin;
- they have previously applied for international protection ;
- there are serious reasons for consider that they represent a danger to national security or the public order;
- they have already been the subject of a forced removal order on serious grounds of national security or order public.<sup>28</sup>

In Luxembourg, if there is any doubt about the age of UAMs, the Minister may order medical examinations,<sup>29</sup> but must ensure that the minor is informed, in a language they understand, about the objective of the examination, the method used and the consequences of the results as well as the consequences of a refusal to submit to this test.<sup>30</sup> The refusal to submit to the examination cannot be the only reason for rejecting the request for international protection, but it does not prevent the Minister from ruling on the request.<sup>31</sup>

After the personal interview, the Minister in charge of Asylum will proceed to evaluate all the elements in the file and will take a decision. The Minister will either grant refugee or subsidiary protection status or issues a refusal decision. In case of a refusal decision, the file of the minor will be submitted to the committee for assessing the best interests of the child, in order to assess whether or not it is in their best interest to return to their country of origin. If that is the case, the refusal decision will be accompanied by an order to leave the territory. If it is not the case, they will be granted a residence permit on humanitarian grounds.<sup>32</sup>

In any case, the UAM can appeal the decision, through their ad-hoc administrator, before the Administrative Tribunal within a deadline of one month after the notification of the decision.<sup>33</sup> If the Administrative Tribunal confirms the decision of the Minister, the UAM can still file an appeal before the Administrative Court within a month after the notification.<sup>34</sup>

It is important to note that the Luxembourg legal system provides for the appointment of a guardian to manage the minor's current affairs outside the procedure of international protection. The Family Judge appoints an organisation (in practice, guardianships are shared between the organisations which run the reception structures, such as the Red Cross, Caritas, the 'Fondation Maison de la Porte Ouverte', etc. See answer to questions Q. 3.1.4 and with regard to foster families see answer to Q 2.1.7 and Q 2.1.8),<sup>35</sup> which then designates a person responsible for representing the UAM.<sup>36</sup> The guardian is responsible to ensure that the minor can benefit from their rights and ensures that they respect the reception obligations.

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<sup>26</sup> Article 26 (4) in accordance with article 20 of the Asylum Law.

<sup>27</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 29 May 2020.

<sup>28</sup> Article 21 (1) of the Asylum Law.

<sup>29</sup> Article 20 (4) of the Asylum Law.

<sup>30</sup> Article 20 (4) a) of the Asylum Law.

<sup>31</sup> Article 20 (4) c) of the Asylum Law.

<sup>32</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 29 May 2020.

<sup>33</sup> Article 35 (1) of the Asylum Law.

<sup>34</sup> Article 35 (1) paragraphs 2 and 3 of the Asylum Law.

<sup>35</sup> Information provided by the National Reception Office (ONA), Ministry of Foreign and European Affairs on 22 May 2020 and by the National Childhood Office (ONE) on 26 May 2020.

<sup>36</sup> This appointment is made in accordance with the law of 10 August 1992 on the protection of Youth, article 379 of the Civil Code and article 20 of the Asylum Law.



### Assessment of special reception needs:

In the context of international protection, the care for UAMs begins from the moment they apply for international protection.<sup>37</sup> As soon as possible, the Directorate of Immigration will request the family court judge to appoint an ad-hoc administrator in order to assist the minor during the international protection procedure (administrative and judicial proceedings).<sup>38</sup>

The moment the minor applies for international protection, they immediately benefit from all the reception conditions. The Director of the National Reception Office (ONA) will take into account the particular material reception needs of the UAM.<sup>39</sup> More specifically, the Director will grant primordial attention to the best interest of the child and will guarantee adequate living standards for the UAM in order to guarantee their physical, mental, spiritual, moral and social development.<sup>40</sup> In order to do so, the Director takes into account the possibility of family reunification,<sup>41</sup> the well-being and social development of the minor in regard to their personal situation,<sup>42</sup> considerations of safety and security, particularly when the minor is likely to be a victim of human trafficking,<sup>43</sup> and the minor's opinion depending on their age and maturity. Furthermore, the UAM is accommodated taking into consideration the best interest of the child by placing them depending on the availability of places, either in reception structures specifically dedicated to their individual needs or in convenient accommodation in accordance with their age.<sup>44</sup> There is a clear distinction made between minors younger than 16 years and a half of age<sup>45</sup> and those who are older. The first ones are accommodated in a reception centre managed by the Luxembourg Red Cross and the others in a reception centre managed by Caritas. Also, the minors who are under the age of 16 years of age can be accommodated with adult family members<sup>46</sup> or with a foster family.<sup>47</sup> Minors over the age of 16 years of age can be placed in reception structures for adults applying for international protection.<sup>48</sup>

In any case, a guardian is appointed by the family court judge to deal with all day-to-day affairs of the minor. The competent authorities try to find a prompt solution for the UAM not only in regard to the residence status of the UAM, but also in regard to social support and assistance.

When dealing with an UAM who benefits from a residence permit for private reasons (see 1.1.1), in accordance with the Civil Code a guardian will be appointed,<sup>49</sup> and if the UAM runs away the guardian is obliged to report this fact.

Finally, the Immigration Law foresees that for all UAMs concerned by a return decision, independent of the fact that they are rejected international protection applicants or not, the best interest of the child will be analysed,<sup>50</sup> and under certain circumstances a residence permit can be granted if after the evaluation it is evident that the minor cannot be sent back to their country of origin.<sup>51</sup>

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<sup>37</sup> Article 5 (4) of the Law of 18 December 2015 on international protection and temporary protection.

<sup>38</sup> Article 5 (4) paragraph 2 and Article 20 (1) of the Law of 18 December 2015 on international protection and temporary protection.

<sup>39</sup> Article 15 of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection.

<sup>40</sup> Article 19 (1) of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection.

<sup>41</sup> Article 19 (2) a) of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection.

<sup>42</sup> Article 19 (2) b) of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection.

<sup>43</sup> Article 19 (2) c) of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection.

<sup>44</sup> Article 21 (1) of the Law of 18 December 2015 on reception of applicants for international protection and temporary protection.

<sup>45</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 29 May 2020.

<sup>46</sup> Article 21 (1) a) of the Reception Law.

<sup>47</sup> Article 21 (1) b) of the Reception Law.

<sup>48</sup> Article 21 (1) last paragraph of the Reception Law.

<sup>49</sup> Article 389-3 of the Civil Code.

<sup>50</sup> Article 103 of the amended law of 29 August 2008.

<sup>51</sup> See answer of the Minister of Justice, Minister of National Education and Youth and Minister of Foreign and European Affairs of 13 January 2020 to the parliamentary question n° 1521.

For UAMs who are presumed victims of human trafficking, see 1.3.

## 1.2. COLLECTION OF BIOMETRIC DATA OF MINORS

- 1.2.1. During the identification and registration procedure, does your Member State ensure that fingerprinting and biometric data collection of minors is done in a a) child-friendly and b) gender-sensitive way? (only for minors over the age of 14 years old ). If so, please explain how this is ensured (e.g. Is female staff present, is training available to staff, etc.)?

YES ☒

NO ☐

Explanation	Applicable groups of minors*
As it was mentioned above, the agents who are dealing with UAMs have the adequate training on the specific needs of minors so the collection of biometrics is done respecting this principle. <sup>52</sup>	<input type="checkbox"/> accompanied minors/families with children <input type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <sup>53</sup> <input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

## 1.3. (POTENTIAL) VICTIMS OF HUMAN TRAFFICKING

- 1.3.1. How and when does your Member State identify that minors are (potential) victims of trafficking in human beings? Please briefly explain.

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<sup>52</sup> Information provided by the Grand Ducal police on 12 May 2020.

<sup>53</sup> This can be the case if the minor is in a return procedure, either because of their irregular situation of stay or if he/she is a rejected international protection applicant and if after the evaluation of the best interest of the child, the authorities consider that the minor cannot be sent back to their country of origin according to Article 103 of the amended law of 29 August 2008.

Explanation	Applicable groups of minors*
<p>The detection of a minor who is a potential victim of trafficking can be done at any moment of the international protection procedure.</p> <p>The detection can also be done at any stage of any procedure regarding the entry or stay on the territory as well as during the return procedure.</p> <p>Concerning UAMs who are presumed victims of human trafficking, a guardian is appointed<sup>54</sup> to assist them during the entire time that is necessary and until the minor is handed over to the authorities of their country of origin which must act in the best interest of the child.<sup>55</sup> In addition, an ad-hoc administrator will be appointed to represent the minor during the administrative and judicial proceedings.<sup>56</sup></p>	<input type="checkbox"/> accompanied minors/families with children <input type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

1.3.2. Which authority(ies) do(es) the detection? Please briefly explain.

Explanation	Applicable groups of minors*
<p>Any individual (private citizens), public servant (e.g. social worker, psychologist, ad-hoc administrator, guardian, the assigned agent dealing with the case at the Directorate of Immigration), accredited organisation or NGO (e.g. Caritas, Red Cross, Femmes en détresse, Fondation de la Maison de la Porte Ouverte,...) and the Grand Ducal police can detect that a minor is a victim of human trafficking.</p>	<input type="checkbox"/> accompanied minors/families with children <input type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

1.3.3. Which authority does the identification? Please briefly explain.

Explanation	Applicable groups of minors*
<p>The formal identification of a minor victim of trafficking of human beings lays with the Grand Ducal police.<sup>57</sup></p>	<input checked="" type="checkbox"/> accompanied minors/families with children <input checked="" type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input checked="" type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

<sup>54</sup> Ex-officio unaccompanied minors are automatically placed in dedicated centres and the authorised organisations request the guardianship of the UAM. The process that follows (interview with an educator, psychologist, etc.) enable the staff of the organization to identify if he/she is or has been potentially a victim of trafficking and to accompany them in the process. Information provided by Caritas on 1 April.

<sup>55</sup> Article 3 of the amended law of 8 May 2009.

<sup>56</sup> Article 92 (2) of the amended law of 29 August 2008.

<sup>57</sup> Information provided by the Grand Ducal police on 12 May 2020.

1.3.4. If the minor who is identified as a potential victim is already hosted in a reception facility:  
Is the minor removed from the reception facility in those cases? Please briefly explain.

**YES** ☒

**NO** ☐

Explanation	Applicable groups of minors*
<p>This depends on the situation.</p> <p>Cases of UAMs presumed or identified victims of human trafficking are rare in Luxembourg.</p> <p><u>In the framework of international protection:</u></p> <p>With the entrance into force of the Asylum Law and the Reception Law, the organisations responsible for accommodating the UAMs during their application for international protection, as well as, the ORK reported that there were also changes in the care system which allowed for more child-specific care of UAMs in terms of more responsible staff and 24/7 care provisions in the reception structures for AIPs.<sup>58</sup> The same is also true for the reception centre 'Lily Uden' of the Luxembourgish Red Cross, which serves as a first reception centre for UAMs since 2016.<sup>59</sup></p> <p>If the minor is detected as a victim and is already hosted in a reception structure and is already being taken care of by the reception structures authorities, and if the aggressor is not in the reception structures, the minor can eventually stay in the reception centre if the reception centre has the adequate facilities to deal with the case.</p> <p>In principle, prudence and good governance require that minors who are victims of trafficking are placed in secure shelters and away from potential trafficking networks and traffickers that may exist around the unaccompanied minors and the reception centres for international protection applicants.<sup>60</sup></p> <p><u>Outside the framework of international protection:</u></p> <p>The second type of case is when the UAM is an irregular migrant and is detected by the Grand Ducal Police or a third party.</p> <p>Formal identification as a victim of trafficking enables support measures to be triggered. The police informs the SAVTEH<sup>61</sup> and COTEH<sup>62</sup> as soon as possible and liaises with them to arrange</p>	<p><input type="checkbox"/> accompanied minors/families with children</p> <p><input checked="" type="checkbox"/> separated children</p> <p><input checked="" type="checkbox"/> UAM recorded within the asylum system</p> <p><input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</p> <p><input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system</p>

<sup>58</sup> Information provided by the National Childhood Office (ONE) on 8 December 2017, Interview with the Luxembourgish Red Cross on 15 December 2017, Interview with the Ombuds-Committee for the Rights of the Child (ORK) on 4 January 2018, Interview with Fondation Maison de la Porte Ouverte on 17 January 2018.

<sup>59</sup> Information provided by the Luxembourg Reception and Integration Agency (OLAI) on 1 March 2018.

<sup>60</sup> Information provided by the Ministry of Equality between Women and Men on 29 May 2020.

<sup>61</sup> Service d'Assistance aux Victimes de la Traite des Êtres Humains (SAVTEH) of the non-profit organisation Femmes en Détresse asbl.

<sup>62</sup> Centre Ozanam pour les victimes de la Traite des Êtres Humains (COTEH) of the Fondation Maison de la Porte Ouverte

for care for the victims (i.e. accommodation, medical treatment etc.).

The unaccompanied minors who are victims of trafficking of human beings are placed, as soon as there is availability in shelters for children in acute distress which are more suited to their specific needs (approved by the Ministry of National Education and Youth), following the previous approval of the National Office for Children (ONE) in accordance with Directive 2011/36 /EU<sup>63</sup> strengthening the protection of victims of treaty transposed by the law of April 9, 2014 and our law of May 8, 2009.<sup>64</sup>

Note: In the case of an UAM who is a victim of human trafficking, the Immigration Law foresees the appointment of an ad-hoc administrator.<sup>65</sup> This ad-hoc administrator will represent the UAM during the entire procedure. If the UAM runs away, the ad-hoc administrator is obliged to inform the police and the family court. The UAM is also assigned a tutor responsible for his daily monitoring in accordance with the Law of 8 May 2009.

It is important to mention that accompanied minors whose accompanying person/legal representative or who exercise any responsibility concerning the minor, is either the author or the accomplice of the trafficker or represents a danger to the minor, are also assigned an ad hoc administrator under the Immigration Law for the procedural aspect but also a guardian.<sup>66</sup>

## 2. Providing adequate reception in the European Union

### 2.1. RECEPTION FACILITIES FOR MINORS

- 2.1.1. Does your Member State have facilities adapted for hosting families with children during the asylum procedure or does your Member State host families with children in general reception facilities and/or in another way?

During the international protection procedure, the family with children are placed in general reception structures with the other AIPs. In these cases, the reception structure will provide a room that is adequate for the entire family.

However, the Luxembourg Red Cross manages also one hosting facility (Redange) for single women or single women with children who show a certain vulnerability.

- 2.1.2. Does your Member State have facilities adapted for hosting unaccompanied minors during the asylum procedure or does your Member State host unaccompanied minors

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<sup>63</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA transposed by the laws of 9 April 2014 and the amended law of 8 May 2009.

<sup>64</sup> Information provided by the Ministry of Equality between Women and Men on 29 May 2020.

<sup>65</sup> Article 92 (2) of the amended law of 28 August 2008.

<sup>66</sup> Information provided by the Ministry of Equality between Women and Men on 29 May 2020.

in general reception facilities and/or in another way?

In Luxembourg, there are six adapted accommodation structures for (unaccompanied) minors.

UAMs who arrive are transferred as soon as possible to a special hosting structure for UAMs and according to their age and other characteristics, they are transferred to one of six hosting facilities for minors after the deposit of their asylum request.

After passing through a first reception centre, the UAM is relocated according to their age between the following structures: 'Lily Uden' managed by the Red Cross and 'Foyer St Antoine' managed by Caritas. Those who are less than 16.5 years old are directed to 'Lily Uden' and those who are older than 16.5 years are directed to 'Foyer St Antoine'. As a general rule, those who are 16.5 years old generally remain at 'Foyer St Antoine'.

These two structures, which depend on ONA, are large 'general' reception structures for international protection applicants (IPAs), which host adults, but where some beds are available for UAMs. Unaccompanied minors are accommodated separately from adults. They will be accommodated between themselves in dedicated spaces and will benefit from reinforced support with National Office for Children's (ONE) approved personnel as it is the case for Caritas.

The UAMs younger than 16.5 years old, who are accommodated in the first reception centre 'Lily Uden' are transferred to a specialized structure which depends on the ONE. Before the transfer, the special reception needs (medical, psychological, schooling of the children, etc.) are identified. After this identification, the persons will be directed to the adequate services.

Currently, there are four specialized reception facilities for unaccompanied minors applying for international protection which, are funded by the ONE.

In order to transfer the UAM, the shelter must fill the FP3 form, which is destined for the ONE requesting the placement of the UAM in the shelter of the requesting institution. Depending on the availability in the three specialized shelters which provide 24/7 supervision, the specialized shelters declared the number of exits (exit declaration) and of the places available via the website "myguichet.lu".<sup>67</sup>

2.1.3. What measures are in place during the time of residence in reception facilities to prevent and respond to child abuse (e.g. reporting mechanisms; background checks; training for staff, etc.)?

Explanation	Applicable groups of minors*
The National Reception Office (ONA) requests yearly to its staff who are in contact with minors, an extract of their criminal record (bulletin n° 5). Likewise, the ONA collaboration agreement with its partners Caritas and the Red Cross stipulates that hired personnel must have the required honourability needed for the exercise of their duties at all times. <sup>68</sup> The specialized reception structures for ONE's unaccompanied minors have to meet certain obligations and documentary requirements that are part of a double procedure: the accreditation and the recognition to be obtained from the Ministry of National Education, Children and Youth (MENJE). <sup>69</sup>	<input type="checkbox"/> accompanied minors/families with children <input type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

<sup>67</sup> Information provided by ONE on 26 May 2020.

<sup>68</sup> Information provided by ONA, Ministry of Foreign and European Affairs on 22 May 2020.

<sup>69</sup> Article 1 of the amended and rectified Law of 8 September 1998 regulating the relations between the State and the organisms working in the social, family and therapeutic domain (ASFT) states « No one may, principally or incidentally and against remuneration, undertake or exercise in a non-occasional manner one of the activities listed below, in the social, socio-educational, medico-social or therapeutic field if is not in possession of a written agreement of the competent

With regard to the conditions for obtaining the accreditation, it is important to mention the honourability conditions that the applicant and their staff must fulfil and that it is evaluated upon the extracts of the criminal records.<sup>70</sup>

Among the documents and information to be provided,<sup>71</sup> we can highlight, among others: the documents certifying the qualification and honourability of the persons responsible for the management (an extract from the criminal record - bulletin number 3 - is required) and an original extract from the criminal record bulletin number 5 (linked to the "protection of minors", not older than 3 months); a certificate from the manager that the salaried and/or voluntary staff meets the required honourability criteria and benefits from a minimum number of hours of continuous training and/or socio-educational supervision per year (standard certificate must be completed).<sup>72</sup>

In order to obtain the recognition of the State as a service of assistance to children,<sup>73</sup> the applicant must send the documentation proving that they guarantee the quality of the assistance measures of their work in accordance with the law.<sup>74</sup>

2.1.4. Are unaccompanied minors who do not apply for international protection or those who are recorded within other migration procedures hosted in the same facilities as those described above?

YES ☒

NO ☐

In Luxembourg, the UAMs who do not apply for international protection or those who are recorded within other migration procedures are not hosted in the same reception structures as the other UAMs who are IPAs.

However, it may sometimes happen that UAMs will not make the request and remain in the reception centre 'Lily Uden'.<sup>75</sup>

The agreed assistance services for human trafficking victims COTEH and SAVTEH do not host UAMs in their reception structures as they are not appropriate for minors because they have two reception structures that are open structures. However, COTEH and SAVTEH are collaborating with several specialized reception facilities for minors whose childcare workers are properly trained.<sup>76</sup>

The UAMs victims of trafficking of human beings are placed, as soon as possible when there is availability in the shelters for minors on acute distress, accredited by the MENJE with the previous agreement of the ONE. These facilities are adapted to the specific needs in accordance with the Directive 2011/36/EU, which was transposed by the Law of 9 April 2004 in relation with the Law of 8

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minister, according to their respective competences."

<sup>70</sup> Articles 8 and 9 of the amended grand-ducal regulation of 17 August 2011 on the approval to be granted to activity managers for children, young adults and families in distress.

<sup>71</sup> Article 29 of the amended grand-ducal regulation of 17 August 2011 on the approval to be granted to activity managers for children, young adults and families in distress.

<sup>72</sup> [https://portal.education.lu/Portals/66/Procedures/Agrement%20MENJE/Gestionnaire/1\\_Doc%20%E0%20fournir.pdf](https://portal.education.lu/Portals/66/Procedures/Agrement%20MENJE/Gestionnaire/1_Doc%20%E0%20fournir.pdf)

<sup>73</sup> Article 13 of the amended law of 16 December 2008 on the assistance to children.

<sup>74</sup> Article 3 of the grand-ducal regulation of 17 August 2011, 1. Regulating the organisation and the functioning of the National Office for Children; and 2. Amending the amended grand-ducal regulation of 7 June 1979 determining the acts, documents and files authorized to use the identity number of natural and legal persons

<sup>75</sup> Information provided by the Luxembourgish Red Cross on 13 May 2020.

<sup>76</sup> Information provided by the service COTEH of the Fondation de la Maison Porte Ouverte on 7 May 2020.

May 2009.

Prudence and good governance require that these victims are placed in secure shelters and far from the potential networks of trafficking and traffickers that may exist around shelters for UAMs or reception facilities of IPAs.<sup>77</sup>

2.1.5. Does your Member State ensure that all reception facilities hosting minors (including in the hotspots where relevant) have staff who has received a child right training and/or are prepared to work with minors in a child-sensitive way?

YES ☒

NO ☐

Explanation	Applicable groups of minors*
<p>The four specialized shelters for unaccompanied minors under the supervision of ONE must commit, in order to obtain accreditation, that their supervisory staff have certain qualifications<sup>78</sup> and that they annually follow a certain number of hours of training.<sup>79</sup></p> <p>In addition to the honourability criteria of the staff, the manager must present, among other things, a concept of the activity for children or young adults in distress in order to be able to obtain the approval.<sup>80</sup></p> <p>To be recognised as a social assistance service for children, the manager is obliged to respect the quality approach anchored in the Law of 16 December 2008 on assistance to children, in particular in article 13 "Quality of the assistance measures". Among other things, they are obliged to define an orientation project for their activities, in accordance with the rights of the child and proving their particular sensitivity for children affected in terms of their physical, mental, social or cultural capacities.<sup>81</sup></p> <p>Some of these structures themselves provide psychological care, such as <i>Fondation de la Porte Ouverte</i> (FMPO), where there has been a psychologist on site in the specialized shelter for unaccompanied minors since September 2019.<sup>82</sup> Other structures, which do not have a psychological service, can resort to ONE consultations (psychological, etc.).</p> <p>In coordination with the child and family services, the ONE offers assistance adapted to the psychological and social issues facing the children, young people, and their families.<sup>83</sup></p> <p>The ONE guarantees continuous support, a follow-up and guarantees with the organisation the follow-up of the minors and their projects.<sup>84</sup></p>	<p><input checked="" type="checkbox"/> accompanied minors/families with children</p> <p><input type="checkbox"/> separated children</p> <p><input checked="" type="checkbox"/> UAM recorded within the asylum system</p> <p><input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</p> <p><input checked="" type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system</p>

<sup>77</sup> Information provided by the Ministry of Equality between Women and Men on 29 May 2020.

<sup>78</sup> Articles 12 to 15 of the amended grand-ducal regulation of 17 August 2011 on the approval to be granted to activity managers for children, young adults and families in distress. Information provided by ONE on 26 May 2020.

<sup>79</sup> Articles 17 of the amended grand-ducal regulation of 17 August 2011.

<sup>80</sup> Article 29 of the amended grand-ducal regulation of 17 August 2011.

<sup>81</sup> Article 13 of the law of 16 December 2008 on the assistance to children.

<sup>82</sup> Information provided by Fondation de la Maison de la Porte Ouverte on 7 May 2020.

<sup>83</sup> URL: <https://officenationaleenfance.lu/en>

<sup>84</sup> Information provided by ONE on 8 June 2020.



The reception facilities of IPAs managed by the Red Cross and Caritas (which depend financially of ONA) and which accommodate UAMs have socio-educative staff with the qualifications needed. If minors require additional support that exceed the standard supervision provided by the social workers of the reception structures, the NGOs and/or other organisations can either refer to psychologists that work for their own organisation, or they can file an application with the National Office for Children (ONE) or other structures so that specialised social workers may intervene.<sup>85</sup> In the shelter managed by Caritas, there is additional staff present, specialized in the support and follow-up of UAM and accredited by the services of the ONE.<sup>86</sup> The Red Cross has an ethno-psychological team consisting of 8 professionals (psychologists, nurses, psychiatric nurses) to assess the vulnerabilities of applicants for international protection as soon as possible, to ensure adequate care and assistance and ensure the transition to the health care system, especially to medical specialists. Even though there is no specialized psychologist for UAM, this team can intervene if needed with UAM accommodated in the reception centre 'Lily Uden' or contact specialists of other structures such as the ONE.<sup>87</sup>

For the new arrivals, especially the INSA (Health Inspection Department) is available and offers medical consultations with a medical team.

Guidance in everyday life is mainly conducted by educators and/or social workers and comprises all daily affairs (such as education, learning languages, social integration, etc.), including administrative tasks such as enrolling them in schools and contacting various authorities (ONA, Directorate of Immigration, ONE, Family Court, etc.), depending on their needs.<sup>88</sup> Furthermore, the social workers of the different reception structures are also in contact with interpreters, who can provide assistance in administrative and/or judicial procedures, or with volunteers who can support the minors in their homework or language acquisition or organise and participate in social activities.<sup>89</sup>

The supervision in the first reception centre for UAMs 'Lily Uden' of the Luxembourgish Red Cross and in the four

<sup>85</sup> Interview with Caritas on 13 December 2017 and 5 January 2018, Interview with the Luxembourgish Red Cross on 15 December 2017, Interview with Fondation Maison de la Porte Ouverte on 17 January 2018. Information provided by Caritas and the Luxembourgish Red Cross, May 2020. Information provided by Caritas on 1 April 2020 and the Luxembourgish Red Cross, on 8 June 2020.

<sup>86</sup> Information provided by Caritas on 1 April 2020.

<sup>87</sup> Information provided by the Luxembourgish Red Cross on 8 June 2020.

<sup>88</sup> Interview with Caritas on 13 December 2017 and 5 January 2018, Interview with the Luxembourgish Red Cross on 15 December 2017, Interview with Fondation Maison de la Porte Ouverte on 17 January 2018.

<sup>89</sup> Interview with Caritas on 13 December 2017 and 5 January 2018, Interview with the Luxembourgish Red Cross on 15 December 2017, Interview with Fondation Maison de la Porte Ouverte on 17 January 2018.

reception structures specifically dedicated for UAMs is 24/7, thereby allowing a more child-specific care.

In regard to specific trainings, a variety of vocational trainings are very important in the context of UAMs, in particular trainings on topics such as inter- and/or transcultural education, national legislation, post-traumatic stress and suicidal crisis management, trafficking in human beings and conflict resolution. These trainings are either organised internally or by external institutions and organisations.<sup>90</sup>

The staff responsible for the social monitoring (*"suivi social"*) of UAMs applying for international protection are also social workers who have received continuous trainings in awareness raising and detection of trafficking in human beings, LGBTI, female genital mutilation and team supervision.<sup>91</sup>

The staff responsible for the care of UAMs supports them in virtually all areas in which assistance and guidance is needed. As the organisation who accommodates the minor often also holds the guardianship, their staff ensures both the management of everyday life as well as the monitoring of the application for international protection in coordination with the ad-hoc administrator.<sup>92</sup>

Minors who are victims of trafficking in human beings are compulsorily supervised and assisted by the assistance services for victims of trafficking in human beings SAVTEH and COTEH, in close collaboration with the judicial police who ensure their protection, in accordance with the Law of 8 May 2009 on assistance, protection and security of victims of trafficking in human beings, whatever their status may be, namely applicants for international protection or irregular migrants, whether accompanied or not (by a responsible adult for example), regardless of where they are staying at the time of detection/identification, i.e. shelters for UAMs of the Red Cross or other shelters, IPA or BIP structures, hotels, foster families or other, even in the street.

SAVTEH and COTEH will go wherever the minor victim is located and collaborate with social workers or the people who supervise them if they are already in a structure, or elsewhere.<sup>93</sup>

The staff of the agreed assistance services for human trafficking victims (SAVTEH and COTEH) includes 2 social workers and 1 psychologist.<sup>94</sup> In addition to the contact with the

<sup>90</sup> Interview with Caritas on 13 December 2017 and 5 January 2018, Interview with the Luxembourgish Red Cross on 15 December 2017, Interview with Fondation Maison de la Porte Ouverte on 17 January 2018. Information provided by the service COTEH of the Fondation Maison de la Porte Ouverte on 16 January 2018.

<sup>91</sup> Information provided by the Luxembourg Reception and Integration Agency (OLAI) on 1 March 2018.

<sup>92</sup> Interview with Caritas on 13 December 2017 and 5 January 2018, Interview with the Luxembourgish Red Cross on 15 December 2017, Interview with Fondation Maison de la Porte Ouverte on 17 January 2018.

<sup>93</sup> Information provided by the Ministry of Equality between Women and Men on 29 May 2020.

<sup>94</sup> Information provided by the service COTEH of the Fondation Maison de la Porte Ouverte on 7 May 2020.

various authorities mentioned about, the SAVTEH and COTEH also have a close collaboration with the Ministry of Equality between Women and Men and the Ministry of Justice.<sup>95</sup>

The Ombuds-Committee for the Rights of the Child (ORK) noted in its annual report 2017<sup>96</sup> as well as in its report on the current situation of the reception structures dedicated for UAMs from 2017<sup>97</sup> that the staff responsible for the care of UAMs should have the right and the obligation to vocational training specifically dedicated to the situation of UAMs.

2.1.6. Does your Member State take the presence of relatives in the Member State into account when allocating an unaccompanied minor to a reception facility or other forms of accommodation?

YES ☒  
NO ☐

Explanation	Applicable groups of minors*
<p>UAMs who are younger than 16 years can be accommodated with adult family members, in a foster family, in a specialised reception structure for minors in need and in other reception structures adapted for minors.<sup>98</sup></p> <p>UAMs who are older than 16 years of age can be placed in the same reception structures for adult IPAs. However, the minors will be accommodated with other minors in dedicated reception facilities and will benefit from enhanced support from approved staff by ONE.<sup>99</sup></p> <p>In this context, the child's opinion should be taken into account, depending on his age and maturity.</p>	<p><input checked="" type="checkbox"/> UAM recorded within the asylum system</p> <p><input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</p> <p><input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system</p>

2.1.7. Are there alternative (non-institutionalised) care systems available in your Member State (e.g. foster/family-based care, community care) for unaccompanied minors?

YES ☒  
NO ☐

Explanation	Applicable groups of minors*
<p>As it was mentioned before, the UAMs normally apply for international protection through their ad-hoc administrator.<sup>100</sup></p> <p>There are four possibilities of accommodations foreseen by the Reception Law<sup>101</sup> (see 2.1.6).</p>	<p><input checked="" type="checkbox"/> UAM recorded within the asylum system</p> <p><input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</p>

<sup>95</sup> Information provided by the service COTEH of the Fondation Maison de la Porte Ouverte on 16 January 2018.

<sup>96</sup> Ombuds-Comité fier d'Rechter vum Kand (ORK), *Rapport 2017 au Gouvernement et à la Chambre des Députés*, 2017, p. 17, 102-103, URL: [http://ork.lu/files/RapportsORK\\_pdf/RAP2017Compil\\_AvecAnnexesVersionWeB.pdf](http://ork.lu/files/RapportsORK_pdf/RAP2017Compil_AvecAnnexesVersionWeB.pdf) (last accessed on 21 December 2017).

<sup>97</sup> Greijer, Susanna (Brainiact), Schlechter, René (Ombuds-Comité fier d'Rechter vum Kand - ORK), *Réflexions et témoignages des foyers pour mineurs non accompagnés au Luxembourg*, June 2017, p.14, URL: [http://ork.lu/files/PriseDePositionRapports/Rapport%20MNA\\_SG-RS\\_version%20web.pdf](http://ork.lu/files/PriseDePositionRapports/Rapport%20MNA_SG-RS_version%20web.pdf) (last accessed on 20 December 2017).

<sup>98</sup> Article 21 (1) a) to d) of the Reception Law and article 63 (3) of the Asylum Law.

<sup>99</sup> Information provided by Caritas, on 1 April 2020.

<sup>100</sup> Article 63 (1) of the Asylum Law.

<sup>101</sup> Article 21 (1) a) to d) of the Reception Law.

However, even in the cases in which the UAM is outside of the international protection procedure, the Family Judge will appoint an ad-hoc administrator to the UAM.<sup>102</sup> The judge will also appoint a guardian for the handling of the day-to-day affairs. The UAM is in constant contact with the social staff which manages the reception structures.

Foster care is possible but is rarely done. Only three foster families exist for UAMs. They have undergone specific training in order to be able to receive unaccompanied minors, which is added to the compulsory training to obtain accreditation as a foster family.<sup>103</sup>

The ONE is always looking for new foster families who are ready to commit to a project that benefits children and their families.<sup>104</sup>

The Red Cross jointly with IOM have implemented the programme "Fostering Across Borders" which aims to develop a network to host UAMs in foster homes. However, in practice, this project does not function very well in Luxembourg, especially because there is a lack of adequate trained families to foster an UAM.<sup>105</sup>

Any person of legal age who is a resident of Luxembourg, and who satisfies the conditions of reputability and has a stable income, may apply to become a host family.

The prerequisites are:

Socio-educational hosting in a family setting entails non-occasionally taking in and looking after children, either permanently or temporarily, during the day and/or night, at the request either of the child, if the latter is capable of judgement, or of the person(s) with parental authority, after action on the part of the ONE, or the judiciary.

To be accepted as a host family, candidates must satisfy all of the following conditions:

- provide an appropriate living environment and appropriate care for the children they take in;
- comply with the requirements in terms of number of children and reception conditions as set out in their authorisation (no more than 4 children at a time, unless otherwise specified);
- provide infrastructure that conforms to minimum criteria as set out in article 27 of the Grand-Ducal regulation of 17 August 2011 concerning the accreditation of managers of activities for children, young adults and families in distress, and as set out in the general terms and conditions;

☒ UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

<sup>102</sup> Article 103 of the amended law of 29 August 2008.

<sup>103</sup> Information provided by ONE, May 2020.

<sup>104</sup> [https://portal.education.lu/Portals/45/documents/WEB\\_Depliant\\_DevenezFA.pdf?ver=2016-05-19-135452-553](https://portal.education.lu/Portals/45/documents/WEB_Depliant_DevenezFA.pdf?ver=2016-05-19-135452-553)

<sup>105</sup> <https://eea.iom.int/fostering-across-borders>

<ul style="list-style-type: none"> <li>• complete a process of 'selection, preparation and training' lasting no more than 30 hours with one of the hosting oversight bodies and earn the selection certificate;</li> <li>• attend the 54-hour basic training course for host families, organised by the Ministry of National Education, Children and Youth;</li> <li>• devote at least 12 hours a year to attending continuing training and/or supervision sessions;</li> <li>• understand and be able to express themselves in at least one of the 3 languages (German, French and Luxembourgish) provided for in the Law of 24 February 1984 on the country's official languages;</li> <li>• agree to be monitored regularly by one of the hosting oversight bodies;</li> <li>• not be prohibited from engaging in this type of activity or similar as the result of a criminal conviction.<sup>106</sup></li> </ul>	
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2.1.8. If yes, please explain which alternative care systems are available, whether they are systematically monitored by the competent authorities and whether there are plans to increase the use of alternative care systems.

Explanation	Applicable groups of minors*
<p>See answer to question 2.1.4.</p> <p>To be accepted as a host family, candidates must satisfy among others the following conditions:</p> <ul style="list-style-type: none"> <li>• devote at least 12 hours a year to attending continuing training and/or supervision sessions;</li> <li>• agree to be monitored regularly by one of the hosting oversight bodies.<sup>107</sup></li> </ul> <p>In the case of UAMs, this monitoring is done by the Luxembourgish Red Cross.<sup>108</sup></p>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> UAM recorded within the asylum system</li> <li><input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</li> <li><input checked="" type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system</li> </ul>

2.1.9. Are there semi-independent living arrangements available for older unaccompanied minors?

YES ☒

NO ☐

<sup>106</sup> Information provided by Children and Family Assistance Service of the Ministry of Education, Children and Youth, on 9 June 2020, <https://guichet.public.lu/en/citoyens/sante-social/action-sociale/aide-enfance/famille-accueil.html>

<sup>107</sup> Information provided by 'Service de l'aide à l'enfance et à la famille' of the Ministry of Education, Children and Youth, on 9 June 2020, <https://guichet.public.lu/en/citoyens/sante-social/action-sociale/aide-enfance/famille-accueil.html>

<sup>108</sup> Information provided by the 'Service de l'aide à l'enfance et à la famille' of the Ministry of Education, Children and Youth on 9 June 2020.

Explanation	Applicable groups of minors*
<p>Various institutions that are actively implicated in the reception of young people offer supervised housing services.<sup>109</sup> These services support young people and young adults for a certain period of time with the aim of making it easier for young people to access an independent and responsible life. At the youngster's request, and in agreement with the National Office for Children (ONE), individual supervision can be concluded.</p> <p>The FMPO has also opened a supervised housing structure which accommodates unaccompanied minors who have become beneficiary of international protection adults.<sup>110</sup></p>	<input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

2.1.10. Is a monitoring system of reception facilities hosting minors in place in your Member State in order to ensure minimum standards are fulfilled?

YES ☒

NO ☐

Explanation	Applicable groups of minors*
<p>A distinction must be made between shelters administered by ONA and ONE.</p> <p>At the two IPAs shelters which host unaccompanied minors managed by the Red Cross and Caritas, the managers ensure that an adequate follow-up is guaranteed for unaccompanied minors, but there is no post-monitoring.</p> <p>At ONE shelters, the standards are defined at the beginning of the approval and recognition procedure.</p> <p>In the reception structures hosting minors, the same standards are applicable as in other reception structures for minors which depend on the Children and Family Assistance Service of the Ministry of National Education, Children and Youth (MENJE) and which are subsidized by the ONE.<sup>111</sup></p> <p>In order to obtain the approval of the MENJE, it is necessary to satisfy the conditions of supervision staff with suitable qualifications (key personnel)<sup>112</sup> and adequate infrastructure (i.e. standards of safety, hygiene, surface area).<sup>113</sup></p>	<input checked="" type="checkbox"/> accompanied minors/families with children <input type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input checked="" type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

<sup>109</sup> For example: Service Betreut Wunnen of the non-profit organisation Arcus, Anne asbl de la Fondation Elisabeth, Caritas Jeunes et Familles, See URL: <http://www.men.public.lu/fr/aide-assistance/aide-enfance/03-aide-cadre-non-familial/index.html>

<sup>110</sup> Information provided by FMPO, on 7 May 2020.

<sup>111</sup> Information provided by ONE on 26 May 2020 and by the Children and Family Assistance Service of the Ministry of Education, Children and Youth on 9 June 2020.

<sup>112</sup> Articles 11 to 19 of the amended grand-ducal regulation of 17 August 2011 on the approval to be granted to activity managers for children, young adults and families in distress. Information provided by ONE on 26 May 2020 and by the Children and Family Assistance Service of the Ministry of Education, Children and Youth on 9 June 2020 and by Fondation de la Maison de la Porte Ouverte on 3 June 2020.

<sup>113</sup> Articles 22 to 26 of the amended grand-ducal regulation of 17 August 2011. Information provided by ONE on 26 May 2020 and by the Children and Family Assistance Service of the Ministry of Education, Children and Youth on 9 June 2020 and by Fondation de la Maison de la Porte Ouverte on 3 June 2020.

There are controls as part of the accreditation procedure, the modalities of which are set out in the amended grand-ducal regulation of 17 August 2011 concerning the accreditation to be granted to activity managers for children, young adults and families in distress.<sup>114</sup>

To obtain recognition by the State as a social welfare service for children,<sup>115</sup> the applicant must send documentation proving that they guarantee in their work the quality of the assistance measures in accordance with the elements set out in article 13 of the Law of 16 December 2008 on assistance to children.<sup>116</sup>

The administrator must also cooperate with the ministers concerned with the situation of children, the State prosecutor and the Youth court, the Ombuds-Committee for the Rights of the Child (ORK) and the ONE.

There is an automatic control on the basis of regular reports that the manager must send to the ONE concerning the activities taken in favour of minors. The ONE assessment unit can request an interview with the manager in case of doubts concerning the report.

More rarely, there may be on-site checks by the accreditation service in the event of a structural problem (accreditation conditions) or of the ONE in the event of a problem concerning the monitoring of a child.

The ORK or the MENJE representative for Children's Rights can make visits.<sup>117</sup>

## 2.2. ACCESS TO SERVICE RIGHTS

2.2.1. Does the minor have access to healthcare and psychological support, regardless of their migration status?

YES ☒

NO ☐

<sup>114</sup> Articles 31 à 35 of the amended grand-ducal regulation of 17 August 2011.

<sup>115</sup> Article 13 of the amended law of 16 December 2008 on assistance to children.

<sup>116</sup> Article 3 of the grand-ducal regulation of 17 August 2011, 1. Regulating the organisation and the functioning of the National Office for Children ; and 2. Amending the amended grand-ducal regulation of 7 June 1979 determining the acts, documents and files authorized to use the identity number of natural and legal persons

<sup>117</sup> Information provided by ONE on 26 May 2020 and by the Children and Assistance Service of the Ministry of Education, Children and Youth on 9 June 2020 and by Fondation de la Maison de la Porte Ouverte on 3 June 2020.

Explanation	Applicable groups of minors*
<p>However, the type of access to healthcare and psychological support depends partially on the status of the UAM: if they are an international protection applicant,<sup>118</sup> beneficiary of international protection,<sup>119</sup> victim of trafficking of human beings or have been granted a residence permit on private reasons.<sup>120</sup></p> <p>It also depends on the reference address as without an address there cannot be an affiliation to the National Health Fund (CNS).</p>	<input checked="" type="checkbox"/> accompanied minors/families with children <input type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input checked="" type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

2.2.2. How long after having been brought to the attention of authorities does your Member State provide access to inclusive education (primary/secondary/higher education/vocational training/early childhood education and care)?

Explanation	Applicable groups of minors*
<p>From the moment that the UAM is hosted in a reception centre, the social staff will try to school them and/or find possibilities of professional training.</p> <p>To facilitate the integration into the compulsory schooling system of Luxembourg of newly-arrived foreign pupils (between the ages of 4 and 16 years of age), who often do not speak all, or any of the administrative or working languages of Luxembourg, special reception classes are organised.</p> <p>Children who haven't finished their primary school yet, receive information on the schooling available to them by the municipality of residence or the <i>"direction de région de l'enseignement fondamentale"</i>. These are responsible for their schooling and establishing the measures needed if the pupils speak none of the administrative languages (see intensive language lesson below).</p> <p>A specific chapter dedicated to the schooling of children who are applicants for international protection was included in the pedagogical guide for fundamental school teachers. This guide was elaborated by the Department of Schooling for Foreign Children (SECAM) of the Ministry of Education, Children and Youth.<sup>121</sup></p> <p>In primary education, intensive language lessons in German and/or French (also called 'welcome classes' – <i>'cours d'accueil'</i>) are organised. The number of hours of intensive language lessons varies according to the child's age and language abilities.</p> <p>For children who have finished their primary level, the school reception unit for newly-arrived pupils (<i>'Cellule d'accueil'</i></p>	<input checked="" type="checkbox"/> accompanied minors/families with children <input checked="" type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input checked="" type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

<sup>118</sup> Article 8 (2) and (3) of the Reception Law.

<sup>119</sup> Article 62 (2) of the Asylum Law.

<sup>120</sup> Article 78 (3) of the Immigration Law.

<sup>121</sup> Ministry of National Education, Childhood and Youth, *Guide pédagogique pour enseignants de l'école fondamentale*. September 2017. URL : <http://www.men.public.lu/catalogue-publications/themes-transversaux/scolarisation-eleves-etrangers/brochures-enseignants/accueillir-integrer/fr.pdf>, pp.110-132



*scolaire pour élèves nouveaux arrivants* – CASNA) of the Ministry of Education, Children and Youth provides information on Luxembourg's schooling system and on the schooling available for pupils who speak foreign languages. Children's educational levels and knowledge are tested so that they can be guided towards the most appropriate class or training. All pupils will be attending schools within a three months frame, preferably within one month.

Children between 12 and 15 years of age arriving in the Grand Duchy with no knowledge of either German or French may be admitted to a welcome class (*'classe d'accueil'* – ACCU), where they are taught French or English intensively and introduced to Luxembourgish.

Children who are 16 or 17 years old, with no knowledge of either German or French, may join an insertion class for young adults (*'classe d'insertion pour jeunes adultes'* – CLIJA), where they are taught French or German intensively and receive basic training to prepare them for technical secondary education or for getting a job.

Young adults between 18 and 24 years of age arriving in Luxembourg without any knowledge of either German or French, can be tested via logical reasoning and memory tests, which do not take any language skills or cultural differences into account. They can join an insertion class for young adults (*'classe d'insertion pour jeunes adultes'* – CLIJA+). These classes provide intensive French or German lessons and basic training, preparing students to undertake professional training or to get a job. They also have the possibility to join intensive lessons organised by the Adult Education Department.<sup>122</sup>

2.2.3. Are there any special measures to support access to education for the minor, including early childhood education?

YES ☐

NO ☒

Explanation	Applicable groups of minors*
The measures applied are the same as for all the foreign minors. See answer to Q. 2.2.2.	<input checked="" type="checkbox"/> accompanied minors/families with children <input checked="" type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input checked="" type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

<sup>122</sup> Information provided by the Department for the Schooling of Foreign Children of the Ministry of Education, Children and Youth on 9 April 2020.

2.2.4. At what point in time does your Member State assess the specific vulnerability and special needs of minors? When admitting them in the reception centre/in the identification procedure/status determination procedure/other?

Explanation	Applicable groups of minors*
<p><u>In the framework of international protection:</u></p> <p>The detection of vulnerable persons and the assessment of their specific reception needs take place, within a reasonable time and depending on the circumstances, by the director of the National Reception Office (ONA) or any other competent authority (Directorate of Immigration).<sup>123</sup></p> <p>UAMs who arrive are transferred as soon as possible to a special hosting structure for UAMs and according to their age and other characteristics are transferred to one of six hosting facilities for minors after the deposit of their asylum request. Contrary to adult IPAs, for the UAM there is no possibility to accommodate them in reception facilities in phase 1, 2 or 3.<sup>124</sup></p> <p>The UAMs are distributed according to their age between the two shelters administered by Caritas and the Red Cross. The special reception needs (medical, psychological, schooling of the children) are identified before the transfer to the specialised reception structures for UAMs.<sup>125</sup></p> <p>The director of the ONA takes care to pay primary attention to the best interest of the child and to guarantee an adequate standard of living for the minor's physical, mental, spiritual, moral and social development.<sup>126</sup></p> <p>In assessing the best interests of the child, account is taken of:</p> <ul style="list-style-type: none"> <li>a) possibilities for family reunification;</li> <li>b) the minor's well-being and social development, paying particular attention to the minor's personal situation;</li> <li>c) safety and security considerations, in particular when the minor is likely to be a victim of trafficking in human beings;</li> <li>d) the opinion of the minor, according to their age and maturity.<sup>127</sup></li> </ul> <p>In order to guarantee the best interests of the child, an unaccompanied minor is appointed as soon as possible a representative, namely a person or organisation designated by the guardianship judge to enable them to benefit from the rights and to comply with the reception obligations and, if necessary, to perform legal acts on their behalf. When an organisation is designated as a representative, it appoints a person</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> accompanied minors/families with children</li> <li><input type="checkbox"/> separated children</li> <li><input checked="" type="checkbox"/> UAM recorded within the asylum system</li> <li><input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</li> <li><input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system</li> </ul>

<sup>123</sup> Article 16 (1) of the Asylum Law.

<sup>124</sup> Information provided by the National Reception Office (ONA), Ministry of Foreign and European Affairs on 22 May 2020.

<sup>125</sup> Information provided by the Luxembourgish Red Cross on 8 June 2020.

<sup>126</sup> Article 19 (1) of the Asylum Law.

<sup>127</sup> Article 19 (2) of the Asylum Law.

<p>responsible for fulfilling the obligations of representation in respect of the unaccompanied minor.<sup>128</sup></p> <p><u>Outside the framework of international protection:</u></p> <p>Formal identification as a victim of trafficking enables support measures to be triggered. The police informs the SAVTEH<sup>129</sup> and COTEH<sup>130</sup> as soon as possible and liaises with them to arrange for care for the victims (i.e. accommodation, medical treatment, etc.). These organisations will also assess specific reception needs.</p>	
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### 3. Ensuring swift and comprehensive access to status determination procedures and implementation of procedural safeguards

#### 3.1. GUARDIANSHIP

##### 3.1.1. How is the guardianship system for unaccompanied minors organised in your Member State?

Explanation	Applicable groups of minors*
<p>The Family Court<sup>131</sup> is the responsible authority for the appointment of the ad-hoc administrator<sup>132</sup> and the guardian.<sup>133</sup></p> <p><u>International protection procedure:</u></p> <p>As soon as the UAM files the application for international protection, the Directorate of Immigration contacts the Family Court in order to appoint an ad-hoc administrator.</p> <p>The ad-hoc administrator is responsible to deal with the administrative and judicial proceedings. Therefore, once the international protection procedure is finished (if the decision is positive), they will finish their duties. If the decision is negative, the ad-hoc administrator will continue until the decision for return is final.<sup>134</sup></p> <p>A guardian is also appointed by the Family Court<sup>135</sup> as a representative of the minor in everyday affairs (either a physical or a moral person), allowing the UAM to benefit of all their reception rights, as well as, understand their obligations and to conclude any legal acts in their name.<sup>136</sup></p>	<p>☒ UAM recorded within the asylum system</p> <p>☒ UAM not applying for asylum but recorded within other migration procedures</p> <p>☒ UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system</p>

<sup>128</sup> Article 20 of the Asylum Law.

<sup>129</sup> Service d'Assistance aux Victimes de la Traite des Êtres Humains (SAVTEH) of the non-profit organisation Femmes en Détresse asbl.

<sup>130</sup> Centre Ozanam pour les victimes de la Traite des Êtres Humains (COTEH) of the Fondation Maison de la Porte Ouverte

<sup>131</sup> Article 1 point 3 of the amended law of 10 August 1992.

<sup>132</sup> Article 20 (1) and 63 (1) of the Law of 18 December 2015 on international protection and temporary protection and article 92 (2) of the amended law of 29 August 2008.

<sup>133</sup> Articles 389-3 of the Civil Code and article 3 of the amended law of 8 May 2009.

<sup>134</sup> Article 5 (4) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection. See also article 20 (1), (2) and (3).

<sup>135</sup> Article 389-3 paragraph 2 of the Civil Code.

<sup>136</sup> See Sommarribas, Adolfo, Les mineurs en exil : Cadre juridique concernant l'accueil des mineurs non accompagnés au Luxembourg, 2017, Forum, 364, p. 10.

The fact that the international protection procedure is over after granting the international protection to the UAM terminates the ad-hoc administrator's appointment in this context.<sup>137</sup> Nevertheless, the appointment of the ad-hoc administrator<sup>138</sup> will continue until the UAM reaches majority.<sup>139</sup> In practice, the original ad-hoc administrator will be appointed in order to guarantee continuity.

In case the international protection application is rejected, an ad-hoc administrator will be appointed in order to represent the interests of the UAM until the return decision is executed.<sup>140</sup> Also, in order to represent the minor in the day-to-day affairs until the return decision is executed, a guardian can be appointed.<sup>141</sup>

#### UAM victim of human trafficking:

When the competent authorities determine that an UAM is a victim of human trafficking, they will request the Family Court to appoint an ad-hoc administrator<sup>142</sup> in order to represent the interests of the UAM during the administrative and judicial proceedings as well as a guardian to support the UAM in everyday life affairs.<sup>143</sup>

#### Rejected international protection applicants:

The international protection procedure foresees the appointment of an ad-hoc administrator<sup>144</sup> for the duration of the procedure, i.e. from the presentation of the application to the decision of the Administrative Court<sup>145</sup> in case of appeal (seeing that UAMs cannot, in general, be submitted to fast track procedures<sup>146</sup>). Nevertheless, if the applicant receives a negative decision that includes a return decision,<sup>147</sup> they are subject to the return procedure foreseen in the Immigration Law, which establishes that the Minister in charge of Immigration and Asylum cannot take any decision against any

<sup>137</sup> Article 20 (1) of the Law of 18 December 2015 on international protection and temporary protection.

<sup>138</sup> The guardian is appointed in accordance with article 20 of the Law of 18 December 2015 on the reception of applicants for international protection and temporary protection by the Youth Court as a representative (either a physical or moral person) of the minor in everyday business, allowing him to benefit of all their reception rights as well as to understand their obligations and to concluded any legal acts in their name.

<sup>139</sup> Article 488 of the Civil Code in accordance with article 1 paragraph 1 point 3 and last paragraph of the amended law of 10 August 1992.

<sup>140</sup> Article 5 (4) of the Law of 18 December 2015 on international protection and temporary protection in accordance with article 103 of the amended law of 29 August 2008 and article 389-3 of the Civil Code. This includes the representation of the minor in the context of the newly created commission assessing the best interest of the child in the context of return (see answer to Q3a).

<sup>141</sup> Article 389-3 paragraph 2 and 433 of the Civil Code.

<sup>142</sup> Article 92 (2) of the amended law of 29 August 2008 and article 3 of the amended law of 8 May 2009.

<sup>143</sup> Article 389-3 paragraph 2 of the Civil Code.

<sup>144</sup> Article 5 (4) and 20 (1) of the Law of 18 December 2015 on international protection and temporary protection.

<sup>145</sup> Article 35 (1) paragraph 2 of the Law of 18 December 2015 on international protection and temporary protection.

<sup>146</sup> Article 21 (1) of the Law of 18 December 2015 on international protection and temporary protection.

<sup>147</sup> Article 34 (2) of the law of 18 December 2015 on international protection and temporary protection.

<p>UAM without a legal representative,<sup>148</sup> except if based on serious grounds for public safety or if in the best interest of the UAM.</p> <p><u>Other situations (Residence permit for private reasons...):</u></p> <p>In any entry and stay procedure, which involves an UAM, an ad-hoc administrator will be appointed.<sup>149</sup></p>	
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3.1.2. For unaccompanied minors applying for asylum, at which stage of the international protection procedure a representative/guardian is designated/appointed?

Explanation	Applicable groups of minors*
<p>In order to ensure the best interests of the child, the UAM shall be designated, as soon as possible, a representative, namely a person or organisation by the Family Court judge as an ad hoc administrator to assist and represent them in proceedings relating to their application for international protection and, where appropriate, to perform legal acts on to their behalf, and will be informed immediately.</p> <p>In practice, an ad hoc administrator is required at the very beginning of the procedure, from the moment the child arrives and registers his application.</p> <p>However, according to Article 20 (3) the Minister may refrain from designating an ad hoc administrator for an unaccompanied minor who is likely to reach the age of eighteen years before a decision is taken by the Minister. In this case, the UAM may lodge the application on their own.<sup>150</sup></p> <p>As soon as the asylum application has been lodged and the UAM is placed in adequate accommodation, the organisations responsible for the minor request the guardianship.<sup>151</sup></p>	<p><input type="checkbox"/> separated children</p> <p><input checked="" type="checkbox"/> UAM recorded within the asylum system</p> <p><input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</p> <p><input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system</p>

3.1.3. If applicable, for unaccompanied minors not applying for asylum, at which stage after the unaccompanied minor reports to or is detected by authorities is a representative/guardian designated/appointed? Please briefly explain.

<sup>148</sup> Article 103 of the amended law of 29 August 2008.

<sup>149</sup> Article 103 in accordance with article 78 (3) of the amended law of 29 August 2008.

<sup>150</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 29 May 2020.

<sup>151</sup> Information provided by Caritas on 1 April 2020 and by Fondation de la Maison Porte Ouverte on 7 May 2020.

Explanation	Applicable groups of minors*
<p>From the moment an UAM is found or presents themselves to the Directorate of Immigration, an ad hoc administrator is directly requested by the Ministry of Foreign and European affairs, whether the child is making an asylum application or not.<sup>152</sup></p> <p>In regard to an UAM who is an irregular migrant or presumed a victim of traffic of human beings, once they are detected an ad-hoc administrator will be appointed.<sup>153</sup></p>	<input type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

3.1.4. What is the procedure followed in order to appoint the guardian? What is the role of the various actors in this procedure?

Explanation	Applicable groups of minors*
<p>A guardian is appointed by the Family Court<sup>154</sup> as a representative of the minor in everyday affairs (either a physical or a moral person), allowing them to benefit from all their reception rights, as well as, to understand their obligations and to conclude any legal acts in their name.<sup>155</sup></p> <p>Non-governmental organisations (Caritas, Fondation Maison de la Porte Ouverte, Fondation Elisabeth) or auxiliaries to the public authorities (Luxembourgish Red Cross), which accommodate and take care of UAMs who are applicants of international protection, are normally appointed as guardians.<sup>156</sup></p> <p>They are usually appointed as guardian of UAMs upon request to the Family Court.</p> <ul style="list-style-type: none"> <li>- Caritas usually accommodates UAMs aged 16 years and a half or older.</li> <li>- The Luxembourgish Red Cross guarantees the housing of UAMs under the age of 16 and a half.</li> <li>- Fondation Maison de la Porte Ouverte, Fondation Elisabeth (which runs the reception structure MINA- Troisvierges), Villa Nia Domo (Luxembourg Red Cross) and Maison St Hubert (Caritas) usually accommodate the most vulnerable UAMs in their specifically dedicated accommodation for minors.</li> </ul> <p>And for girls under 16, an accommodation can be found in the <i>Maisons de l'Enfant de l'Etat (actuels Instituts Etatiques d'Aide à l'Enfance et à la Jeunesse)</i> or other care-taking institutions. The concerned organisation explains the UAM the role of the guardian and the application is made by mail.<sup>157</sup></p>	<input type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

<sup>152</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 29 May 2020.

<sup>153</sup> Article 92 (2) and 103 of the amended law of 29 August 2008.

<sup>154</sup> Article 389-3 of the Civil Code.

<sup>155</sup> Article 20 of the Law of 18 December 2015 on the reception of applicants for international protection and temporary protection

<sup>156</sup> Article 20 of the Asylum Law.

<sup>157</sup> Information provided by Caritas on 1 April 2020 and by Fondation de la Maison Porte Ouverte on 7 May 2020.

3.1.5. Do you, as part of the selection procedure, also verify the criminal record of potential guardians?

YES ☒

NO ☐

3.1.6. Does your Member State have a complaint system in place for minors in migration related to guardianship?

YES ☐

NO ☒

Explanation	Applicable groups of minors*
As the guardian is appointed by the Family Court, the guardianship is regulated by the Civil Code. The guardian and the ad-hoc administrator <sup>158</sup> are under the supervision of the Family Court. <sup>159</sup> The judge can summon the ad-hoc administrator and/or the guardian, ask them for clarifications, send them observations and pronounce injunctions against them. It can also impose fines (from € 3 to 50) if the guardian does not respect the injunction. <sup>160</sup> Finally, the guardian is obliged to render a guardianship report of its work three months after the end of the guardianship. <sup>161</sup> The approbation of the guardianship report does not exonerate of any liability action that the minor has against the tutor. <sup>162</sup>	<input type="checkbox"/> accompanied minors/families with children <input type="checkbox"/> separated children <input type="checkbox"/> UAM recorded within the asylum system <input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

## 3.2. PROCEDURAL SAFEGUARDS IN THE ASYLUM PROCEDURE

3.2.1. How does your Member State ensure the provision of information to minors on their rights and on procedures?

The Asylum Law states that from the moment that the UAM files an application for international protection (by themselves or by their ad-hoc administrator),<sup>163</sup> this application is treated by an agent who has the necessary knowledge of the special needs of minors.<sup>164</sup> The applicant is informed in a language which they understand or which it is reasonable to assume that they understand, on the procedure to be followed and their rights and obligations during the procedure, as well as, consequences of failure to comply with obligations or refusal to cooperate with the Minister. They are also informed of the timetable, the means at their disposal to fulfil the obligation to present all the evidence to their claim, as well as, the consequences of an explicit or implicit withdrawal of the request. This information is communicated to the applicant in time to enable them to exercise the rights and fulfil the obligations arising of their applicant status.<sup>165</sup> The applicant receives the services of a free interpreter to present their arguments during the examination procedure and during the appeal procedures.<sup>166</sup> The ad-hoc administrator has the possibility of informing the UAM about the meaning and possible consequences of the personal interview and, if applicable, how to prepare for it. The ad-hoc administrator or the lawyer attends this interview and is authorised to ask questions or make comments in the framework set by the interviewer. The UAM must be personally present during the interview even if the ad-hoc administrator and/or the lawyer is present.<sup>167</sup>

<sup>158</sup> Article 389-7 of the Civil Code states that the general rules that apply to the guardian are also applicable to the ad-hoc administrator.

<sup>159</sup> Article 395 of the Civil Code.

<sup>160</sup> Article 395 paragraph 3 of the Civil Code.

<sup>161</sup> Article 471 of the Civil Code.

<sup>162</sup> Article 473 paragraph 1 of the Civil Code.

<sup>163</sup> Article 5 (4) of the Asylum Law.

<sup>164</sup> Article 3 (2) paragraph 3 of the Asylum Law.

<sup>165</sup> Article 11 (1) of the Asylum Law.

<sup>166</sup> Article 11 (2) of the Asylum Law.

<sup>167</sup> Article 20 (2) of the Asylum Law.

3.2.2. Has your Member State implemented procedures or measures to provide information in a child-friendly manner?

YES ☒

NO ☐

As mentioned above, the agent who treats the application of an UAM has the necessary knowledge of the special needs of minors and in consequence will try to provide all this information to the minor. In 2019, Luxembourg started to provide a leaflet to the UAMs, which gives specific information on their situation in a child friendly language.<sup>168</sup>

3.2.3. Does your Member State prioritise and/or fast-track the applications for international protection of unaccompanied minors?

YES ☒<sup>169</sup>

NO ☐

The applications of UAMs are prioritized and in principle they are not fast tracked except in the following cases: a) if they are from a country that meets the criteria to be considered a safe country of origin; b) if they have made a subsequent application for international protection which is not inadmissible; c) if there are serious reasons to consider that they constitute a danger to national security or order public, or have been the subject of a forced removal order on serious grounds of national security or order public.<sup>170</sup>

3.2.4. Are the views of the minor taken into account throughout the procedure in your Member State? (i.e. is the minor interviewed?) If yes, please briefly describe how this is done and if the interview is carried out in a child-friendly way by trained staff.

YES ☒

NO ☐

Once the ad-hoc administrator is appointed, they can inform the UAM of the rationale and the consequences of the personal interview in which the UAM must explain the reasons for their request.<sup>171</sup> Thus, if necessary, the ad-hoc administrator must ensure that the latter is prepared for this interview.<sup>172</sup> The UAM must be personally present during the interview even if the ad-hoc administrator and/or the lawyer is present.<sup>173</sup>

The ad-hoc administrator has the possibility of informing the UAM about the meaning and possible consequences of the personal interview and, if applicable, how to prepare for it. The ad-hoc administrator or the lawyer attends this interview and is authorised to ask questions or make comments in the framework set by the interviewer. The interviewer who is in charge of the file and who is trained to determine the special needs of the minor will arrange the interview in a child-friendly way. They have to conduct the interview in an adequate manner: They must adapt the questions to the presumed age of the applicant and ask them in a simple and understandable manner. Also, the agent can allow the lawyer or ad-hoc administrator to ask questions or make observations within the framework that the agent has pre-established.<sup>174</sup>

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<sup>168</sup> Information provided by the Directorate of Immigration on 23 December 2019.

<sup>169</sup> Article 26 (4) of the Asylum Law.

<sup>170</sup> Article 11 (2) of the Asylum Law.

<sup>171</sup> Article 20 (2) of the Asylum Law.

<sup>172</sup> See Sommarribas, op. cit., p. 10.

<sup>173</sup> Article 20 (2) of the Asylum Law.

<sup>174</sup> Article 20 (2) of the Asylum Law.



### 3.3. AGE ASSESSMENT

#### 3.3.1. What are the age assessment methods and procedures used in your Member State?

The Asylum Law<sup>175</sup> explicitly provides that the Minister can order medical examinations to determine the age of the UAM when they have doubts on this subject. In this context, the National Health Laboratory (LNS) has developed such medical expertise. This examination is not carried out on all UAMs, but only on minors who are not in possession of an identity document and for whom a serious doubt about the indicated age exists. The examination is based on a two-step exam, first an x-ray of the wrist and hand. If subsequently minority can be assumed, a medical report is drawn up without carrying out additional examinations. Thus, doubt benefits the minor. On the other hand, if a serious suspicion on the majority of the person persists, a full physical examination will be carried out. This examination is completed by an x-ray of the collarbone and a dental panoramic. The photographs taken during this examination are strictly confidential and are only used for the report by the expert doctor. They therefore do not appear in the LNS expert report or in the administrative file of the applicant for international protection kept at the Directorate of Immigration.<sup>176</sup>

At the beginning of 2019, the Minister of Foreign and European Affairs announced that the authorities will stop with the inspection of genitals as a valid age assessment practice.<sup>177</sup> At the moment, the age assessment is limited to examining the wrist, scapula and dentition.

#### 3.3.2. How does your Member State ensure that the least invasive method for age assessment is used (e.g. use of EASO guidelines for age assessment, etc.)?

See answer to question 3.3.1. above.

### 3.4. FAMILY REUNIFICATION<sup>178</sup>

#### 3.4.1. Is family reunification possible for unaccompanied minors and separated children?

YES ☒  
NO ☐

Explanation	Applicable groups of minors*
The Immigration Law <sup>179</sup> establishes that the Minister in charge of Immigration authorises the entry and stay, for the purposes of family reunification, of first-degree relatives in the direct ascending line of an UAM enjoying international protection. <sup>180</sup> In this case the conditions of sufficient resources, accommodation and dependency (in principle regular third-country national minors do not have the right to family reunification as they do not have the sufficient resources, and accommodation and health insurance to sponsor a family member <sup>181</sup> ) are not applied. <sup>182</sup>	<input type="checkbox"/> separated children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures

<sup>175</sup> Article 20 (4) of the Asylum Law.

<sup>176</sup> Le ministère des Affaires étrangères et européennes en réaction au rapport de la CCDH sur les conditions d'accueil des demandeurs et bénéficiaires de protection internationale au Luxembourg, Press release, 28 November 2018. See [https://gouvernement.lu/fr/actualites/toutes\\_actualites/communiqués/2018/11-novembre/28-reaction-ccdhd.html](https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2018/11-novembre/28-reaction-ccdhd.html)

<sup>177</sup> Information provided by the CCDH on 27 November 2019 and by the Ombuds-Committee for Children's Rights on 29 November 2019.

<sup>178</sup> This section refers both to family reunification under the Dublin Regulation (No 604/2013) and the Family Reunification Directive 92003/86/EC).

<sup>179</sup> Article 70 (4) of the amended Law of 29 August 2008.

<sup>180</sup> Article 63 (5) of the Asylum Law.

<sup>181</sup> Article 69 (1) 1) to 3) of the Immigration Law.

<sup>182</sup> Article 70 (5) of the amended Law of 29 August 2008.

<p>Furthermore, the Immigration Law<sup>183</sup> foresees that the Minister may allow family reunification of the legal guardian or any other member of the family of an UAM enjoying international protection, if the minor has no relatives in a direct ascending line or no such relatives can be traced.</p> <p>A minor who benefit from a residence permit for private reasons will not be entitled to family reunification, as the minor cannot be a sponsor because they do not fulfil the criteria of sufficient resources, adequate accommodation and health insurance to sponsor a family member in accordance with the Immigration Law.<sup>184</sup></p>	
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3.4.1.1. If yes, what efforts are being made to speed-up the family reunification procedures, prioritising unaccompanied and separated children?

Explanation	Applicable groups of minors*
<p>The Asylum Law establishes that if an UAM is granted international protection<sup>185</sup> and the tracing of their family members has not already started, their tracing shall start as soon as possible after the granting of international protection, whilst also protecting the minor's best interests. If the tracing has already started, it must continue where appropriate. In cases where there may be a threat to the life or integrity of the minor or their close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning these persons is undertaken on a confidential basis. The Luxembourgish Red Cross is in charge of the family tracing. In order to begin the research, both the guardian, as well as, the UAM have to give their written consent and sign the necessary paperwork before the Red Cross can begin its investigation in the country of origin.<sup>186</sup> Furthermore, the guardian will most likely assist the UAM, together with the help of a translator, to answer the questionnaire concerning the information of the family members in the country of origin.<sup>187</sup></p>	<p><input type="checkbox"/> separated children</p> <p><input checked="" type="checkbox"/> UAM recorded within the asylum system</p> <p><input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</p>

3.4.1.2. If yes, at what stage are needs and possibilities for reunification with family members assessed? Which authority carries out this assessment?

Explanation	Applicable groups of minors*
<p>[UAM recorded within the asylum system]:</p> <p>Family reunification is only possible for the UAM who has been granted refugee or subsidiary protection status. In principle, the responsible authority for carrying out the assessment of the family reunification is the Directorate of Immigration.</p>	<p><input type="checkbox"/> separated children</p> <p><input checked="" type="checkbox"/> UAM recorded within the asylum system</p> <p><input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</p>

<sup>183</sup> Article 70 (5) c) of the amended Law of 29 August 2008.

<sup>184</sup> Article 69 (1) 1) to 3) of the Immigration Law.

<sup>185</sup> Article 63 (5) of the Asylum Law.

<sup>186</sup> Interview with the Luxembourgish Red Cross on 15 December 2017.

<sup>187</sup> Interview with the Luxembourgish Red Cross on 15 December 2017.

<p>[UAM not applying for asylum but recorded within other migration procedures]:</p> <p>If an UAM is detected as a victim of human trafficking, they are granted a residence permit for six months,<sup>188</sup> which can be renewed for six additional months.<sup>189</sup> At the end of this renewal, the Minister in charge of Immigration can grant a residence permit for private reasons.<sup>190</sup> This is possible even after the UAM becomes of age. Family reunification is only possible if the individual fulfils the general conditions as a sponsor established in the Immigration Law.<sup>191</sup></p>	
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3.4.1.3. If yes, is family tracing of the unaccompanied minors initiated, and if so at what stage of the procedure and by whom?

Explanation	Applicable groups of minors*
In order to ensure the best interest of the UAM, their family members are sought as soon as possible, through the 'Restoring Family Links' ( <i>Service de Rétablissement des Liens Familiaux</i> ), which is a service provided by the Luxembourgish Red Cross. <sup>192</sup> In cases where the life or physical integrity of a minor or their relatives is threatened, in particular if they have remained in the country of origin, it will be ensured that the collection, processing and dissemination information about these persons is kept confidential. <sup>193</sup>	<input type="checkbox"/> separated children <input type="checkbox"/> UAM recorded within the asylum system <input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures

### 3.5. DUBLIN PROCEDURE

3.5.1. How Dublin family reunification procedures are carried out in your country (timing, types of evidence of family links collected, etc.)?

Luxembourg experiences very few Dublin cases involving an UAM in general. If such a situation occurs, it is dealt with priority by the Directorate of Immigration.

The procedure starts in the same way as is done for any UAM and an ad hoc administrator is appointed as soon as possible in order to formally lodge the application. In respect of the best interest of the minor, an interview template is used which includes questions regarding family members, siblings and/or relatives present in any of the Member States. Any relevant information relating to the presence of a family member, sibling or relative in another MS is used to trace those family links. In this process, different actors can play a part: the ad hoc administrator, national administrations (e.g. passport/visa office) or cooperating authorities in the MS. If a legal presence of family members in another MS is found, the Directorate of Immigration tries to obtain more information about the person/people in question, ideally in the form of documents recognising a family link. If a family reunification is considered to be in the best interest of the minor, a take charge request according to Article 8 of the Dublin III regulation is sent to the Member State in question in order to confirm its responsibility and prepare the reunification appropriately.<sup>194</sup>

<sup>188</sup> Article 95 (1) of the amended law of 29 August 2008.

<sup>189</sup> Article 95 (2) of the amended law of 29 August 2008.

<sup>190</sup> Article 98 in relation with Article 78 (3) of the amended law of 29 August 2008.

<sup>191</sup> Article 69 of the amended law of 29 August 2008.

<sup>192</sup> Service Migrants et Réfugiés, Croix-Rouge luxembourgeoise, Rétablissement des Liens Familiaux (RLF) et regroupement familial, presentation powerpoint, Luxembourg, 27 September 2016, slide 7.

<sup>193</sup> Article 63(5) of the amended law of 18 December 2015 on the reception of applicants for international protection and temporary protection.

<sup>194</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 4 June 2020.

#### 4. Detention for the purpose of return of unaccompanied minors and families with children in the European Union

##### 4.1. UNACCOMPANIED MINORS

4.1.1. Does your Member State place unaccompanied minors in detention for the purpose of return?

YES ☒

NO ☐

Explanation	Applicable groups of minors*
The Immigration law <sup>195</sup> foresees that UAMs may be detained in an appropriate place adapted to the needs of their age. The best interests of the child are considered in order to be placed in detention. In practice, it is very rare that UAMs are held in detention. <sup>196</sup>	<input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures

4.1.2. Are there alternatives to the administrative detention of unaccompanied minors available in your Member State?

YES ☒

NO ☐

Explanation	Applicable groups of minors*
The UAM will be lodged in a reception structure adapted to their age and needs. <sup>197</sup>	<input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures

##### 4.2. FAMILIES

4.2.1. Does your Member State place families with children in detention for the purpose of return?

YES ☒

NO ☐

The detention is allowed for a maximum of seven days<sup>198</sup> since the entering into force of this amendment introduced by the Law of 8 March 2017. However, this maximum period has not been applied in practice.<sup>199</sup>

On average, the concerned individuals do not stay more than 48 hours in the Detention Centre.<sup>200</sup>

4.2.2. Are alternatives to the administrative detention of families with children for the purpose of return available in your Member State?

4.2.2.1. If yes, which are those alternatives and under which conditions they are granted?

It may happen that a family is detained for practical reasons or that the Grand Ducal police picks up

<sup>195</sup> Article 120 (1) paragraph 2 of the amended law of 29 August 2008.

<sup>196</sup> Information provided by the Detention Centre on 10 June 2020. LU EMN NCP, The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards, Luxembourg, 2017, p. 24.

<sup>197</sup> Ibidem.

<sup>198</sup> Article 6 (3) of the amended law of 28 May 2009 on the creation of the Detention Centre.

<sup>199</sup> Interview with the Directorate of the Detention Centre of the Ministry of Foreign and European Affairs on 19 July 2017 and the Directorate of Immigration of the Ministry of Foreign and European Affairs on 7 August 2017.

<sup>200</sup> Information provided by the Detention Centre on 10 June 2020.

the families from the ONA reception structures where they are staying.<sup>201</sup>

According to the 2018-2023 Coalition Agreement<sup>202</sup> of the current Government, the current detention system and semi-open structures as alternatives to detention should be supplemented by structures better suited to the needs and current situation of different groups of people concerned. It is planned to create a specific structure for the detention of women, families and vulnerable persons. Once this specific structure has been created, the legislation on detention will be adapted to ensure that children are no longer placed in the detention centre. The measure of detention is always a measure of last resort, if there are no applicable alternatives. In addition, efforts will be made to propose alternatives to detention. Thus, it is planned to replace the Emergency Accommodation Structure in Kirchberg (SHUK), which is of temporary nature, with a new permanent semi-open structure, to serve as an alternative to the detention centre, which should take into account the needs of different groups of people.

#### 4.3. VOLUNTARY AND FORCED RETURNS

4.3.1. Does your Member State carry out voluntary returns of unaccompanied minors?

YES ☒

NO ☐

Explanation	Applicable groups of minors*
In the context of return, an interdisciplinary commission has to evaluate if the return is in the best interest of the UAM. <sup>203</sup> The UAM may of course always opt for voluntary return.	<input type="checkbox"/> UAM recorded within the asylum system <input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures

4.3.1.1. If yes, how does your Member State ensure best interests of the child during the voluntary return procedure?

In the context of return, it establishes an interdisciplinary commission to evaluate the best interest of UAMs in return decisions.<sup>204</sup>

4.3.2. Does your Member State carry out forced returns of unaccompanied minors?

YES ☒

NO ☐

4.3.2.1. If yes, how does your Member State ensure the best interest of the child?

It happens rarely.<sup>205</sup> See answer to question 4.3.1. There exists an agreement with IOM.

4.3.3. Has your Member States used EU funds in the development of alternatives to detention for minors?

YES ☐

NO ☒

## 5. Ensuring durable solutions for minors

### 5.1. INTEGRATION

5.1.1. Is there a specific policy or strategy on the integration of minors in wider society (e.g.

<sup>201</sup> Information provided by the Detention Centre on 10 June 2020.

<sup>202</sup> <https://gouvernement.lu/fr/publications/accord-coalition/2018-2023.html>, p.233.

<sup>203</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 14 April 2020. See also: LU EMN NCP, Annual Report on Migration and Asylum, Luxembourg, 2018, p. 49.

<sup>204</sup> Article 103 of the amended law of 29 August 2008 and LU EMN NCP, Annual Report on Migration and Asylum, Luxembourg, 2019, p. 6.

<sup>205</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 14 April 2020.

through sport, leisure or other cultural activities, etc.)?

YES ☒

NO ☐

Explanation	Applicable groups of minors*
<p>There exists a national youth strategy based on the Youth Pact 2017-2020<sup>206</sup> which is implemented by the inter-ministerial committee of youth and is also monitored on an annual basis by this committee. The Youth Pact 2017-2020 deals with the transition from youth into adulthood. Just like its predecessor, the 2012 Youth Pact, the 2017-2020 Youth Pact draws on the results of the national report on the situation of young people.</p> <p>The Youth Pact 2017-2020 defines political objectives with regard to three domains: (1) school-to-work transitions, (2) housing transitions and (3) participation.</p> <p>Whereas the 2012 Youth Pact had a quite broad approach and covered many different topics and policy areas, its successor, is focused on youth transitions. It is guided by a more explicit objective of supporting young people to a successful transition from youth to adulthood.</p> <p>However, the Action Plan is aimed at young people in general and no specific measure particularly targets young migrants and even less UAMs. However, it should be noted that with regard to the domain "school-to-work transitions", the Plan refers in particular to young people with low resources who are less likely to obtain a diploma, which also includes young migrants. In addition, under the participation domain, the Action Plan notes that young non-Luxembourgers are less present in civic action.</p> <p>Caritas implements specific actions for unaccompanied minors and other minors: organization of holidays, registration in sports clubs, support courses, coaching with volunteers, etc.<sup>207</sup></p>	<p><input type="checkbox"/> accompanied minors/families with children</p> <p><input type="checkbox"/> separated children</p> <p><input type="checkbox"/> UAM recorded within the asylum system</p> <p><input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures</p> <p><input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system</p>

## 5.2. RESETTLEMENT

5.2.1. Does your Member State prioritise (e.g. through quotas, fast-track procedures) the resettlement of unaccompanied minors or families with minors to your Member State?  
How does this work in practice?

YES ☒

NO ☐

<sup>206</sup> <http://www.men.public.lu/catalogue-publications/politique-jeunesse/statistiques-analyses/170712-jugendpakt/2017-2020.pdf>

<sup>207</sup> Information provided by Caritas on 1 April 2020.

Explanation	Applicable groups of minors*
For each resettlement mission Luxembourg determines the number and the general profile of the persons to be resettled, including their country of origin and the country of resettlement. Luxembourg thereby follows the resettlement submissions categories defined by UNHCR. <sup>208</sup> The resettlement of family units has been a constant throughout the resettlements implemented by Luxembourg, prioritising smaller households with only 2-3 children, but the profile can change from one mission to another depending on the context and profiles of the refugee population in the resettlement country. <sup>209</sup>	<input type="checkbox"/> accompanied minors/families with children <input type="checkbox"/> UAM recorded within the asylum system <input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures

5.2.2. Briefly describe the reception procedure on arrival in the territory in your Member State for resettlement.

Explanation	Applicable groups of minors*
<p>The overall objective of the Luxembourgish authorities is to offer protection to refugees in urgent need coming from regions where there is no possibility of a durable solution.<sup>210</sup> Furthermore, resettlement is not only considered as a protection instrument, but also as a durable solution and constitutes a practical example of the international burden and responsibility sharing between EU Member States and with third countries most affected by the refugee inflows.<sup>211</sup></p> <p>As there are different frameworks in which resettlement can take place, the process of setting them up as well as the structure may slightly vary from one to another. However, these are the normal steps to follow in a resettlement procedure:</p> <p>(a) The final decision to resettle always rests with the Minister in charge of Asylum and Immigration with the endorsement of the Government Council. The decision may be taken following a unilateral decision, a pledge by the Minister in the framework of a high level meeting/conference, as well as, upon request of the European Commission, the UNHCR or any other third party including NGOs. In principle, the Minister also determines the number and the general profile of the persons to be resettled, including their country of origin and the country of resettlement.<sup>212</sup></p> <p>(b) The Directorate of Immigration coordinates the implementation of the resettlement mission until the persons are effectively resettled in Luxembourg. After the decision to resettle a given number of persons from a given resettlement</p>	<input checked="" type="checkbox"/> accompanied minors/families with children <input checked="" type="checkbox"/> UAM recorded within the asylum system <input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures

<sup>208</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 4 June 2020.

<sup>209</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 4 June 2020.

<sup>210</sup> *Ibidem*, p.202.

<sup>211</sup> Gouvernement du Grand Duché de Luxembourg, Visite du Centre Hélier a Weilerbach, Press conference of 10 June 2015, Dossier de presse, p.6.

<sup>212</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs, Interview conducted on 18 May 2016.

country has been taken, UNHCR is informed in order to initiate the pre-selection of candidates. On the basis of the criteria/priorities set by Luxembourg, UNHCR proceeds with the “match making”<sup>213</sup> procedure and provides a certain number of candidates eligible for being resettled by the Luxembourgish authorities. After the resettlement missions, which consists of resettlement interviews with the pre-selected candidates, the Directorate of Immigration informs the UNHCR of their selection of candidates in order for them to organise face-to-face interviews in their host country. They furthermore the International Organisation of Migration (IOM) is contacted so that they may organise the logistical aspect of the selection mission *in situ* (i.e. pre-departure medical screenings, practical arrangements in obtaining travel documents, bookings and assistance upon departure, in transit and upon arrival at the various airports).<sup>214</sup>

(c) The resettlement is organised in collaboration with national (and possibly international) authorities and possible stakeholders are mobilised in the field of education, health, housing and employment.<sup>215</sup> The selection mission in the country of resettlement is coordinated in close cooperation with the United Nations High Commissioner for Refugees (UNHCR) and IOM.<sup>216</sup> IOM is responsible for contacting the pre-selected candidates and they take over the logistics (booking of flights, provision of premises for the interviews, etc.). The Luxembourgish delegation that takes part in the resettlement missions is mainly composed of representatives from the Ministry of Foreign and European Affairs and stays in constant contact with their superiors from the Ministry.<sup>217</sup> In parallel, security verifications on the candidates’ dossiers are carried out by the Judicial Police as well as the National Secret Services (SREL).<sup>218</sup> In past resettlement operations, national NGOs have also been consulted for providing support already at the stage of pre-departure (identification of candidates) or took part in the field mission.<sup>219</sup> However, for the more recent resettlements, NGOs have only been involved in the post-

<sup>213</sup> While in some instances it is possible to aim at accommodating additional criteria (e.g. in terms of maximum family size), criteria as such are defined already. UNHCR’s Global Resettlement Submission Criteria serve as a base for UNHCR’s identification and submission of cases. Information provided by UNHCR on 27 June 2016.

<sup>214</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs, Interview conducted on 18 May 2016 and LU EMN NCP answer to EE Ad-Hoc Query on risk to national security in resettlement context, launched on 15 December 2014.

<sup>215</sup> OLAI, Fonds « Asile, Migration et Intégration » 2014-2020, Programme national du Luxembourg, 11 December 2015, p.16

<sup>216</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 4 June 2020.

<sup>217</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs, Interview conducted on 18 May 2016.

<sup>218</sup> LU EMN NCP answer to EE Ad-Hoc Query on risk to national security in resettlement context, launched on 15 December 2014.

<sup>219</sup> This was the case in 1997 when a social assistant from Caritas Luxembourg travelled to Turkey in the frame of a resettlement of 28 Iraqi refugees from Turkey, at the initiative of Caritas. Also, for the implementation of a resettlement from a refugee camp in Jordan in 2009, Caritas Luxembourg was involved for the establishment of family ties between Luxembourgish residents and candidates for resettlement. Information provided by Caritas Luxembourg, Interview conducted on 11 May 2016.



arrival and integration phase. In principle, a representative from ONA is part of the delegation in order to provide the pre-selected candidates with information sessions and/or 'cultural orientation workshops'. If no representative from ONA accompanies the selection delegation, information about Luxembourg is provided through brochures, as well as, during the face-to-face interviews with representatives of the Directorate of Immigration.<sup>220</sup>

## 6. Undocumented/irregularly staying migrants

6.1.1. Does your Member State provide access to education, healthcare, housing or psychological support to irregularly staying children with families?

YES ☒

NO ☐

School attendance is compulsory for all children that live in Luxembourg, whether they are nationals or foreigners, and regardless of the status of their parents. Every child living in Luxembourg and having reached the age of four before 1 September must attend school. This obligation extends over twelve consecutive years, starting from 11 September of that year.

If the children and their families are granted a right to stay/residence, or a postponement of removal there will be a possibility to have access to assistance and social supports. The access to the different systems will depend on the migration status and the category of residence permit that the child benefits from.

If the parent of the child or the minor is working, they will immediately be insured and will benefit from health coverage and access to other social security benefits, independent of their migratory status.

If the parent of the child or the minor is not working, a contribution for the voluntary health insurance has to be paid. There will be a waiting period of three months, during which the individual cannot access the health care benefits.

In principle, in order to apply for voluntary health insurance the applicant has to have an address of reference: or, with irregular migrants this constitutes a problem.

## 7. Transition into adulthood

7.1.1. In Member States where migrant children are entitled to stay for the fact of being unaccompanied minors, what happens when they turn 18 (both in legal and in practical terms)?

Explanation	Applicable groups of minors*
In Luxembourg, UAMs are treated like adults when they turn 18 years of age. <sup>221</sup> If the individual has a legal resident status, in principle there are no implications on the UAM's transition from the age of minority to 18 years of age in regard to their access to health insurance, educational pathways, as long as they fulfil the respective access conditions.	<input checked="" type="checkbox"/> UAM recorded within the asylum system <input checked="" type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures

<sup>220</sup> Information provided by OLAI, Ministry of Family, Integration and the Greater Region, Interview conducted on 30 May 2016 and a former civil servant responsible for resettlement, Interview conducted on 17 May 2016 as well as the Directorate of Immigration, Ministry of Foreign and European Affairs, Interview conducted on 18 May 2016.

<sup>221</sup> Article 488 of the Civil Code.

At the moment, there are no transitional measures foreseen in national legislation. However, the social workers of the reception structures and/or the guardian are usually aware of the UAMs' birthday and can provide information on the upcoming changes before and during the transition to the age of majority.<sup>222</sup>

In principle, UAMs are oriented towards the international protection procedure. This is, because in practice, there are no other authorisation of stay foreseen, neither by the Immigration Law nor by the Asylum Law, with the exceptions of victims of human trafficking<sup>223</sup> or the residence permit for private reasons based on humanitarian grounds of an exceptional gravity.<sup>224</sup> In the case of a postponement of removal, the UAM who has received a return order can remain in the territory.

Besides these exceptions, there is no provision in the Asylum Law or the Immigration Law to grant any other status if the minor receives a final negative decision.

In Luxembourg, when the authorities have determined that the supposed UAM is indeed a minor or if the doubt persists, the authorities will treat the case as an application of an UAM for the duration of the international protection procedure. In this case, the authorities will name as soon as possible an ad-hoc administrator to represent and assist them during the international protection procedure. In addition, a guardian will be appointed to assist them in daily life issues and transactions.

In case the UAM is still considered a minor when the final decision is notified, the UAM will continue benefiting of the guardian and the ad-hoc administrator even though the procedure for the examination of claims for international protection is finished. This is because the ad-hoc administrator is appointed by the Family Court in order to assist the minor during all the administrative and judicial proceedings. This even allows the ad-hoc administrator to apply for a residence permit for private reasons or to assist the UAM during the postponement of removal procedure.<sup>225</sup>

However, if the age was determined and the minor turns 18 years old, if the international protection procedure is not finished, in principle the appointment of the ad-hoc administrator as well as the guardian<sup>226</sup> will be revoked and the procedure will continue treating the applicant as an adult.<sup>227</sup> In

<sup>222</sup> Interview with Caritas on 13 December 2017 and 5 January 2018, Interview with the Luxembourgish Red Cross on 15 December 2017. Interview with Fondation Maison de la Porte Ouverte on 17 January 2018.

<sup>223</sup> Article 92 (2) and 95 (1) of the amended law of 29 August 2008 and article 3 of the amended law of 8 May 2009 on assistance, protection and security of victims of human trafficking

<sup>224</sup> Article 78 (3) of the amended law of 29 August 2008.

<sup>225</sup> Article 103 of the amended law of 29 August 2008.

<sup>226</sup> Article 488 of the Civil Code, amended by law of 11 August 1982.

<sup>227</sup> Article 1 paragraph 3 of the amended law of 10 August 1992 on Youth Protection.

case the application gets rejected, the UAM will be issued a return decision.<sup>228</sup>

There is no provision in the law that allows an automatic review of the international protection status because the minor becomes of age. The Asylum Law establishes that an examination in order to withdraw the international protection that was granted to an individual can be started by the Minister in charge of Immigration and Asylum when new facts are brought to their attention which indicate that there is a need to re-examine the validity of the international protection.<sup>229</sup> If the UAM was granted the status as a minor (refugee status or subsidiary protection) and there are no new elements to target a review of the international protection, the individual will continue to benefit from their status.

If in the other procedures - residence permit for private reasons and victim of human trafficking - the UAM receives a negative decision once they turn 18 years old, they will be treated as an adult. If the individual was a minor at the time of the issuance of the negative decision, they will continue to benefit from the assistance of a guardian in the first case<sup>230</sup> and in the second case of an ad-hoc administrator<sup>231</sup> and a guardian.<sup>232</sup>

For the UAM who is considered a presumed victim of human trafficking, the appointment of a guardian for the UAM<sup>233</sup> is foreseen for all the duration of their stay and until they are transferred under the responsibility of an authority of their country of origin which will be acting in the best interest of the child. The Immigration Law foresees the appointment of an ad-hoc administrator to represent the UAM during the administrative procedure and if needed in the criminal procedure.<sup>234</sup>

The measures of assistance and protection of the UAM are guaranteed until they become of age<sup>235</sup> and if needed, these measures will remain until three months after there is a final decision in regards the criminal and/or the civil case.<sup>236</sup>

If a UAM has obtained another legal status than international protection, the law does not foresee any revision of the status per se on the only condition that the minor becomes of age. This

<sup>228</sup> Article 111 (1) and (2) of the amended law of 29 August 2008 and 34 (2) of the Asylum Law.

<sup>229</sup> Article 33 (2) of the Asylum Law.

<sup>230</sup> Article 389-3 of the Civil Code.

<sup>231</sup> Article 92 (2) of the amended law of 29 August 2008.

<sup>232</sup> Article 3 of the amended law of 8 May 2009.

<sup>233</sup> Article 3 of the amended law of 8 May 2009.

<sup>234</sup> Article 92 (2) of the amended law of 29 August 2008.

<sup>235</sup> Article 1 (1) al. 3 of the Grand ducal regulation of 11 September 2014 on: 1. Implementation of article 2, paragraphs (1) point a) and (2) and (4) of the amended law of 8 May 2009 on assistance, protection and security of victims of human trafficking; 2. Amendment of the amended Grand ducal regulation of 19 March 1999 concerning the governmental accreditation granted to managers of girls, women and women with children.

<sup>236</sup> Article 1 (1) al. 3 in accordance with al.2 of the same article of the Grand ducal regulation of 11 September 2014.

situation applies to the beneficiary of a residence permit for private reasons and to a presumed victim of human trafficking.

It is only when information comes to the attention of the authorities that the applicant has misled the authorities or provided them with false information or documentation that the residence permit can be withdrawn, independently if it is a minor or an adult.

In addition, the authorities will evaluate if the conditions under which the authorisation of stay was granted are still being fulfilled by the applicant during the renewal of the residence permit.<sup>237</sup>

In practical terms, all unaccompanied minors, whether they are in a regular stay or not, remain accommodated and monitored. When they reach the age of 18, as long as they have not been returned, they are still be looked after. Those in a regular situation are housed in reserved private accommodation and they continue to be supported through the ONE system until the end of their apprenticeship/studies which allows them to then find a job and a real autonomy<sup>238</sup> (see also answer to Q2.1.9 on semi-independent living arrangements available for older unaccompanied minors).

7.1.2. Does your Member State provide any type of support (e.g. housing, education, employment, psychological support) for the transition to adulthood of unaccompanied minors legally residing in your Member State?

YES ☐

NO ☒

## 8. Cross-cutting actions

8.1.1. What kind of data do relevant authorities in your Member State collect specifically regarding children in migration?

Explanation	Applicable groups of minors*
Data about asylum applications made by unaccompanied minors and accompanied minors are collected, as well as data according to unaccompanied minors that are not asylum seekers. Data about missing unaccompanied minors, during their application or during the time-lapse between the registering and the logging of their application, are also collected. <sup>239</sup>	<input type="checkbox"/> accompanied minors/families with children <input type="checkbox"/> separated children <input type="checkbox"/> UAM recorded within the asylum system <input type="checkbox"/> UAM not applying for asylum but recorded within other migration procedures <input type="checkbox"/> UAM not applying for asylum who remain outside the asylum/migration/(child) protection-system

<sup>237</sup> Article 101 (1) 1) of the amended law of 29 August 2008.

<sup>238</sup> Information provided by Caritas on 1 April 2020.

<sup>239</sup> Information provided by the Directorate of Immigration, Ministry of Foreign and European Affairs on 4 June 2020.