Report of Various Sizes FRANET

Guardianship systems for child victims of trafficking

Art.1, Dutch knowledge centre on discrimination

Deadline: 30 August 2013
I. GUARDIANSHIP SYSTEM (2 pages)

In broad terms, guardians may have different roles, depending on the national context. This report focuses on two particular roles: (i) responsibility for the well-being of the child and (ii) legal representation in various legal procedures (criminal investigation against traffickers and criminal proceedings related to trafficking in human beings, procedure for residence permits, asylum procedures, etc). This report does not cover those persons who provide day-to-day care to a child, unless they also exercise one of the two other functions listed above. Please describe briefly the guardianship system in place in your country responding in particular to questions below.

1. Is the guardianship system the same for all children (meaning all persons below 18 years of age), i.e. nationals, EU national, third-country nationals, unaccompanied or not, children kept at borders, etc.? Describe briefly the system(s) in place, if there are more than one please explain communalities and differences. Indicate who would deal with child victims of trafficking. If a child is subject to multiple procedures (e.g. victim of trafficking and asylum seeker) do the systems interact? Is the guardian competent to act in all relevant procedures?

In the Netherlands, there is no separate system of guardianship for child victims of trafficking. These victims form a sub-group of the overall group of children who require a guardian. Within the general system of guardianship, special attention is paid to child victims of trafficking. To understand the system of guardianship for child victims of trafficking in place in the Netherlands, we therefore have to understand the overall system of guardianship. This guardianship system is not the same for all children, as different systems exist for unaccompanied minor asylum seekers (UMASs) and for other unaccompanied minors. The organisation Nidos is responsible for the guardianship system for UMASs, whereas the Youth Care Agency (Bureau Jeugdzorg) is in charge of the guardianship system for all other categories of children. Both organisations can be faced with child victims of trafficking.

The legal framework for guardianship of children is stipulated in the Dutch Civil Code (Burgerlijk Wetboek). According to the law, minors have to fall under the authority of a parent or guardian. In cases where the parental guardian fails or is unable to exercise the authority, or where he or she is unknown, the juvenile court is entitled to appoint a temporary guardian. For general guardianship arrangements, the Civil Code refers to the Youth Care Act (Wet op de Jeugdzorg); the Civil Code mentions UMASs separately, who can fall under the authority of a specifically assigned organisation. This specifically assigned organisation is the Nidos foundation. Both Nidos and the Youth Care Agency work according to the provisions made in the Civil Code and the Youth Care Act.

Though the Civil Code does not refer specifically to child victims of trafficking, a separate decision defining the categories of minors which fall under the responsibility of the Nidos foundation, includes the following category: "foreign minors who are found on Dutch territory and who have become the victims of human trafficking and by or for whom an application for a residence permit is submitted under the restriction of 'victim-informer of human trafficking'". This latter category refers to the specific regulation concerning temporary residence permits for victims of trafficking who cooperate with the police, as defined in chapter B8 of the Implementation Guidelines of the Aliens Act.

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2 Youth Care Agency (Bureau Jeugdzorg) (2013), What is the Youth Care Agency? (Wat is bureau jeugdzorg), website, available at: www.bureaujeugdzorg.info/Wat_is_bureau_jeugdzorg.
3 The Netherlands, Civil Code (Burgerlijk Wetboek), article 1:245.
4 The Netherlands, Civil Code (Burgerlijk Wetboek), article 1:253r.
5 The Netherlands, Civil Code (Burgerlijk Wetboek), article 1:241.
6 The Netherlands, Designation order on the categories of other minors in the Civil Code (Aanwijzingsbesluit categorieën andere minderjarigen Burgerlijk Wetboek Boek 1), article 1c.
Both the Youth Care Agency and Nidos pick up signals to identify children who require a guardian. The Youth Care Agency cooperates with the Council for Child Protection (Raad voor de Kinderbescherming). If a child is identified who is deemed to require a guardian, the child is reported to the Council. The Council conducts research to determine whether the child does indeed require protection. If so, the juvenile court is asked to impose a protective measure, which can include the designation of a guardian. Depending on the child in question, the Youth Care Agency or Nidos takes on the responsibility of appointing a guardian. While these two organisations are the designated organisations for the implementation of the guardianship system, not the organisations, but their individual employees are the actual guardians of the children in question.

Spotting signs of trafficking and identifying specifically vulnerable children are a central focus of the guardianship system targeting UMASs. Thus Nidos, the police and the aliens police closely cooperate to identify possible victims of trafficking, protect them and support them in bringing the perpetrators to justice. The aliens police works with a number of criteria, including the country of origin, but also the general impression of a child, in order to identify child victims. If they have a suspicion that a child may be a victim of trafficking, they communicate this to Nidos, so that the child can be placed in the so-called ‘protected reception’. This targeted provision was originally instituted for girls from Nigeria who were thought to be victims of trafficking. By now, it is used for several vulnerable groups of UMASs. It consists of closer accompaniment of the children whereby the prevention of the children falling back into the hands of the traffickers is the key priority. Thus, children are accommodated in a more closed system of reception focused on preventing disappearances. They also receive special counselling with the objective to make them understand that it is not in their interest to return to the traffickers. This is especially important for children who have been smuggled into the country for the purpose of trafficking, but who have not actually been abused or exploited yet, since they often do not understand the threat they are facing.

The guardian is responsible for the care and up-bringing of the child, though he or she does not have to be actively involved in it. Thus, a foster family or care home may take care of the child, while the guardian remains responsible. The guardian is the legal representative of the child and is therefore competent to act in all relevant procedures. Some limitations apply to the handling of the child’s financial affairs, where the guardian may need to apply for a specific mandate for some actions. This includes matters concerning heritage and property of the child.

2. Who represents a child victim of trafficking in legal proceedings (investigations and criminal proceedings against the traffickers, compensation proceedings, residence permit procedures, etc)?

The guardian represents the child in legal proceedings. This includes criminal proceedings. If the minors have to defend themselves in criminal proceedings, the legal guardian will act on their

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7 The Netherlands, Aliens Circular 2013 (Vreemdelingencirculaire 2013), chapter B8, section 3.
8 Telephone interview with Nidos representative, 2 July 2013, 24 September 2013.
9 Telephone interview with Nidos representative, 2 July 2013.
11 The Netherlands, Civil Code (Burgerlijk Wetboek), book 1, section 6.
behalf. Depending on the severity of the offence or crime, the minor will be assigned a lawyer by the court. When it comes to criminal proceedings against the traffickers, the child victims and their guardians are in practice almost always assisted by specialised lawyers, if the child or the guardian deem it necessary. These lawyers are reimbursed by the Legal Aid Board. This means that victims are supported by lawyers in addition to the support they receive from their guardian.

However, in administrative law, minors do not need a representative if they are able to represent their own interest. Residence permit procedures and related provisions are part of administrative law and thus formally fall under the minors' own responsibility. Nonetheless, where the minor is seen as unable to represent his or her own interest, the court can require the representation by a guardian or, where no guardian exist, appoint a temporary representative. The guardian accompanies the child where possible and if necessary, when the minor is not able to take this responsibility. Also, minors can be supported and represented by a lawyer if they wish to. Nidos guardians are always present at the first intake interview with the immigration and naturalisation service (Immigratie- en naturalisatiedienst, IND). Very vulnerable children, including child victims of trafficking, receive closer accompaniment than less vulnerable children.

Children under the age of 12 cannot file a request for asylum by themselves, but have to have a representative to do this for them. Nidos guardians act as representatives in these cases and request asylum on behalf of the child.

3. Which are the provisions in national law that transpose Article 14(2) and 16 of Directive 2011/36/EU?

Article 14(2) is transposed into articles 1:241 (stipulation of temporary guardianship for minors in general, and UMAs specifically), 1:250 (determining procedure of appointment of a curator in cases of a conflict of interest on the part of the guardian or the parent), 1:266 (stipulating the possibility to remove parental authority from the parent in case of inability or unsuitability), 2:295 (guardianship for all children who are not subject to parental authority) and 1:302 (appointment of guardianship to an assigned institution or foundation) of the Dutch Civil Code.

Article 16 is transposed in article 1:302 of the Dutch Civil Code, stipulating the fact that the juvenile court may entrust guardianship for UMAs exclusively to an institution which has been assigned by the Minister to carry out that task. The article is in conjunction with article 1 of the Youth Care Act which defines the terms of youth care. Article 51c of the Code of Criminal Procedure (Wetboek van strafvordering) furthermore defines the rights of victims of crime to be represented at court by a lawyer or, where necessary, by another representative. This has to be a person that has a written

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12 The Netherlands, Code of Criminal Procedure (Wetboek van Strafvordering), article 496.
13 The Netherlands, Code of Criminal Procedure (Wetboek van Strafvordering), article 487.
15 The Netherlands, General Administrative Law (Algemene wet bestuursrecht), article 8:21.
16 The Netherlands, General Administrative Law (Algemene wet bestuursrecht), article 8:24.
17 Youth Care Inspectorate (Inspectie Jeugdzorg) (2011), The Guardianship task of Nidos (De voogdijtaak van Nidos), Utrecht, Youth Care Inspectorate.
authorisation to represent the victim in court. This applies to all groups of victims. It also stipulates that victims of crime may use the services of an interpreter in the context of a trial if they cannot understand Dutch.\textsuperscript{20} A lawyer providing legal aid may be compensated for incurring expenses in the context of interpreters/ translators in criminal cases.\textsuperscript{21}

4. At which Government level is responsibility for guardianship / legal representation (local, regional, national)? Does this ensure sufficient independence?

The responsibility for guardianship and legal representation is located at national level. The Minister of Security and Justice is charged with appointing the organisation responsible for guardianship of children who have filed a request for asylum and for other categories of children.\textsuperscript{22} Nidos has been designated at national level by the Ministry of Justice as this specific guardianship organisation for UMASs and related categories of children.\textsuperscript{23} The Youth Care Agency has been appointed at national level as designated guardianship organisation by the Minister of Youth and Family (now: Minister of Health, Welfare and Sport) and by the Minister of Justice jointly, pursuant to the Youth Care Act.\textsuperscript{24} While the national ministries are responsible for the legislation and for the budget of youth care, the 12 provinces (regional) and the three major urban regions Amsterdam, Rotterdam and The Hague are responsible for the quality of youth care.\textsuperscript{25} Both Nidos and the Youth Care Agency have numerous local and regional offices. In 2012, Nidos had 11 regional offices.\textsuperscript{26} There are 15 regional offices of the Youth Care Agency, with several local offices falling under each regional offices.\textsuperscript{27}

It is not clear to what extent the national level of responsibility has an impact on the independence of the services. Both the Youth Care Agency and Nidos are monitored by the Dutch Inspectorate for Youth Care.\textsuperscript{28}

5. Are guardianship functions exercised by state or non-state actors or both? Briefly describe.

Nidos is a non-governmental organisation, a foundation with an independent board. It is financed by the Ministry of Justice. The actual guardianship is exercised by the employees of Nidos, the so-called juvenile protectors.\textsuperscript{29} Pursuant to section 4 of the Youth Care Act, the Youth Care Agency is a foundation, also with an independent supervisory board. The foundation is financed by the provinces, which in turn receive the necessary funding from the national ministries.\textsuperscript{30} The organisation of


\textsuperscript{21} The Netherlands, Decision compensation legal aid (Besluit vergoedingen rechtsbijstand), Art. 26.

\textsuperscript{22} The Netherlands, Civil Code (Burgerlijk Wetboek), article 1:241.


\textsuperscript{24} The Netherlands, Youth Care Act (Wet op de jeugdzorg), article 1, available (in English) at: http://www.nji.nl/youthpolicy/Publications/The%20Youth%20Care%20Act.pdf.

\textsuperscript{25} The Netherlands, Youth Care Act (Wet op de jeugdzorg), articles 2 and 3.

\textsuperscript{26} Nidos (2012), Annual Report 2011 (Jaarverslag 2011), Utrecht, Nidos.

\textsuperscript{27} Youth Care Agency (2013), Main locations (Hoofdlocaties), website, available at: www.bureaujeugdzorg.info/Hoofdlocaties.

\textsuperscript{28} The Netherlands, Youth Care Act (Wet op de jeugdzorg), articles 47-48.


\textsuperscript{30} The Netherlands, Youth Care Act (Wet op de jeugdzorg), chapter 3, part 1, article 4.
guardianship is one of the legal tasks assigned to the foundation. We can therefore speak of non-state actors with a public mandate.

II. PROFILE OF GUARDIANS / LEGAL REPRESENTATIVES (1.5 pages)

1. Please indicate if guardians / legal representatives appointed for child victims of trafficking are volunteers or professionals.
   Briefly describe the pre-conditions and qualifications required to become a guardian / legal representatives (are these set by law?) and whether these are considered adequate by civil society organisations working in the field of child trafficking or in line with recommended international and European standards (FRA will provide an overview of such standards at the end of January 2013).

The guardians (who operate as legal representatives) are always professionals, both in the case of Nidos and in the case of the Youth Care Agency. Guardians at Nidos have to have completed a polytechnic bachelor degree in social work or residential social work and day care. For youth care guardians, a bachelor degree in pedagogy is also a possibility. These requirements only apply to guardians working under the remit of one of these two organisations, not to guardians who are appointed outside of this formal system. The requirements are defined by the organisations themselves.

The Executive Order of the Youth Care Act simply states that the responsible organisations have to take care that their employees have the necessary level of education and experience.

Regarding personal criteria, the Youth Care Inspectorate defined the following profile for (family) guardians: "emotionally stable, strong, outgoing, friendly and curious and preferably resilient. He is honest, open, warm, non-judgmental, interested and involved. He is clear and perceptive, flexible, affirmative, stimulating and reliable." A family guardian is a guardian who supervises the upbringing of a child within its own family, whereby the authority of the parents is shared with the guardian under a supervision order. These criteria are not mandatory or set in law, but they give a general impression of the ideal type of guardian envisaged by the Inspectorate.

At Nidos, the guardians are responsible for between 21 and 24 minors at most. They are required to have contact with every child at least once per month. The guardians can make use of translation services where the communication with the child is difficult. Nidos has set up a specific cooperation covenant for that purpose. At the head office of Nidos, legal advisors can assist the guardians in the execution of their tasks. These aspects of the work are not specified in legislation, but form the working practice of Nidos guardians.

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31 Youth Care Agency (Bureau Jeugdzorg) (2013), What is the Youth Care Agency (Wat is Bureau Jeugdzorg), website, available at: www.bureaujeugdzorg.info/Wat_is_bureau_jeugdzorg.
34 Youth Care Inspectorate (Inspectie Jeugdzorg) (2013), The best family guardian (De beste gezinsvoogd), Utrecht, Youth Care Inspectorate.
35 Interview with Nidos representative, 2 July 2013.
36 The Netherlands, Ministry of Justice (Ministerie van Justitie) (2011), Executive Order Youth Care Act (Uitvoeringsbesluit Wet op de Jeugdzorg), article 1h.
37 Youth Care Inspectorate (Inspectie Jeugdzorg) (2013), The best family guardian (De beste gezinsvoogd), Utrecht, Youth Care Inspectorate.
38 See The Netherlands, Executive Order on the Youth Care Act (Uitvoeringsbesluit Wet op de jeugdzorg), articles 40-42.
39 Interview with Nidos representative, 24 September 2013.
2. Are relatives of the child victims appointed as guardians / legal representatives? What is the prevalence of this phenomenon?

In general, it is possible that relatives are appointed as guardians of children (regardless of them being victims of trafficking) where this is in the interest of the child.\textsuperscript{40} This can for example be the case when the deceased parents of the child have assigned a relative as a guardian in their will or in cases of minors from Caribbean parts of the Netherlands coming to the Netherlands.\textsuperscript{41} Regarding UMASs, it is possible and it happens regularly that children want to be placed under guardianship of relatives who reside in the Netherlands. However, in most cases, these children cannot provide the necessary documents to show that their relatives can indeed be seen as the rightful guardians. This refers to documents which are necessary to show that they are relatives and that they are authorised by the parents of the child to act as guardians. Usually, Nidos is therefore appointed guardian by the court nonetheless. Where possible and desirable, Nidos then transfers the guardianship step by step to the relatives. This means that Nidos is in touch with the relatives who want to become the guardian in order to establish whether they are able to carry out the guardianship. Possible connections to the trafficking of the child in question are taken into account.\textsuperscript{42} Where the relative is seen as fit and willing to act as guardian for the child, Nidos can, in cooperation with the Child Protection Council, transfer guardianship to the relative via the juvenile court.\textsuperscript{43}

Concerning child victims of trafficking from the Netherlands, it is a theoretical possibility that relatives are appointed as guardians, but there is no information available on the prevalence of this phenomenon.

3. Briefly describe what training is available to guardians / legal representatives in general and specifically on child trafficking.

As said above, guardians are usually required to have completed initial training as a social worker or residential or day care worker. This initial training is provided by polytechnic universities within the structure of the overall educational system. The Youth Care Act and related regulation defines that Nidos and the Youth Care Agency have to ensure that guardians (and other youth care professionals) are sufficiently competent and knowledgeable.\textsuperscript{44} It also provides the possibility for the Minister to further specify standards for training and education for youth care professionals by means of regulation.\textsuperscript{45} No regulation regarding this specification has been developed.

Regarding specific training on guardianship and on child trafficking, Nidos organises introductory training courses for new guardians which include information on the legal framework of guardianship, on the specific elements of Nidos guardianship and on the methodologies adopted by Nidos guardians. Nidos also provides training courses on the CARE (Child Abuse Risk Evaluation) methodology for risk assessment,\textsuperscript{46} on suicide prevention and on new developments, such as a new protocol on child abuse.\textsuperscript{47}

Nidos has participated in the programme ‘Better Protected’ (\textit{Beter beschermd}) which aimed to improve the coordination and cooperation between the different youth care institutions.\textsuperscript{48} This resulted

\textsuperscript{40} The Netherlands, Executive order on the Youth Care Act (\textit{Uitvoeringsbesluit Wet op de jeugdzorg}), article 42.4.
\textsuperscript{41} The Netherlands, Civil Code (\textit{Burgerlijk Wetboek}), article 1:292-293.
\textsuperscript{42} Interview with Nidos representative, 2 July 2013.
\textsuperscript{43} The Netherlands, Civil Code (\textit{Burgerlijk Wetboek}), article 1:299a.
\textsuperscript{44} The Netherlands, Youth Care Act (\textit{Wet op de Jeugdzorg}), article 13; Executive order Youth care act (\textit{Uitvoeringsbesluit Wet op de jeugdzorg}), article 29.
\textsuperscript{45} The Netherlands, Executive order Youth care act (\textit{Uitvoeringsbesluit Wet op de jeugdzorg}), article 29.3.
\textsuperscript{46} Nidos (2012), Annual Report 2011 (Jaarverslag 2011), Utrecht, Nidos.
\textsuperscript{47} Nidos (2013), Annual Report 11 (Jaarverslag 11), Utrecht, Nidos.
\textsuperscript{48} Youth Care the Netherlands (\textit{Jeugdzorg Nederland}) (2013), Improving the quality of youth care (\textit{Versterking van de kwaliteit van jeugdzorg}), website, available at: www.jeugdzorgnederland.nl/jeugdbescherming
in a new methodology called 'Young and on the road: Nidos methodology for guardianship support of UMASs'. In order to guarantee the proper use of this methodology, Nidos employees (including guardians) were trained in it. The methodology focuses on working practices, such as the use of an action plan which is developed jointly by guardian and minor, whereby the vulnerable position of the UMASs is taken into account, including their precarious residence status and cultural issues. While threats and risks are taken into account, the methodology does not focus on spotting signals of trafficking as such.

A recent report by the GATE project (Guardians Against Trafficking and Exploitation) states that Nidos guardians are generally not trained in spotting signs of trafficking and that they build up knowledge through work experience, although a work methodology for spotting signs of trafficking is in development. The report also states that guardians sometimes lack legal knowledge of the immigration and asylum procedures which emphasises the importance of the training provided by Nidos. A different report by Unicef confirms that Nidos guardians do not get formal training. However, guardians working at the reception centre for UMASs have a lot of knowledge about trafficking and present their experiences to new employees within the first few weeks of their work. According to the same report, employees of the Central Agency for the Reception of Asylum Seekers (Centraal orgaan opvang asielzoekers, COA) are trained to recognise signals of trafficking.

In general youth care, no information on specific training concerning trafficking is available. A topic which has received attention is the threat of so-called 'loverboys', traffickers who seduce vulnerable girls and women and eventually coerce them to work as prostitutes. According to research, not all youth care institutions provide training on this topic, due to a lack of resources and priority. A pilot project has been started in six regions to train youth care employees (though not necessarily guardians) in spotting signals of a 'loverboy' risk.

4. Briefly describe what quality control and accountability measures have put in place to oversee the work of guardians / legal representatives (e.g. reporting requirements, audits, etc.).

On an organisational level, both Nidos and the Youth Care Agency have to work according to the provisions of the Youth Care Act. This also means that their work is supervised and controlled by the Youth Care Inspectorate. The Inspectorate has the task to oversee the overall quality of the care provided by youth care organisations, in relation to the requirements defined by law. This task is further detailed by the Inspectorate itself in its annual working programmes, and can in principle cover all aspects of the guardians’ work. In practice, the inspectorate carries out its supervision based on incidents and calamities, on reports from citizens, on regional priorities, and on thematic priorities. In 2011, the inspectorate scrutinised the guardianship task of Nidos for the last time.

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55 The Netherlands, Youth Care Act (Wet op de Jeugdzorg), article 47.
56 Youth Care Inspectorate (Inspectie Jeugdzorg) (2013), Annual Working Programme 2013 (Jaarwerkprogramma 2013), Utrecht, Youth Care Inspectorate.
57 Youth Care Inspectorate (Inspectie Jeugdzorg) (2011), The Guardianship task of Nidos (De voogdijtaak van Nidos), Utrecht, Youth Care Inspectorate.
Since then, it has focused on the quality of reception centres and foster families. Pursuant to the Youth Care Act, both Nidos and the Youth Care Agency have an independent governing board which scrutinises the performance of the organisations’ management board. The organisations are financially monitored by the provincial authorities and by the national ministries, depending on the origin of the subsidies. Finally, the organisations are obliged to lay down a procedure for complaints. The organisations have to establish a complaints commission made up of at least three independent persons who are not employed by the organisation itself. Complaints have to be settled within five years of a complaint being filed. In order to ensure accessibility of its complaints procedure, Nidos provides all minors with an introductory folder in their own language in which this complaints procedure is explained. In 2011, one complaint was received by the complaints commission of Nidos. The complainant decided to withdraw the complaint and to direct it to the executive management board of Nidos instead.

In order to improve the quality of its own service provision and to monitor the performance of its guardians, Nidos has implemented a number of quality control measures, focusing on the opinion and experience of its clients. Thus, at the end of a guardianship period, clients are asked to complete an evaluation form on the performance of the guardian and the objectives that were set for housing, social network, education, leisure time and the future of the UMA in question. Cooperating with the University of Applied Sciences of Utrecht, Nidos has repeatedly conducted studies to measure the satisfaction of clients to get a good impression of the clients’ expectations and experiences concerning their guardians. For this purpose, annual ‘Worldcafé’ meetings are organised whereby participants discuss certain topics in small, informal groups. This also appears to be a good methods to bring Nidos clients together. In 2012, several ‘Worldcafé’ meetings were supposed to be organised. Nidos has commissioned the University of Groningen to conduct an annual survey of UMAs about their welfare to monitor whether it is achieving the objectives of its methodology ‘Young and on the road.’ Finally, Nidos carried out an audit by auditing agency INK in 2012.

III. PROCEDURE FOR APPOINTING A GUARDIAN / LEGAL REPRESENTATIVE TO A CHILD VICTIM OF TRAFFICKING (1.5 pages)

1. Briefly describe the procedure for assigning a guardian and/or a legal representative to a child victim of trafficking. Who triggers the procedure? Describe the main steps of the procedure and how long it takes to appoint a guardian once a child victim of trafficking in need of a guardian/legal representative is identified?

58 Youth Care Inspectorate (Inspectie Jeugdzorg) (2013), Annual Working Programme 2013 (Jaarwerkprogramma 2013), Utrecht, Youth Care Inspectorate.
59 The Netherlands, Youth Care Act (Wet op de jeugdzorg), article 4, available (in English) at: http://www.nji.nl/youthpolicy/Publications/The%20Youth%20Care%20Act.pdf.
60 The Netherlands, Youth Care Act (Wet op de jeugdzorg), article 48, available (in English) at: http://www.nji.nl/youthpolicy/Publications/The%20Youth%20Care%20Act.pdf.
61 The Netherlands, Youth Care Act (Wet op de jeugdzorg), article 68, available (in English) at: http://www.nji.nl/youthpolicy/Publications/The%20Youth%20Care%20Act.pdf.
62 The Netherlands, Youth Care Act (Wet op de jeugdzorg), article 68.2
65 Knowledge centre on social innovation (Kenniscentrum sociale innovatie) (2013), Underage asylum seekers and their guardian (Minderjarige asielzoekers en hun voogd), website, available at: www.innovatievemaatschappelijkindienstverlening.nl/Content.aspx?PGID=4a912568-1d54-4bba-a9a4-70892bf40340.
There is no special procedure for assigning a guarding to child victims of trafficking. We therefore describe the general procedure in place for assigning a guardian to a child, both Dutch (overseen by the Youth Care Agency) and foreign (overseen by Nidos) which also applies to child victims of trafficking.

The general guardianship procedure works as follows: at the start of the procedure, someone needs to identify and notice the child and its problems. This can done by be citizens, family, teachers, social workers, police or anyone else. These actors report their concerns to the Counselling and reporting centre on child abuse (Advies- en Meldpunt Kindermishandeling, AMK), part of the Youth Care Agency. If the need of the child is confirmed, the Youth Care Agency reports to the Council for Child Protection (Raad voor de Kinderbescherming). In serious cases, where the need of the child is evident, or severe abuse of the child has been witnessed directly, police can also report a child directly to the Council. The Council then examines the situation of the child, which can result in a request to the juvenile court to impose a youth protection measure, including the appointment of a guardian. The juvenile court in turn decides on the basis of the Council report whether a youth protection measure is imposed and what kind of measure that should be. If a guardianship measure (either family supervision or full individual guardianship) is imposed, the court requests the Youth Protection Agency or Nidos to carry out the guardianship and to monitor its implementation. During all these steps, especially however in the very beginning and during the further research of the Council and the AMK, signs of trafficking can be identified, but this does not change the general procedure. This general procedure applies to children from the Netherlands and from other EU countries.

A different procedure is in place where it concerns UMASs from third countries. The reception and asylum procedure of UMASs is closely intertwined with the guardianship services of Nidos. In general, when a UMAS is identified, either on entering the Netherlands or in a different situation, e.g. in the context of police activity, he or she is brought to one of the application centres in Schiphol or in Ter Apel where he/she has an intake interview with the aliens police to determine the identity of the UMAS. Straight after that first interview, the UMAS has an intake interview with Nidos guardians who try to determine whether the minor in question might be a victim of trafficking. If so, the UMAS is referred on to a protected reception facility. Nidos used to have a special team operating at Schiphol, but this team has been moved to Ter Apel. In all cases, Nidos files a request for temporary guardianship at the juvenile court, simultaneously informing the Council for Child Protection which releases a declaration of no-objection. The children in question sign a compliance statement. The juvenile court releases the appointment to the UMAS, to Nidos and to the Ministry of Justice, appointing the Nidos guardian the official guardian and representative of the child.

The first contact between Nidos and the UMAS has to take place within five days of the UMAS's arrival at the application centre. The period between the request for guardianship and the granting of guardianship may not be longer than two months. During that period Nidos already acts as if it was granted guardianship, informing the UMAS of the rights, and supporting and representing the interest of the child.

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73 The Netherlands, Executive Order Youth Care Act (Uitvoeringsbesluit Wet op de Jeugdzorg), article 44.
of the UMAS. In practice, Nidos is contacted immediately by the immigration service when a UMAS is identified. Thus, the first contact takes place within the first few days. Nidos and the immigration service have signed a covenant on their cooperation in this context (which is not publically accessible). Regarding the formal assignment of guardianship, the period can vary greatly in practice, since this concerns formal court proceedings which can be held up by procedural factors.

2. Briefly describe who assesses whether holders of parental responsibility staying in the country can or cannot represent the child and ensure the child’s best interests and how this is done.

The Council for Child Protection (Raad voor de Kinderbescherming) is the main actor in examining the ability and suitability of parents to retain parental authority. After a signal from the Youth Care Agency or from the police, the Council conducts research to come up with a clear advice formulated for the juvenile court. While the juvenile court takes the final decision for a measure of youth care, including the forced or voluntary appointment of a guardian, the advice of the Council is the basis of the court’s decision and therefore the crucial element of this process.

For the assessment, a researcher of the Council talks to the child in question, to the parents and, where necessary, to other professionals who are involved in the support for the child. This can include teachers, general practitioners or social workers. The researcher can be supported by a legal and a behavioural expert, if needed. The best interest of the child is at the centre of the investigation which is structured by means of a research plan, in line with article 3 of the Convention on the Rights of the Child. The objective of the investigation is to attain a clear picture of the situation of the child and its surroundings in order to assess whether the development of the child is threatened. Based on investigation, the researcher writes a report with a concluding advice. A draft version of this report is presented to the parents of the child and, depending on the age of the child, discussed with the child in order to check for incorrect facts or misjudgements. The judge can decide to place the child under temporary guardianship for no longer than three months.

The assessment is based on a number of principles which are defined in the Quality Framework of the Council. According to these principles, the researcher of the Council cooperates with multidisciplinary experts where necessary. At the start of the assessment, the researcher provides the parents of the child in question with information about the Council. The child is also given information, depending on the age. Together with different experts, the researcher of the Council decides which informants should be heard in every case, including professionals. The researcher is authorised to request judicial information regarding the case. The research is carried out in line with the official time line. The assessment is drawn up according to a standard format, detailing at least the reasons for the assessment, factors that influenced the assessment, the experts involved in the assessment, the key facts of the case, the reaction of the parents and the child to the draft report. The assessment in protection cases (beschermingszaken) should take no longer than 56 days.

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75 Interview with Nidos representative, 25 September 2013.
78 The Netherlands, Civil Code (Buregerlijk Wetboek), article 1:255.
79 The Netherlands, Youth Protection Council (Raad voor de Kinderbescherming) (2012), The quality framework for the Child Protection Council (Het Kwaliteitskader van de Raad voor de Kinderbescherming), Utrecht: Child Protection Council.
Based on this report, the Council assesses whether mandatory support is necessary. Where this is not the case, the Council can recommend voluntary support. If mandatory support is necessary (including guardianship), the Council requests the juvenile court to impose a youth care measure. This only happens if voluntary support is insufficient, if parents do not want to accept voluntary support or, if the assessment confirms that the development of the child is seriously threatened.

3. How frequently is the appointed guardian or legal representative changed? What are the efforts in place to ensure that the same person accompanies the child until the criminal or other procedure is completed or the child reaches majority age?

Though the organisations such as Nidos and the Youth Care Agency are responsible for the implementation of the guardianship, the guardian is in principle appointed directly, i.e. on a personal, individual basis. This means that in theory the guardian is not expected to change. In the general system of guardianship, a guardianship measure (individual or family guardianship) lasts no longer than a year. After a year, the guardian can request an extension of the guardianship period with another year. If the guardian does not think that it is necessary to extend the guardianship, he or she has to inform the Council in advance. The Council checks whether this assessment is justified. The guardianship is terminated when the parental authority can be re instituted, or when the guardianship can be transferred to family or foster family. This is only possible through a court order. The guardianship automatically ends when the child comes of age.

Nidos guardians usually stay guardian of the child in question until the child turns 18. Efforts are made to ensure that guardians do not change frequently. Since guardians are appointed on a regional basis (i.e. regional teams appoint a guardian per child), if the child moves to a different region, this often results in a change of guardian.

4. What mechanism, if any, exists to allow guardians/legal representatives to contact guardians/legal representatives in other EU MS or third countries?

Where possible, Nidos tries to contact parents or legal representatives of the child in the country of origin as soon as possible. This is done to come to a better assessment of the situation of the child and to see whether it is possible to let the child return to its country of origin. In this context it is important to establish whether the family can provide adequate support to the child, which is of special importance in the case of victims of trafficking, since the family may have played a role in the trafficking itself.

Since 2008, Nidos has worked on setting up the European Network of Guardianship Institutions (ENGI), facilitated by European Union funding, i.e. the European Refugee Fund and the European Programme for Integration and Migration. This project was triggered by a lack of cooperation between guardianship institutions in different countries and great differences in the nature and extent of guardianship provided. The objective of the project is to improve the exchange of information and good practice between countries, in order to improve and even out the level of protection children can

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83 Interview with Nidos representative, 2 July 2013.
84 Interview met Nidos representative, 2 July 2013.
expect in different countries. As part of this project, the guardianship systems for UMASs in 11 countries was examined in a fact finding study and a conference was organised where the results of the study were discussed. This has led to an intensification of contacts between guardianship organisations, according to the report of the fact finding study. ³⁸⁶

IV. TASKS (4 pages)

Guardians and legal representatives exercise different tasks. Replies to the questions below should clearly distinguish between child well-being / child best interests functions and legal representation functions.

1. Responsibility for child’s well-being and best interests:
   Briefly describe the tasks of the guardian as reflected in domestic legislation. Does the responsibility of the guardian cover the aspects included in Articles 14(1) and 14 (2) of Directive 2011/36/EU.
   Indicate how the individual assessment of the needs of the child is made, what are the factors which need to be considered and how the views of child are incorporated in such assessment?
   Please indicate if criteria for assessment are laid down in guidelines or other documents.
   Who assess what is a durable solution for a child victim? How is this done and what is the role of the guardian?
   Is there a specific procedure for assessing the best interests of the child? If so, briefly describe.

Pursuant to article 1:303 of the Civil Code, the guardian has in principle the same tasks and duties as a natural parent. Parents have the duty and the right to take care and bring up the child. ³⁸⁷ However, the guardian only has to make sure that the child is cared for and educated. ³⁸⁸ The difference between the duties of the natural parent and the duty of the guardian therefore lies in the fact that guardians do not have to carry out the upbringing themselves, but that they may also ask someone else to take care of it, e.g. a foster parent or an institution. Furthermore, the Civil Code defines that the responsibility for care and upbringing should be understood to include the responsibility for the mental and physical well-being of the child and for the development of its personality. This also means that guardians have the rights to determine the school the child goes to, the place where it lives and similar matters. Foster parents do acquire more rights and responsibilities after the child has resided within a family for longer than a year. Thus, after one year, the guardian cannot remove the child from the foster family without consent of that family. ³⁸⁹

The overall legal framework of guardianship (articles 1:241, 1:295, 1:302 Civil Code) ensures that the responsibilities of the guardian cover the aspects included in articles 14(1) and 14(2) of the Directive 2011/36/EU (see section 1.3 of this report). Although these articles do not refer specifically to victims of trafficking, they apply to these victims as well, as sub-group of children in need of a guardian. ⁹⁰ Regarding the access to education, medical care and legal aid stipulated in article 14(1) of the Directive, the Aliens Act determines that the exclusion of aliens without a residence permit from social and administrative services does not apply to education. ⁹¹ The different acts on the educational

³⁸⁷ The Netherlands, Civil Code (Burgerlijk Wetboek), article 1:247.
³⁸⁸ The Netherlands, Civil Code (Burgerlijk Wetboek), article 1:336.
⁹¹ The Netherlands, Aliens Act 2000 (Vreemdelingenwet 2000), article 10(2).
sub-systems (i.e. primary education, secondary education, vocational education and training) stipulate that access to education for aliens under the age of 18 is not conditional on their residence status.92

A legislative proposal concerning the Civil Code was supposed to stipulate that the parents, and also the guardians, should take into account the opinion of the child about his or her matters, as well as the increasing ability of the child to take care of his or her own affairs. While this stipulation was not included in the law, according to Nidos it retains some significance, as it means that guardianship has to be exercised in reasonableness and fairness, taking into account the opinion of the child.93 In actual civil proceedings, it is required that children are given the opportunity to express their opinion on cases concerning their own affairs.94

In practice, the tasks of assessing the child's needs and taking care of the well-being and best interest of the child are structured by work processes and methodologies. Guardians of both the Youth Care Agency and Nidos work with the so-called Delta Method (Deltamethode) for guardianship which was developed in order to improve and streamline the way that child protection measures were carried out.95 The Delta Method was developed for so-called family supervision, whereby guardianship is exercised over a child who may still live with his or her parents which is mostly the case for children under the auspices of the Youth Care Agency.

The Delta Method is a standardised working method for the assessment of the child’s needs and for the definition of objectives and solution. It is described in a text book for guardians which includes detailed instructions for guardians for dealing with all kinds of different situations.96 The Delta Method is not specified in law, but should be seen as a pedagogical manual for guardians and other youth care professionals. The Delta Method is focused on taking away the threats to the development of the child. This is done in consultation with the child and the parents of the child (in the case of family supervision) based on four consecutive steps. Thus, first, the strong and weak points of the child's situation and its environment are identified. Hereby, tools such as an ecogram detailing the child's personal network and a lifeline, defining important events in the child's life are used. The outcomes of this phase are then, in step 2, translated into possible threats to the development of the child. During step 3, the guardian define together with the child what the desired outcomes of its development are. Finally, the fourth step consists of defining objectives and looking for instruments to achieve these objectives. All these steps are discussed with the child in question and are brought together in an Action Plan which guides the implementation of the guardianship.97

Nidos has adapted the method to take into account the background and situation of foreign minors, and to unaccompanied minors specifically.98 The cultural disorientation, the lack of knowledge of the new surroundings and the uncertain legal position of these minors makes their situation more complex compared to that of Dutch children in need of a guardian. This is especially the case where these children are also victims of trafficking. More so than with other children, it is important that guardians

92 The Netherlands, Act on further education (Wet op het voortgezet onderwijs), article 27(1); The Netherlands, Act on primary education (Wet op het primair onderwijs), article 40(1); The Netherlands, Act on education and professional education (Wet op educatie en beroepsonderwijs), article 8.1.1(1).
94 The Netherlands, Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering), article 809.
95 Youth Care the Netherlands (Jeugdzorg Nederland) (2013), Improving the quality of youth care (Versterking van de kwaliteit van jeugdzorg), website, available at: www.jeugdzorgnederland.nl/jeugdbescherming
96 PI Research/Van Montford (2009), Handbook Deltamethod Family supervision (Handboek Deltamethode Gezinsvoogdij), Utrecht, MOGroep Jeugdzorg.
ensure that further abuse is prevented and that the child does not disappear. 99 Where Nidos carries out family supervision, the adaptation of the method mainly concerns additional attention paid to the cultural and religious background of the family. Especially step 3 of the method, the formulation of desired development outcomes, has to be closely aligned with the cultural norms the child carries with it, and can therefore not be purely based on a Dutch norm framework, according to this approach. Besides this crucial aspect, the same four steps described above are applied and integrated in the action plan. 100

When it comes to unaccompanied minors (and therefore direct guardianship), some of these steps have been adapted to suit the specific situation of the children better. According to Nidos, the main challenge for unaccompanied minors is not taking away the threats to the development (as in the case of regular children in family supervision), but that the opportunities for development need to be improved. Thus, step 2, which in the Delta Method results in a definition of the threats, in the Nidos method consist of the drawing up of a personal development profile and an identification of the barriers that may stand in the way of a healthy development. 101 It is important to emphasise in this context that this methodology concerns questions regarding the development and education of the child. Questions of safety and shelter, crucial in the case of child victims of trafficking, are approached differently whereby the vulnerable situation of children is closely taken into account (see also section 1.2 of this report). 102

These methods used by the Youth Care Agency and Nidos, regardless of whether we are talking about family supervision or individual guardianship, are based on an active exchange between guardian and child. The two core competences of the guardian in this context are engaging (whereby the guardian has to motivate the child (and possibly parents) to contribute actively to the process) and positioning (which means that the guardian ensures that the child understands how its development will be guaranteed). The guardian explains clearly what the different steps in the process are, what the responsibilities and agreements are and how the cooperation should proceed. Different tools have been developed to support this working method, including protocols for the drafting of an action plan, lists of possible development threats and instruments to determine the security of the child. 103

Regarding the assessment of a durable solution for the child, the guardians have the main responsibility in this regard. 104 They have to take decisions within the context of the asylum or residence procedure, what they consider the best choice for the child in question is. Thus, where a child has to return to its country of origin, the guardian can decide whether it is desirable to challenge this decision by court. In these decisions, the guardians take into account the opinion of the child and legal advice provided by the lawyer of the child. Furthermore, guardians work according to the Nidos View on Return. 105 Nidos developed this general perspective on return together with a number of other organisations. At the moment, a new document is being prepared whereby the current situation regarding asylum regulation and perspectives of asylum seekers and refugees are taken into account. This new document is not publicly available yet. 106 According to this Nidos perspective, the guardian

104 The Netherlands, Civil Code (Burgerlijk Wetboek), article 1:303.
105 COA, Cordaid, IOM, Nidos (2007), View on Return (Visie op terugkeer), letter to the Minister of Development and the State Secretary of Justice, Utrecht, 19 November 2007.
106 Interview with Nidos representative, 24 September 2013.
from the very beginning brings up issues of return with the child in questions and takes into account that return might be a desirable or unavoidable outcome. Also with regard to EU residents, it is the responsibility of the guardian to assess whether return is an adequate option. Decisions in the asylum procedure, e.g. whether to appeal or not, should be based on that assessment.107

Nidos is working on standardising the Best Interest Determination process. To do so, Nidos is working together with the Faculty of Behavioural and Social Sciences of the University of Groningen. The University has developed a number of instruments which are already being used by some guardians, but no structural approach has yet been adopted. An overall instrument is still in development and should contribute to the creation of a standardised approach. For the time being, guardians consult with experts from the University of Groningen on specific cases to determine the best interest of the child.108

2. Investigation and criminal procedure:

Please describe exactly which rights and duties the legal representative has during the investigations and the court proceedings (please provide legal source) using the following questions as guidance on the issues to touch upon: How are the legal representatives appointed? Based on which criteria and who assesses? Does the procedure/appointment of legal representative happens ex-officio or the child has to request? Can the police or judge hear the child without the presence of the legal representative and if so under which circumstances? Who can seek compensation for the child and how? What happens if the child turns 18 before the criminal procedure comes to an end?

If the child has to defend itself in criminal proceedings, the guardian will act on their behalf.109 Depending on the severity of the offence or crime, the minor will be assigned a lawyer by the court.110 When it comes to criminal proceedings against the traffickers, the child victims and their guardians are in practice almost always assisted by specialised lawyers, if the child or the guardian deem it necessary. These lawyers are reimbursed by the Legal Aid Board.111 This means that the lawyer is assigned on request of the guardian. If the child is a witness or victim, for example in the prosecution of its traffickers, it can be asked to testify. Children are rarely required to testify during a court hearing, but are either interviewed at a police station or by the examining magistrate overseeing the case.112

Child victims of trafficking who are placed within the Protected Reception system, are assigned a lawyer, by the Legal Aid Board. The Protected Reception system is a specific guardianship system for very vulnerable children and children who are likely to disappear, including child victims of trafficking. This assignment is done on request of the guardian.113 There is a specific list of solicitors

107 Interview with Nidos representative, 24 September 2013.
108 Interview with Nidos representative, 24 September 2013.
109 The Netherlands, Civil Code (Burgerlijk wetboek), artikel 1:245.
110 The Netherlands, Code of Criminal Procedure (Wetboek van Strafvoering), article 487.
who have declared their ability for this kind of support and who are specialised in this area of work.\textsuperscript{114} The solicitor and the guardian work together to protect the interest of the child. While the guardian has the final say on decisions regarding the legal procedure, in consultation with the child,\textsuperscript{115} the solicitor has more legal expertise and therefore plays an important role in determining the decisions of the guardian and child.\textsuperscript{116} The child victims of trafficking can file a report with the police or the military police (Koninklijke Marechaussee). In fact, they should be informed of the possibility to do so by the police, either in the reception centre at Schiphol (if they are identified at the airport) or at the police office where they are taken in. Pursuant to the so-called residence regulation on human trafficking (Verblijfsregeling mensenhandel), they should be offered three months 'reflection time' (bedenktijd) whereby they can decide whether or not they wish to file a report or cooperate with the prosecution of the traffickers.\textsuperscript{117} If the child is already under the auspices of Nidos, it is also possible that the Nidos guardian contacts the police so that the child can file a report. In any case, Nidos guardians inform the child of the possibilities to file a report and to assist the police and the public prosecution service in the criminal proceedings against the trafficker.\textsuperscript{118}

Regarding compensation, the court can order the trafficker(s) to pay compensation to the child victim in the context of the criminal proceedings. The guardian or lawyer, acting as representatives of the child, can request the court to impose such an order.\textsuperscript{119} The Public Prosecution can also seek the compensation if no request by the child or its representative has been filed.\textsuperscript{120} Compensation orders can be imposed in conjunction with other sanctions, also ex officio.\textsuperscript{121} If the trafficker has not paid the compensation within eight months after the order has been imposed, the state will pay the remainder of the compensation to the victim.\textsuperscript{122} In practice, the fact that successful prosecution of traffickers is rare and difficult means that seeking compensation from the traffickers is not a frequently done by guardians.\textsuperscript{123} Guardians can also file a request for compensation on behalf of the victim with the Violent Offences Compensation Fund. To successfully apply for compensation from the fund, the victim needs to have suffered serious physical or psychological damage through an intentional act committed in the Netherlands.\textsuperscript{124}

When the child turns 18, the guardianship is automatically terminated and the child assumes responsibility for his or her own affairs. This can be a problem if the criminal proceedings against the traffickers are still ongoing, just as the procedures regarding asylum and residence. Depending on the status of the victim, it may be possible for Nidos guardians or other support organisations to provide continued support. Thus, when the person has a formal status within the B9 procedure as victim-witness of trafficking, special support structures apply. If the person has a residence permit, possibilities for continued support also exist. However, if the 18-year old does not have any specific

\textsuperscript{114} Kromhout, M.H.C. and Liefaard (2010), Between control and guidance. An evaluation of the pilot 'Protected Reception UMAS at risk' (\textit{Tussen beheersing en begeleiding. Een evalutatie van de pilot 'beschermde opvang risico-AMV's'\textquoteright), The Hague, Scientific Research and Documentation Centre (\textit{Wetschappelijk Onderzoek- en Documentatiecentrum, WODC}).

\textsuperscript{115} The Netherlands, Civil Code (\textit{Burgelijk Wetboek}), article 1:245.

\textsuperscript{116} Telephone interview with Nidos representative, 2 July 2013.

\textsuperscript{117} The Netherlands, Aliens Circular 2013 (\textit{Vreemdelingencirculaire 2013}), chapter B8, section 3.

\textsuperscript{118} Kromhout, M.H.C. and Liefaard (2010), Between control and guidance. An evaluation of the pilot 'Protected Reception UMAS at risk' (\textit{Tussen beheersing en begeleiding. Een evalutatie van de pilot 'beschermde opvang risico-AMV's'\textquoteright), The Hague, Scientific Research and Documentation Centre (\textit{Wetschappelijk Onderzoek- en Documentatiecentrum, WODC}).

\textsuperscript{119} The Netherlands, Code of Criminal Procedure (\textit{Wetboek van strafvordering}), article 51f.

\textsuperscript{120} The Netherlands, Public Prosecution Service (\textit{Openbaar Ministerie}) (2010), Instructions on victim care (\textit{Aanwijzing slachtofferzorg}), paragraph 2.4.2, Government Gazette no. 20476

\textsuperscript{121} The Netherlands, Penal Code (\textit{Wetboek van strafrecht}), article 36f.

\textsuperscript{122} The Netherlands, Penal Code (\textit{Wetboek van strafrecht}), article 36f.6

\textsuperscript{123} Interview with Nidos representatives, 24 September 2013.

\textsuperscript{124} The Netherlands, Violent Offences Compensation Fund Act (\textit{Wet schadefonds geweldsmisdrijven}), article 3.
legal or residency status, there is no framework within which formal support can be provided. Nidos is trying to make the Ministry aware of this problematic issue.\textsuperscript{125}

The Public Prosecution Instruction on Human Trafficking (Aanwijzing Mensenhandel) describes the process of investigation and prosecution. It defines child victims of trafficking as a special priority, and states that Nidos or the Child Protection Council should be involved in cases concerning child victims. Furthermore, the Instructions contain the advice to audio and video record the reports of child victims of trafficking, of which the children have to be informed. During the case proceedings, the Instruction gives the public prosecutor the option to insist that the child is not heard as a witness or victim in a general court hearing, but in a non-public hearing with the magistrate. It is not specified which role the child’s guardian should play in the proceedings.\textsuperscript{126}

3. Administrative procedure:

What is the role of the guardian / legal representative in the administrative procedure on residence permit for the child? If the child submits and asylum claim does the guardian also carry out the legal representation functions under Article 17(1) Asylum Procedures Directive (2005/85/EC)? If not, who carries out such role and how do the two functions interact?

As explained in section 1.2, minors do not require legal representation in administrative procedures. Nonetheless, the guardians assist UMASs, and especially child victims of trafficking, in the procedures on resident permits and asylum claims. In addition, the Legal Aid Board assigns a lawyer to every UMAS, pursuant to the Law on Legal Aid. The child, the guardian and the lawyer assigned by the Legal Aid Board work together in completing the child’s asylum request. The lawyer advises the child and the guardian, but the guardian retains the authority to take decisions in the procedure. The children can either submit a regular request for asylum, or they can follow the B8-procedure for victims of trafficking.\textsuperscript{127} This procedure is defined in chapter B8 of the Implementation Guidelines of the Aliens Act (Vreemdelingencirculaire). Referring to EU Council Directive 2004/81/EG, chapter B8 aims to protect victims and witnesses of human trafficking without valid residence permits for the duration of the trial. The victims of trafficking can thus contribute to the prosecution of perpetrators without being deported.\textsuperscript{128} In practice, lawyers frequently advise UMASs to file a regular asylum request instead of using the B8 procedure, because the permit resulting from the B8 procedure is retracted when the trial is finished. As experience shows that a lot of trafficking cases are dismissed (in 2012 all cases filed by Nidos pupils were dismissed\textsuperscript{129}), filing a B8 request only provides a limited perspective for a long-term permit for the victims. If both a B8 request and a regular asylum request are filed, this can even lead to a rejection of the regular asylum request.\textsuperscript{130}

The guardian is the legal representative of the child. As such, he or she represents the child in civil proceedings where necessary.\textsuperscript{131} When it comes to civil proceedings more generally, judges are

\textsuperscript{125} Telephone interview with Nidos representative, 2 July 2013
\textsuperscript{126} The Netherlands, Public Prosecution Service (Openbaar Ministerie) (2013), Instruction on Trafficking (Aanwijzing Mensenhandel), Registration Number 2008A022gp, available at: www.om.nl/organisatie/beleidsregels/overzicht/georganiseerde/@155218/aanwijzing.
\textsuperscript{128} The Netherlands, Aliens Circular 2013 (Vreemdelingencirculaire 2013), chapter B8, section 3.
\textsuperscript{129} Nidos (2013), Annual Report 2012 (Jaarverslag 2012), Utrecht, Nidos.
\textsuperscript{131} The Netherlands, Civil Code (Burgerlijk Wetboek), article 1:337.
required to hear the opinion of the child in question on issues concerning them. The judge can decide in which manner the child is heard and whether other persons will be present during the hearing. 132

4. Age assessment:

   Does the guardian/legal representative play a role in the age assessment process, and if so, which?

The guardian does not play a role in the age assessment process of unaccompanied minors, regardless of a possible background of trafficking. This has repeatedly been criticised. Thus, a report of the Separated Children in Europe Programme stated as one of the critical issues of the age assessment process in the Netherlands that the guardian does not assist the child during this process. 133 To understand why this is the case, we explain the procedure of age assessment.

Age assessment of a UMAS is carried out if doubts exist about the age of the child. At least three employees of the Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst, IND) need to confirm this doubt to trigger the procedure. The child is informed about the assessment and is asked for informed consent. If the child does not provide its informed consent, it is assumed that the child is of age. The assessment is carried out at least within a week after the doubts have been raised. It consists of x-rays of the wrist and of the collar bone of the child which are assessed by two radiologists. The x-rays are carried out by the Dutch Forensic Institute (Nederlands Forensisch Instituut, NFI). Guardians are not appointed before the age assessment has been completed. If the assessment shows that the child is in fact adult, no guardian will be appointed, as the person does not qualify for the specific measures in place for minors. If the age assessment does not show that the child is of age, a Nidos guardian is appointed. 134

The entire process of age assessment is structured according to the age assessment protocol (protocol leeftijdsonderzoek). This protocol also describes the procedure concerning the request for an age assessment and the informed consent procedure. According to this protocol, formally, the age assessment is offered to (and not imposed on) the child. The IND provides information about the process, the objects and the consequences of the assessment to the child, both verbally and in writing. Hereby, interpreters are provided to translate the information into a language which the child can understand. At least, all elements of the informed consent form are explained to the child. This is done in a way so that it can finally be assured that a situation of informed consent does indeed exist. To confirm consent, the child has to sign a form to request the age assessment. 135

In the operational part of the protocol, no mention is made of guardians or of Nidos at all. The only place where reference is made to Nidos is the request form which has to be signed by the minor. On this form, it is explained that Nidos has expressed its consent for age assessment of UMASs where reasonable doubt exists whether they are indeed under age in a letter dated 24 December 1999. In a letter dated 14 January 2004, Nidos has furthermore expressed that in cases where there is no doubt of the child being a minor, but where there is doubt of the child being under the age of 15, individual consent of the guardian is necessary. 136

132 The Netherlands, Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering), article 809.
133 Separated Children in Europe Programme (SCEP) (2011), Review of current laws, policies and practices relating to age assessment in sixteen European Countries, Brussels, SCEP.
Nidos has announced that it wants to strive to be present at age assessments more regularly, but it is not clear in which context this would be possible. Nidos could ask for the inclusion in the process as so-called pre-guardians, i.e. before being appointed officially.\textsuperscript{137}

IV. ANNEXES (EXCEL SHEETS):

See excel sheets.

1. **Table 1: Promising practices:**
   Please describe any promising practice you have identified during your research. These should be recent examples; you can also refer to past practices, but these should not have been discontinued before 2005.

2. **Table 2: Existing literature**
   List and summarise the most relevant studies on guardianship and/or legal representation published in your Member State from 2005 until today. Literature to be listed in Annex 2 should not have been published before 2005.

\textsuperscript{137} Separated Children in Europe Programme (SCEP) (2011), Review of current laws, policies and practices relating to age assessment in sixteen European Countries, Brussels, SCEP.