

# THEMATIC ALTERNATIVE REPORT 2020 UNACCOMPAGNIED FOREIGN MINORS

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Report submitted to the United Nations  
Committee on the Rights of the Child in  
order to the examination of France's final  
report.

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English version



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*Through this alternative report, France terre d'asile wishes to insist on the primacy of the International Convention on the Rights of the Child (CRC), that France ratified in 1990. The recommendations of the Committee on the Rights of the Child in 2016, following the audition of France at the United Nations, reminded that, despite some of France's efforts to uphold the rights of the Child, there remained several preoccupying issues. This report will present these issues and offer our recommendations for each one.*

*Article 3 of the International Convention on the Rights of the Child: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".*

## Special measures for the protection of children: unaccompanied foreign minors

France terre d'asile was created in 1971 to promote and defend the right to asylum. In order to assist all migrants, the non-profit has dedicated part of its missions to the reception and assistance of unaccompanied foreign minors since 1990.

An unaccompanied foreign minor is a person under the age of 18 who is not a French national and who finds themselves separated from their legal representatives on French soil. As children, they lack legal capacity, and without any legal guardian they find themselves "isolated" and thus in need of protection. There is no specific legal status for unaccompanied foreign minors. They are stuck between the legal framework for foreigners and, as vulnerable children, the French child protective services, which does not segregate based on nationality. All the implications for unaccompanied foreign minors stem from this dichotomy. However, being a child should prevail, which complies with France's obligations as a signatory state to the International Convention on the Rights of the Child (CRC) since the 26th of January 1990. The primary consideration of the best interest of the child, established in the article 3 of the Convention is one of the main emphases of France terre d'asile's Direction for the protection of unaccompanied foreign minors ("Direction pour la protection des mineurs isolés étrangers" or DPMIE).

The organisation's actions towards this public first began with the assistance to children asylum seekers with the creation of the reception and orientation centre for unaccompanied asylum seeking minors ("centre d'accueil et d'orientation des mineurs isolés demandeurs d'asile" or CAOMIDA) in 1990. Since then, France terre d'asile's work with unaccompanied foreign minors has progressively expanded and diversified in order to answer child protection public policies. Today, France terre d'asile's work goes from marauding to emergency accommodation, from age-assessment centres to long-term care to become self-sufficient and fully-integrated in French society.

France terre d'asile is one of the main organisations fulfilling child protective missions towards unaccompanied foreign minors in France.

The work is diverse and requires specific facilities to implement the rights laid out in the International Convention on the Rights of the Child: protection and emergency reception or long-term care, information and referral, education of the children, access to training courses, legal and administrative assistance, access to healthcare and psychological counselling, leisure activities, assistance with asylum seeking procedures.

Throughout its nineteen facilities in cinq French départements [annexe 1] and its transversal management at the head office, the expertise of France terre d'asile on unaccompanied foreign minors has considerably expanded.

Since 2015, the number of unaccompanied foreign minors seeking protection because of their age has kept increasing. Since the last comments of the Committee on the Rights of the Child for France, the number of unaccompanied foreign minors has almost doubled from 8 000 in 2016 to 16 760 in 2019. For the last five years, the capacity of child protective services in every French départements has not ceased to increase to include unaccompanied foreign minors. The legislative apparatus, “innovative” solutions set out to improve the reception and care of children in child protective services have followed the same curve. The participation of the State, called upon during its annual address to the French départements, has taken an ever-growing share in the policies of child services concerning unaccompanied foreign minors.

In 2020, there is no need to question whether unaccompanied foreign minors are a fully-fledged part of the legal framework of child services, but it is necessary to emphasise the “discriminatory” treatment highlighted by the multiplication of specific texts, differentiated treatments and initiatives dedicated to this specific public.

For each legislative proposal or new mechanism, implemented for child protective services, you can see that the access of unaccompanied foreign minors to the common law system is reduced due to their different nationality instead of the presumption of being under-age upheld in the International Convention on the Rights of the Child.

It is thus necessary for France terre d'asile, as an actor in the field and an activist organisation, to contribute to improving national practices by highlighting these shortcomings and putting forward its positions concerning the reception and care of unaccompanied foreign minors. As such, this alternative report will cover each step in the care of unaccompanied foreign minors from an analysis of the failures in the overall monitoring of the reception and care facilities for unaccompanied foreign minors (I). We will then present the issues that France terre d'asile wishes to bring forward concerning the reception of newly arrived minors (II), their care until self-sufficiency (III) and the access to international protection (IV) in order to conclude on the need to reach towards a common European approach in the care of this public (V).

The alternative report of France terre d'asile hopes to enlighten the Committee on the Rights of the Child by relying on its expertise and its experience in the field. It also takes into account the General Observation No.6 of the CRC relating to the treatment of non-accompanied children and children separated outside of their country of origin as well as the recommendations of the Committee on the Rights of the Child made to France.

## Table of contents

<b>Special measures for the protection of children: unaccompanied foreign minors</b>	<b>.3</b>
<b>I- The inequality of treatment in the care of unaccompanied foreign minors</b>	<b>.....7</b>
1. The declining funding of the price-per-day	.....7
2. Towards a volunteer-based parallel system of care for unaccompanied foreign minors	.....9
<b>II- The reception of newly-arrived migrants</b>	<b>.....10</b>
1. The prefecture: a new front door, or way out, of child protective services	10
2. Failure to comply with the unconditional reception of minors	.....11
3. A second age-assessment procedure: a practice that is becoming more common	.....12
4. The problem concerning the access to healthcare for newly-arrived foreign minors	.....13
<b>III- Support towards self-sufficiency for minors taken into care by child protective services</b>	<b>.....15</b>
1. Difficulties due to a lack of civil status	.....15
2. Towards a depletion of the young adult's contract ("contrat jeune majeur")	16
3. The difficulty in obtaining a residency permit when turning 18	.....18
<b>IV- The hurdles when seeking asylum as an unaccompanied foreign minor</b>	<b>.....19</b>
<b>V- Towards a joint European approach</b>	<b>.....21</b>
Appendix 1: Map of the structures that receive and accompany unaccompanied foreign minors at France terre d'asile	.....23

## **I- The inequality of treatment in the care of unaccompanied foreign minors**

In 2016, in its concluding Observations concerning the fifth periodic report of France<sup>1</sup>, the Committee on the Rights of the Child of the United Nations was preoccupied by the situation on unaccompanied foreign minors who did not benefit from sufficient protective measures. The declining funding for the overall care of unaccompanied foreign minors, preferring less trained professionals and more volunteers as well as the risks of criminal proceedings are all factors in the increase of inequality of treatment of unaccompanied foreign minors in the common law facilities of child protective services.

### **1. The declining funding of the price-per-day**

The fourteenth recommendation of the concluding Observations of the Committee on the Rights of the Child from February 2016 emphasised on the need to “increase the budget allocated to the social sectors, and to children in disadvantaged situations, such as [...] migrant children”<sup>2</sup>. Despite the State’s recent increase in its financial contribution to the first age-assessment phase with a “500 euros per person flat fee” as well as “90 euros per person et per day for the first 14 days”<sup>3</sup>, the cost allocated to the overall care of unaccompanied foreign minors varies depending on the French departement and is on the decline.

The Assembly of French départements, as well as organisation directors, estimate the average annual cost of a child taken into care by child protective services to be approximately 50 000 euros, which is equivalent to 140 euros a day per minor. In June 2017, a report handed in by two senators concerning the social care of unaccompanied foreign minors warned of the existing disparity between the price-per-day in a care institution (“maison d’enfants à caractère social” or MECS) can reach up to 200 euros per day per child whereas the calls for tender for facilities dedicated to unaccompanied foreign minors is more often than not closer to 50 and 70 euros<sup>4</sup>.

As an example, a bid for tender to create an accommodation and care centre for unaccompanied foreign minors in the Isère département set the price-per-day at 55 euros in March 2019<sup>5</sup>. Another bid in the Oise département from July 2019 was offering only 50 euros<sup>6</sup>.

## Recommendations

In accordance with the Article 2 of the CRC, access to child protective services must be guaranteed within the jurisdiction of the State Parties without discrimination of any kind. Article 27 provides that access to an adequate standard of living which depends namely on the financial means allocated to child welfare. In order to respect these rights, France terre d’asile recommends that the reception and care of unaccompanied foreign minors requires a national-level steering tool to increase and standardise the average annual cost of a child admitted to child protective services whether he be a foreign or French national.

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<sup>1</sup> Committee on the rights of the Child, *Concluding observations on the fifth periodic report of France*, February 2016. URL : [https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=16565](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=16565).

<sup>2</sup> *Ibid* (cf. 14(b), p.3).

<sup>3</sup> Executive order of 28 June 2018 relating to the State's lump-sum contribution in 2019 to the sheltering and assessment phase for persons declaring themselves to be unaccompanied foreign minors.

<sup>4</sup> Senate, Information report on behalf of the Committee on Social Affairs on social care for unaccompanied foreign minors (p.76 and 79).

<sup>5</sup> URL of the call of proposal in Isère (French department): [https://www.infomie.net/IMG/pdf/38-aap\\_mna\\_final.pdf](https://www.infomie.net/IMG/pdf/38-aap_mna_final.pdf).

<sup>6</sup> URL of the call of proposal in Oise (French department): [http://www.oise.fr/fileadmin/Oise.fr/Enfance\\_Famille/appel-projets-MNA/Avis\\_MNA.pdf](http://www.oise.fr/fileadmin/Oise.fr/Enfance_Famille/appel-projets-MNA/Avis_MNA.pdf).

## **2. Towards a volunteer-based parallel system of care for unaccompanied foreign minors**

More and more grassroots organisations or civic initiatives are helping child protective services and thus are fulfilling part of its mandate. These initiatives concern mostly to the creation of a sponsor system for the educational and administrative care provided by organisations of former beneficiaries of child protective services. Other organisations insure the reception and accommodation of minors during the age-assessment procedure.

These initiatives raise the question of the quality of the care provided by volunteers whose qualifications have not been confirmed by an employment contract as are those of the professionals working for child protective services. Today, no certification exists to assess the qualifications of a volunteer who works in field of child protection. Unaccompanied foreign minors make out a very specific group whose care requires sound knowledge especially concerning the legal and administrative procedures they go through. The lack of training of a volunteer can be problematic when informing a minor on their rights, namely those enshrined in the CRC.

### **Recommendations**

France terre d'asile urges the local authorities of French départements to limit, in their bids for tender, the outsourcing of their missions to volunteer organisations especially concerning the emergency accommodation and socio-educational care of minors. If the presence of volunteers within associative structures belong to an old operating model, it mustn't replace a professional framework dedicated to the protection of children. Secondly, France terre d'asile recommends that the work of volunteers be regulated through the issue of an accreditation by child protective services certifying their qualifications.

## **II- The reception of newly-arrived migrants**

The reception and care conditions of newly-arrived migrants varies from one French department to another. Some, for example, rely on a biometric national registry which questions the presumption of being under-age. Others do not offer systematic emergency accommodation for young persons during the age-assessment procedure or carry out a second age-assessment of those already recognised as minors from another French département. The health check, which is supposed to be performed within the first days of accommodation of a newly-arrived migrant is also not organised in certain French départements.

### **1. The prefecture: a new front door, or way out, of child protective services**

Since 2019, age-assessment procedures in France have been altered by an executive order authorising the creation of a biometric national registry of unaccompanied foreign minors (assistance to age-assessment or “appui à l'évaluation de la minorité” or AEM)<sup>7</sup>. This means more specifically that the president of a French département can ask the prefecture, a decentralised service of the ministry of the interior, to assist them in the age-assessment procedure. If the young person is recognised as being over 18, all of their personal data is recorded in the AEM file which can be transferred to the AGDREF 2 file, which was created to, amongst other things, “fight against the illegal entry and irregular stay in France of migrants”. This same file states that a young person who has been age-assessed as being over 18 “will have their situation examined, and if need be, receive an expulsion measure”<sup>8</sup>.

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<sup>7</sup> Executive Order No. 2019-57 of 30 January 2019 concerning the procedures for assessing persons declaring themselves to be minors and temporarily or permanently deprived of the protection of their family and authorising the creation of personal data processing relating to these persons.

<sup>8</sup> National Information Computer and Privacy Commission, Deliberation of 27 November 2018 giving its opinion on a draft executive order modifying articles R. 221-11 and R. 221-12 of "Code de l'action sociale et des familles" concerning the evaluation of persons declaring themselves to be minors and temporarily or permanently deprived of the protection of their family and authorising the creation of personal data processing relating to these persons.  
URL: <https://www.legifrance.gouv.fr/affichCnil.do?id=CNILTEXT000038076801>.

This biometric file seems to resemble more of a control tool for migration than a new age-assessment tool. That has been what was denounced by fifteen presidents of French départements in a letter addressed to the Prime Minister on the 31st of December 2019 noting “a very worrying confusion between the missions of child protective services and those in the fight against illegal immigration”<sup>9</sup>.

## Recommendations

France terre d’asile recommends a thorough study of the consequences the creation of this biometric file has had. The risk is that such a file may lead to a two-speed access to child protective services for unaccompanied foreign minors, which does not meet the standard of the best interest of the child which is guaranteed in the International Convention on the Rights of the Child.

## **2. Failure to comply with the unconditional reception of minors**

In certain French départements, emergency accommodation is not provided as it is set out in Article L.223-2 of the CASF (the social work and family code in French law or “Code de l’action sociale et des familles”). Many young persons are left to wait down-and-out during the age-assessment procedure. The local authorities of these French départements, in charge of dealing with their accommodation, lack the necessary responsiveness but also the willingness to provide appropriate care for this young foreign migrants despite the flat-rate contribution of the State which was been raised by the 28th of June 2019 executive order. The human rights Ombudsman (“Défenseur des droits”) exposed this situation in its decision of June 2020 stating that the lack of unconditional emergency interim care of people declaring themselves to be unaccompanied foreign minors is not compliant with France’s laws<sup>10</sup>.

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<sup>9</sup> Open letter from Anne Hidalgo and Stéphane Troussel (Presidents of French Departments 75 and 93) concerning the executive order of 30 January 2019 creating a national biometric file.

URL: <http://www.educationsansfrontieres.org/spip.php?article55993>.

<sup>10</sup> Decision of the Defender of Rights No. 2020-110.

URL : [https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=19799](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=19799)

The lack of respect of unconditional interim care for newly-arrived migrants during the age-assessment procedure violates Article 27 of the CRC which upholds “the right of every child to a standard of living”.

## Recommendations

France terre d’asile recommends that newly-arrived migrants must be systematically accommodated in emergency interim care facilities as soon as they arrive in France. These facilities must follow a clear and secure legal framework for unaccompanied foreign minors, no matter their status. The double principle of the presumption of being under-age and being in danger must prevail, while waiting for subsequent investigations, in accordance with the interim care laid out in Article L.223-2 of the CASF.

### **3. A second age-assessment procedure: a practice that is becoming more common**

When an unaccompanied foreign minor is transferred from one local authority to another<sup>11</sup>, certain French départements decide to proceed to a second age-assessment upon reception of the child<sup>12</sup>. This means that the child will undergo a second age-assessment despite the fact that they have received an interim protection order, in other words, that their age has been recognised as being under 18 by a French département and the public prosecution office. The child will thus see his age questioned by the receiving French département.

To justify this approach, the départements, prosecutions or children’s judges who carry out these second age-assessments often refer to the lack of standardisation of age-assessment procedures throughout the French territory.

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<sup>11</sup> The aim is to establish a fair distribution of unaccompanied minors in all departments of France. This distribution key is managed by the National unit for guidance and support for judicial decisions of the Ministry of Justice.

<sup>12</sup> In his statement of February 7, 2017, the Defender of Rights expressed persistent concerns in the implementation of the national distribution, in particular the fact that “more and more young people are reassessed upon arrival in the department to which they are entrusted, which in some cases leads to placement releases”.

However, the ministry of solidarity and health published a guide in December 2019 which highlights the need to “avoid second age-assessment situations, costly for the départements and detrimental for the young persons who have already been recognised as being under 18 by the judicial authority”<sup>13</sup>.

## Recommendations

France terre d’asile recommends that these multiple age-assessments procedures be prohibited. Concomitantly, age-assessments must be standardised throughout the entire French territory in order to avoid any disparity between French départements.

### **4. The problem concerning the access to healthcare for newly-arrived foreign minors**

Unaccompanied foreign minors make out a particularly vulnerable group with both physical and psychological issues. Unaccompanied foreign minors are often carrier of diseases such as scabies or suffer from respiratory or digestive pathologies caused by their often poor living conditions during their migration but also once they arrive in France<sup>14</sup>. An accumulation of traumas, often linked to events in their country of origin, their migratory journey or their arrival in host countries, brings on a particularly fragile mental state and a prevalence of post-traumatic disorders such as anxiety or depressive states<sup>15</sup>.

One young person out of ten seen during medical examinations by Médecins du Monde France in 2017 suffered from a psychological disorder<sup>16</sup>.

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<sup>13</sup> Guide to Good Practice in Minority and Segregation Assessment, December 2019, p. 6. URL: [https://solidarites-sante.gouv.fr/IMG/pdf/guide-de-bonnes-pratiques-en-matiere-d-evaluation-de-la\\_minorite-et-de-l-isolement.pdf](https://solidarites-sante.gouv.fr/IMG/pdf/guide-de-bonnes-pratiques-en-matiere-d-evaluation-de-la_minorite-et-de-l-isolement.pdf).

<sup>14</sup> Médecins du Monde, Unaccompanied Minors Programme Paris, Activity report 2018.

<sup>15</sup> Among unaccompanied foreign unaccompanied minors there is a high frequency of anxiety (38%) and depressive disorders (44%) cf. Radjack, Rahmethnissah, et al. “Reception of unaccompanied foreign minors: a challenge in the face of multiple paradoxes”, *Enfances & Psy*, vol. 67, no. 3, 2015, pp. 54-64.

<sup>16</sup> Médecins du Monde, Observatory of access to rights and care in Médecins du Monde programmes in France, report 2017.

If we take into account the specific needs of this group, the implementation of a clear access to healthcare, including a primary assessment of their health needs and a referral for further medical care, represents true progress. The fact that, since 2019, carrying out this health assessment has become one of the three cumulative conditions resulting in the reimbursement of the State<sup>17</sup> should encourage the local authorities to carry it out. It is equally incumbent upon them to guarantee that the commitment 2 of the national strategy on prevention and child protection 2020-22<sup>18</sup>, which sets out a systematic medical check-up and access to healthcare for children as soon as they enter child protective services, applies without any discrimination to unaccompanied foreign minors. However, today, it is clear that these recent initiatives are not correctly implemented throughout France terre d'asile's facilities: many young person leave the emergency interim accommodation centres without having benefitted from any medical check-up.

## Recommendations

In accordance with Article 24 of the CRC, access to State medical aid must be available as soon as unaccompanied foreign minors are taken into care, in order to allow them systematic access to common law healthcare without delay. As a matter of fact, all minors must be able to have access to medical treatments immediately, regardless of their status. That's why France terre d'asile recommends the systematic primary assessments of their health needs as soon as the child arrives in care, with a medical check-up, a psychological assessment as well as an update on their vaccinations and access to testing.

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<sup>17</sup> Executive order of 28 June 2018 relating to the State's lump-sum contribution in 2019 to the sheltering and assessment phase for persons declaring themselves to be unaccompanied foreign minors.

<sup>18</sup> National Strategy for Prevention and Protection of Children 2020-2022: Ensuring equal opportunities and rights for every child, p.19.

### **III- Support towards self-sufficiency for minors taking into care by child protective services**

#### **1. Difficulties due to a lack of civil status**

The fact that many young people do not have any identity papers is source of many obstacles for them. Obtaining identification documents is necessary in order to open a bank account for young persons who are in an apprenticeship or those who wish to save the allowance they are given by the facilities who have them in their care in order to prepare for when they turn 18 and they will have to live on their own.

Possessing identity papers is a matter of public order: every person in France must be recorded in a civil status registry. The general instruction on civil status of 11th Mai 1999 sets out that “a public interest requires that all persons living regularly in France, even if they were born abroad and are a foreign national, must have a civil status”<sup>19</sup>.

French jurisprudence has therefore recognised for several years that “in the interest of society, it is required that the existence of every child is recorded on civil status registries”<sup>20</sup> whereas the law requires that a declaratory judgement establishing the birth to make up for the absence of civil status<sup>21</sup>. The legal provisions allowing unaccompanied foreign minors to obtain a civil status are many. However, these procedures are often overlooked, rendering France in violation of Article 8 of the International Convention on the Rights of the Child which requires a speedy re-establishing the identity of the child<sup>22</sup>.

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<sup>19</sup> IGREC No 273-1

<sup>20</sup> Paris Court of Appeal, 1st Chamber, 3 November 1927.

<sup>21</sup> Code Civil, art. 55.

<sup>22</sup> Article 8-2 of the ICRC: "Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

## Recommendations

France terre d'asile recommends that the French government improve the administrative procedures to re-establish the civil status of unaccompanied foreign minors and to remind the French tribunals of their competence in that matter.

### **2. Towards a depletion of the young adult's contract ("contrat jeune majeur")**

More than 80% of unaccompanied foreign minors are aged between 15 and 17<sup>23</sup> years old when they arrive in France and are taken into care by child protective services. This leaves little time to enable each young person to become self-sufficient, learn the French language, complete a training course and find a job while integrating themselves in French society by adopting its codes and values. A young adult's contract is essential to give each unaccompanied foreign minor the chance to succeed.

Despite meeting perfectly the criteria to be granted such a contract – difficulties with integration and the lack of a family support system - unaccompanied foreign minors are finding it harder and harder to get access to this type of contract. The first reason may be financial: we have noticed that certain French départements do not provide child protective services with supervision by social workers towards self-sufficiency programs.

Recent legislation on such contracts have hardened the criteria to obtain the contract and may lead to yet another breach in the equality of treatment between young French adults and migrants. The parliamentarian of the Pas-de-Calais had such a proposal with the "access to self-sufficiency contract" ("contrat d'accès à l'autonomie") which was voted in the National Assembly on May 7th, 2019.

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<sup>23</sup> The 2019 activity report of the Unaccompanied Minors Unit of the Ministry of Justice (p.8).

Her proposal sets out that in order to be able to receive such a contract, the young person must have been taken into care by child protective services for at least eighteen months<sup>24</sup>. Therefore, in order to have access to this type of contract, a young person will have had to be taken into care before the age of 16 and a half. This condition immediately renders it inapplicable to at least half of all unaccompanied foreign minors (60% of unaccompanied foreign minors taken into care by child protective services are over 16 years old in 2019)<sup>25</sup>.

Another condition to get a young adult's contract could be to have a residency permit. The announced measures in the national strategy on prevention and child protection 2020-22 only confirm our concerns since "it is the review of this right of residence which [should] allow to benefit from this support scheme"<sup>26</sup>. However, having a young adult's contract is usually a deciding factor when applying for a residency permit, the French Conseil d'Etat deemed that it was a guarantee of integration in France (CE, 21 April 2000, Oladipupo).

## Recommendations

The young adult's contract is an essential tool in rendering an unaccompanied foreign minor self-sufficient as it is crucial to obtaining residency, qualifications and accommodation. France terre d'asile recommends that its use is standardised throughout France, for all young persons taken into care by child protective services and whose social integration requires a continuation of care – due to lack of resources and sufficient family support.

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<sup>24</sup> Legislative Draft No 1081 aiming to reinforce the support of vulnerable young adults towards autonomy, 13 June 2018.

<sup>25</sup> The 2019 activity report of the Unaccompanied Minors Unit of the Ministry of Justice (p.8).

<sup>26</sup> National Strategy for Prevention and Protection of Children 2020-2022: Ensuring equal opportunities and rights for every child (p.38).

### 3. The difficulty in obtaining a residency permit when turning 18

Obtaining a residency permit for an unaccompanied foreign minor when they reach 18 currently depends on the age at which they were admitted to child protective services. A young person taken into care after they turn 16 years old – the majority of unaccompanied foreign minors – will not be granted a residency permit of full right<sup>27</sup>.

A young person taken into care before they turn 16 will receive a temporary residency permit “private and family life”<sup>28</sup> under certain conditions. Regardless of the age at which they were taken into care, the fact that the young person is still in touch with their family in their country of origin is often a reason to deny residency. However, this mustn’t jeopardise a child since Article 9(3) guarantees the right « to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests ».

Unaccompanied foreign minors face equal difficulty in obtaining working visas when they reach 18, despite have well-documented and strong applications<sup>29</sup>. In his recommendations of December 21st 2012, the human rights Ombudsman (« Défenseur des droits ») said « when the work is carried out well because of the human and financial investments of the local authorities, that these young persons are on the road to integration and they wish to stay in France once they become adults, (...) their applications for residency [must be] examined with benevolence ».

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<sup>27</sup> Article L313-15 of the Code of Entry and Residence of Foreigner and the Right of Asylum (CESEDA).

<sup>28</sup> Article L313-11 of the Code of Entry and Residence of Foreigner and the Right of Asylum (CESEDA).

<sup>29</sup> For instance, refer to the Calvados Prefect's Order No 2018-0275 of 7 August 2018 on the refusal of residence and the obligation to leave French territory: "the seriousness of the studies undertaken has been demonstrated but [...] nevertheless his arrival is recent and [...] it is premature to give a verdict on the outcome of the chosen study programme".

## Recommendations

France terre d'asile recommends that residency permits be granted of full right to all unaccompanied foreign minors. The fact that the young person maintains personal relations with their family in their country of origin must no longer impact their applications for residency. When a young person fulfills all the required conditions, their residency application must be examined with benevolence.

### **IV- The hurdles when seeking asylum as an unaccompanied foreign minor**

In 2019 in France, 755 unaccompanied foreign minors applied for asylum, which makes out for 5% of all unaccompanied foreign minors taken into care by child protective services. Despite the efforts of the French Office for the Protection of Refugees and Stateless Persons ("Office français de protection des réfugiés et des apatrides" - OFPRA) for the last few years to change its practices in order to favour the protection of unaccompanied foreign minors<sup>30</sup>, this number remains low. Conversely, in other European countries, seeking asylum is a prerequisite to being granted protection.

This French particularity can be explained by the fact that an unaccompanied foreign minor is considered under French law as an endangered child and thus depends firstly on child protective services. Obtaining refugee status is not conditional to being admitted to child protective services under French law. Some first reception centers for asylum seekers ("Structures de premier accueil des demandeurs d'asile"

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<sup>30</sup> In particular, the criteria for granting status are more flexible than for adults. See the annual report of Forum des réfugiés - Cosi, *L'asile en France et en Europe, état des lieux 2019, 2020*.

- SPADA) refuse unaccompanied foreign minors when their underage status has not been recognised<sup>31</sup>.

Another difficulty in accessing asylum is the lack of appointment of a legal representative, more precisely called an ad hoc administrator, without whom the minor cannot apply for asylum. After the application has been made, the appointment of this representative may take several weeks, or even several months, if it is not simply refused<sup>32</sup>.

Another reason why unaccompanied foreign minors find it more difficult to seek asylum in France may be that the social workers from child protective services lack sufficient knowledge regarding the asylum seeking which is a complex system<sup>33</sup> and thus do not have the tools to adequately inform the young persons on their rights.

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<sup>31</sup> Delphine Burriez, « Mineurs isolés situés sur le territoire : une atteinte au droit de solliciter l'asile en France », *Revue des droits et des libertés fondamentaux*, n°21, 2018.

<sup>32</sup> In a speech before the European Council of Social Rights (ECSR) on 26 February 2016, the Defender of Rights expressed concern about these difficulties in accessing asylum and insisted on the appointment of ad hoc administrators. See Decision MDE-MSP-2016-002 of 26 February 2016 on a third intervention concerning the reception and care of unaccompanied foreign minors brought before the ECSR (p.16).

<sup>33</sup> The asylum seeker goes to a SPADA for pre-registration of his application (1); to the GUDA for registration, assessment of the person's needs and proposal of care (2); to OFPRA (3).

## Recommendations

According to Article 22 of the CRC, public powers must guarantee an effective access to the asylum seeking procedure for all minors who were victims of persecutions or serious threats against their lives in their country of origin. France terre d'asile thus recommends the authorities to assure that the appointment of ad hoc administrators occurs as soon as their asylum claim is preregistered, prior to fingerprinting by the prefecture, the minor having no legal capacity to consent and to exercise the rights to which he is entitled to.

Another recommendation would be to permit a minor to seek asylum based on their declared age. The status of the minor must be taken into account especially concerning the deadlines to examine their case<sup>1</sup> and the conditions for the interview.

Finally, France terre d'asile supports the idea to organise training and raise awareness of the asylum procedure for all professionals who work in child protective services.

## V- Towards a joint European approach

The countries of the European Union rely on very different national schemes of age-assessment and care for unaccompanied foreign minors in terms of financial means, institutional organisation, legal framework and effectivity of their implementation. Some countries consider unaccompanied foreign minors as falling under the jurisdiction of their child protective services, such as France, whereas others use their organisms for asylum seekers, such as Germany or the Great Britain.

The cooperation between countries is non-existent, except for a few past initiatives such as the reunification and reception of unaccompanied and vulnerable foreign migrants scheme (based on the "Dub's" amendment) in Great Britain which was deeply weakened by Brexit.

However, it is important to remember the importance of this international cooperation which is inscribed in the preamble to the CRC as a condition “for improving the living conditions of children in every country”.

In 2019, according to the International Organisation for Migration (IOM), a hundred migrant children have died or went missing while they crossed the sea to reach Europe and over 480 children had been stuck on a boat for more than one week before reaching the European coastline (this number has doubled since 2018). The European Union Agency for Fundamental Rights (FRA) also reported that the situation in Libya was getting worse and in 2019 that the detention conditions had led to the death of 400 children.

The same document also reported that the reception conditions in European countries, especially the capacity of reception for children asylum seekers were insufficient in 2019 in Cyprus, France, Greece, Italy, Malta and Spain.

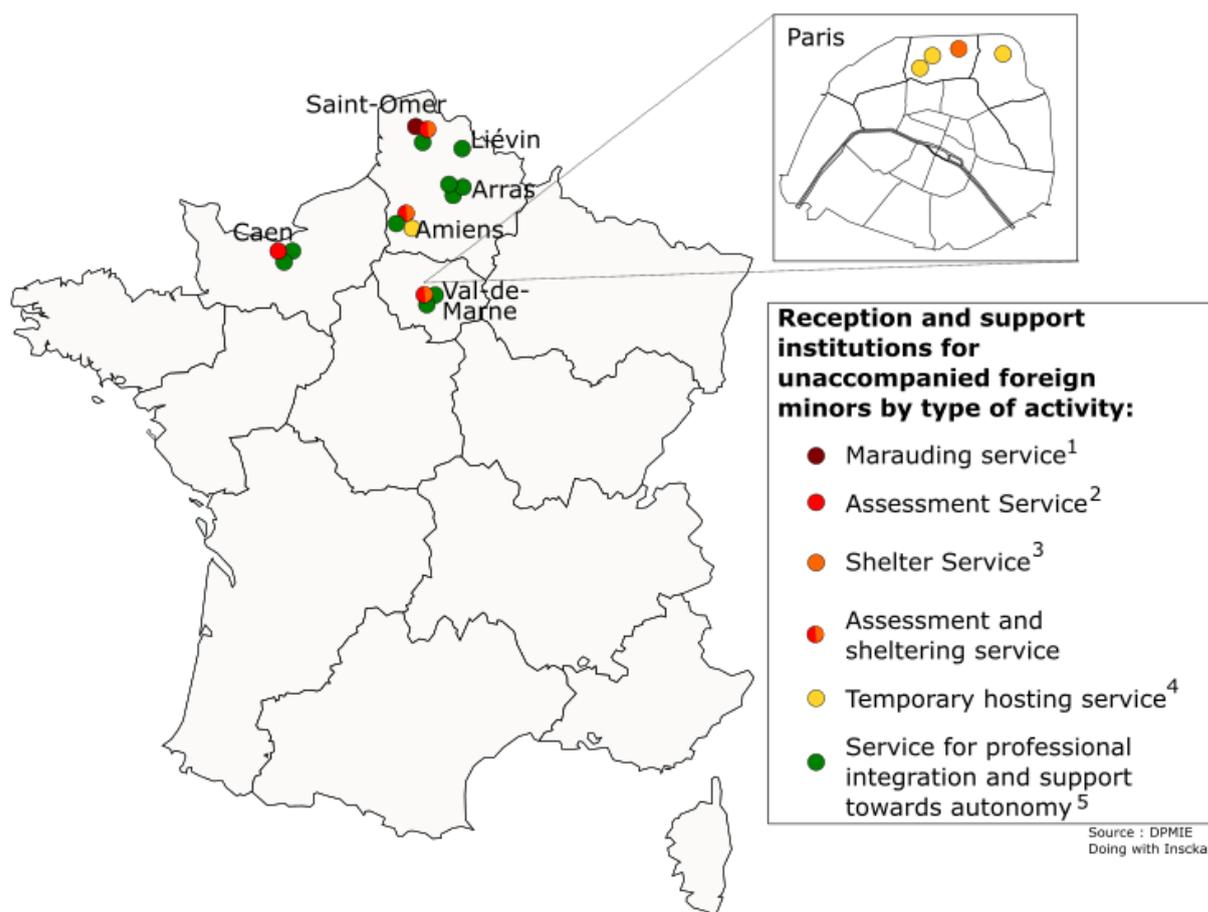
The current state of affairs for unaccompanied foreign minors calls for a joint approach in order to safeguard their route through Europe as well as for the internal management of their reception and care. A high level standard must be discussed on the grounds of good practices, leading to a legislative standardisation applicable to all countries of the European Union.

## Recommendations

France terre d’asile recommends to standardise the figures and statistics on the European scale, in order to have an increased visibility and more accurate analysis. This must also help spot the children who disappear from child protective services, and to identify problematic situations, such as human trafficking.

France terre d’asile advocates more specifically for the safeguarding of the migratory path of unaccompanied foreign minors by strengthening the ability to identify this vulnerable public. This would go through the identification of children as they reach the gates of Europe, an examination of their situation and their vulnerability, then a mechanism allowing them to reach their country of destination. Similarly, in order to avoid being put in danger while on the dangerous migratory routes, a family reunification scheme towards Europe for unaccompanied foreign minors in their country of origin must be developed.

## Appendix 1: Map of the structures that receive and accompany unaccompanied foreign minors at France terre d'asile.



<sup>1</sup>: The marauding service is made up of a team that several times a week carries out operations to shelter young people who have been spotted on the street.

<sup>2</sup>: When a young person declares himself or herself a minor, he or she goes through assessment services, which conduct an initial social assessment interview with him or her.

<sup>3</sup>: Shelter services shelter the youth during the first phase of his or her social assessment (normally lasting 5 days).

<sup>4</sup>: When the young person is recognized as a minor but the judge requests additional expert opinions to confirm his or her minority, he or she may be taken into temporary care in temporary reception facilities. These establishments are specific to Paris.

<sup>5</sup>: When the young person is recognized as a minor, he or she is cared for in a structure that helps him or her prepare for the future (access to residence, professional integration).