



# **European Migration Network**

## Ad-Hoc Query on Unaccompanied Minors applying for Asylum

Requested by DE EMN NCP on 19<sup>th</sup> November 2008

Responses from AT, BE, BG, CZ, DE, EE, ES, FI, FR, HU, IT, LT, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK (22 in Total)


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### **1. Background Information**

Some members of the German Federal Parliament asked the German Government in a Major Interpellation several questions in the context of unaccompanied minors, which will be brought to the attention of the members of parliament as well as to the public. In this context, the following questions were raised:





1. How is the legal capacity to act in the asylum procedure for minors regulated in your country?
2. Is there an age limit for any/certain action?
3. Do they have a legal adviser who acts in place of them?
4. What are the main legal instruments in respect of this matter?

### **2. Responses**

		<b>Wider Dissemination?</b>	
	<b>Belgium</b>	<b>Yes</b>	The legal capacity in BE begins at 18 years of age. A distinction has to be made between unaccompanied minors from EU- Member States and from non-EU member states. Non-EU unaccompanied minors can apply for asylum themselves. Once their in the procedure they loose this capacity to act, as a guardian is provided. EU unaccompanied minors are considered to be able to act and no guardian is

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			provided.
	<b>Bulgaria</b>	<b>Yes</b>	<p>With the accomplishment of 18 years of age the persons attain their majority and are completely able, through their activities, to acquire rights and assume obligations.</p> <p>In compliance with the Law on Asylum and Refugees, a guardian or tutor is appointed, under the conditions and following the procedure laid down in the Family Code, for any unaccompanied minor or juvenile alien seeking or having received protection who is in the territory of Bulgaria.</p> <p>Unaccompanied minor or under age foreigner seeking or having been granted a protection, if he/she has no appointed guardian, respectively trustee, is represented in the proceedings by the order of art. 15, para 7 of the Law of protection of the child, i.e. directorate "Social support" at the permanent address of the child.</p>
	<b>Czech Republic</b>	<b>Yes</b>	18 years is the limit for legal capacity to act in the asylum procedure. If the asylum seeker is minor, his/her trustee is designed by a court.
	<b>Germany</b>	<b>Yes</b>	<p>Normally in Germany the legal capacity begins at an age of 18, when you become major of age. Only in the German asylum procedure there is an exception: the Asylum Procedure Act prescribes, that a foreigner who is at least 16 years of age shall be capable of performing procedural acts in accordance with the Asylum Procedure Act. Below the age of 16 years every child needs a legal guardian.</p> <p>Section 12 Asylum act: Legal capacity of minors (1) A foreigner who is at least 16 years of age shall be capable of performing procedural acts in accordance with this Act, unless he has no legal capacity according to the terms of the Civil Code or unless he would have to be offered assistance or be subject to a reservation of consent in this matter if he had reached the age of full legal accountability.</p> <p>(2) In applying this Act, the provisions of the Civil Code shall determine whether a foreigner is to be regarded as a minor or an adult. If a foreigner is of age under the law of his home country, his legal capacity and capacity to contract shall remain unaffected.</p> <p>(3) Except as provided by a contrary decision of the guardianship court, either parent is authorized to represent a child under age 16 in the asylum procedure if the other parent does not reside in the Federal territory or if his place of residence in the Federal territory is not known.</p>
	<b>Hungary</b>	<b>Yes</b>	<p>How is the legal capacity to act in the asylum procedure for minors regulated in your country?</p> <p>The Act IV of 1959 on the Civil Code of the Republic of Hungary regulates legal competency, and limited capacity and legal incompetency of minors in the following way: Article 11 (1) Everybody whose competency is not limited or disqualified by the law is legally competent. (2) Whosoever is competent is entitled to conclude contracts and make other legal statements.</p>

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		<p>(3) Any contract or a unilateral statement restricting legal competency shall be null and void.</p> <p>Article 12 Persons who have <u>not yet reached the age of eighteen years</u> shall be deemed <u>minors</u>, unless they are married. Adulthood shall not be conferred upon marriage if it is annulled by court order owing to the absence of the guardian's consent, where one is required due to the lack of competency or minority.</p> <p>Article 12/A (1) A <u>minor shall be of limited capacity</u> if he or she has reached the <u>age of fourteen years</u> and is not incompetent. (2) Unless otherwise provided by law, the legal statement of a minor with limited capacity shall not be deemed valid without the consent or subsequent approval of that person's legal representative. If and when minors of limited capacity become competent, they shall be entitled to make their own decisions concerning the validity of their pending legal statements. (3) Minors of limited capacity shall, without the participation of their legal representatives, be entitled a) to make legal statements of a personal nature for which they are authorized by legal regulation; b) to conclude contracts of minor importance aimed at satisfying their everyday needs; c) to dispose of the earnings they acquire through work and undertake commitments up to the extent of their earnings; d) to conclude contracts that only offer advantages. (4) With the permission of the guardian, legal representatives shall be entitled to refuse gifts - in accordance with Paragraph d) - that are promised or given to minors of limited capacity. If the guardian declines to approve the legal representative's statement of refusal, the guardian's such decision shall replace the legal representative's statement of acceptance. (5) Legal representatives shall be entitled to issue legal statements in the name of minors of limited capacity, except when the law requires the statement to be made by the minor with limited capacity himself/herself or when the statement concerns earnings acquired through work.</p> <p>Article 12/B  (1) Minors <u>under the age of fourteen years</u> are <u>legally incompetent</u>.</p> <p>Article 12/C (1) Legal statements made by incompetent minors shall be null and void; their legal representatives shall proceed on their behalf. (2) Contracts of minor importance that are generally concluded in large numbers and do not require special consideration and have been concluded directly by incompetent minors and have already been performed shall not be considered null and void.</p> <p>The legal capacity to act in the asylum procedure for minors – who can be either accompanied or unaccompanied – is regulated by the <i>Act LXXX of 2007 on Asylum</i> as follows:</p> <p>Article 2 f) 'unaccompanied minor' shall mean aliens below the age of eighteen, who arrive on the territory of the Republic of Hungary unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Republic of Hungary;</p> <p>Article 35 (2) A person seeking recognition shall act in the asylum procedure in person.</p>
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			<p>(3) Persons with <u>limited capacity</u> shall also have the right to participate in asylum proceedings as parties.</p> <p>(5) Where an <u>incompetent person</u> wishes to lodge his/her application for recognition in person, the refugee authority shall conduct the asylum procedure with the legal representative of the incompetent person as a party, or failing this a representative ad litem shall be appointed.</p> <p>(6) If the person seeking recognition is an <u>unaccompanied minor</u>, the refugee authority shall forthwith provide for the appointment of a <u>representative ad litem</u>.</p> <p>(8) As regards the joint application of family members for recognition, it shall be submitted by the family member with <u>legal capacity</u> on behalf of all family members concerned.</p> <p>(9) A joint application for recognition shall apply to family members with <u>legal capacity or with limited capacity</u> subject to their prior written consent, or if they grant consent during the personal interview in writing. A joint application for recognition shall apply to family members with <u>no legal capacity</u> subject to the written consent of the legal representative or the representative ad litem.</p> <p>Is there an age limit for any/certain action?</p> <p>Only those persons seeking recognition can be fingerprinted who are above the age of 14.</p> <p>Do they have a legal adviser who acts in place of them? See Article 35 of Act LXXX of 2007 on Asylum above under the first question.</p> <p>What are the main legal instruments in respect of this matter? See answer to the first question above.</p>
	<b>Italy</b>	<b>yes</b>	<p>The asylum applicant or recognized refugee status minors does not enjoy a different treatment than the other unaccompanied children. The recipient authority fosters on a temporary basis to the municipality Social Services the foreign unaccompanied minor who has expressed the will to seek asylum. At the same time, the authority will acknowledge the request to the court for Juvenile Justice and to the Judge with responsibility for guardianship cases , in order they could take the necessary actions (art.371, c.1, n.1 Civil Code). The municipality, in turn, immediately reports the minor to the Central Service of the Protection System for Asylum Applications and Refugees (SPRAR) and requests reception in one of the SPRAR territorial projects. These projects, in addition to the reception, provide also support services, especially regarding education and integration.</p> <p>The foster minor will remains subject to "guardianship" until the age of 18. After age 18 years, his/her reception in SPRAR centres could last for other 6 months.</p>
	<b>Estonia</b>	<b>Yes</b>	<p>In Estonia, persons who have attained 18 years of age (adults) have full active legal capacity. Persons who are under 18 years of age (minors) and persons who due to mental illness, mental disability or other mental disorder are permanently unable to understand or direct their actions, have restricted active legal capacity (General Part of the Civil Code Act).</p> <p>In asylum proceedings all persons under 18 years of age are considered as minors and they shall be represented by a parent or a legal guardian. However, there are some exceptions regarding unaccompanied minors. An unaccompanied minor may perform the acts provided by law independently, if he or she is becoming 18 year of age at least 6 months after he or she has submitted the asylum</p>


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			<p>application to the Citizenship and Migration Board or if the unaccompanied minor is or has been married.</p> <p>There are some activities in the asylum procedure that may be done by the minor applicant. For example minors of at least ten years of age or younger minors if the level of development of the minor so permits, can present, orally or in written form, facts and give explanations, in person, concerning circumstances which may have essential importance in the review of his or her application for asylum, including the circumstances which may prevent the applicant's expulsion from the country.</p> <p>Also minors of at least 15 years of age have to give a signature sample, if he or she is able to write. This is optional for minors from 7 to 14 years of age.</p>
	<b>Spain</b>	<b>Yes</b>	In Spain although the rule on administrative procedure permits minors to act. In the case of non- accompanied minors, are in ward of courts, and they decide if they are vulnerable and they act as it is foreseen in the organic law 1.96 on juridical protection of the minor.
	<b>Latvia</b>	<b>Yes</b>	<p>Legal capacity for minors – asylum seekers are defined by Asylum Law - Section 11 “Rights of Minors”:</p> <p>(1) The rights and lawful interests of a minor (a person who has not attained the age of 18 years) shall be represented by his or her parents.</p> <p>(2) An application shall be examined and the decision to grant or refuse the granting of refugee or alternative status shall also apply to minor children of an asylum seeker if they are located or arrive in the Republic of Latvia concurrently with the parents. In examining an application the opinion of a minor shall be taken into consideration.</p> <p>(3) If a minor is not accompanied by parents and wishes to submit an application himself or herself, his or her rights and lawful interests shall be represented during the asylum procedure by Orphan Court, or an independent authorised representative appointed by the Orphan Court or head of Children Care Centre.</p> <p>(4) Interviews with a minor who is not accompanied by parents shall be conducted by border guards specially trained for such task.</p> <p>(5) Protection of the rights of the child shall be ensured for a minor who is not accompanied by parents in accordance with the procedures prescribed by law.</p> <p>(6) A minor who is not accompanied by parents has the right to receive legal assistance free of charge during the asylum procedure.</p> <p>(7) The minor children of an asylum seeker or minor asylum seekers shall be ensured the acquisition of education in conformity with the laws in force. The Cabinet shall determine the procedures by which education shall be ensured.</p>
	<b>Lithuania</b>	<b>Yes</b>	The main legal instruments on the legal status of minor asylum seekers are the Aliens' Law of the Republic of Lithuania and the Order on examining asylum requests, approved by the minister of interior.




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			<p>During the asylum procedure, minor asylum seekers (children under the age of 18) are represented by their adult family members; applications for asylum of such minors are lodged by their adult family members as well.</p> <p>Minor asylum seekers are considered to be an especially vulnerable group, therefore they are provided with a special care. Procedures of the examination of the minors' asylum requests are usually carried out in presence of their parents or other legal representatives.</p> <p>In Lithuania, an unaccompanied minor asylum seeker is a foreigner who is under 18 years of age, and who arrived to Lithuania without parents or other legal representatives or has been left unaccompanied after having entered the territory of Lithuania. Unaccompanied minors are placed under temporary guardianship or care during their stay in the Republic of Lithuania. A legal guardian represents interests of a child. Unaccompanied minors are supplied with free accommodation, their living costs are covered from the state budget, minors have a right to attend comprehensive or vocational schools. They can also enjoy the right for medical care and legal aid, to receive social services and to contact Lithuanian non-governmental or international organizations. Their rights are being represented by the legal guardians and social workers. After an asylum application is received from an unaccompanied minor the process of his/her family members tracing starts as soon as possible.</p> <p>The Aliens' Law of the Republic of Lithuania (Art. 32) foresees the following rights which are granted to the unaccompanied minor aliens:</p> <ol style="list-style-type: none"> <li>1) to be supplied with free accommodation and be supported in the manner established by the Minister of Social Security and Labour of the Republic of Lithuania;</li> <li>2) to study at general education schools and vocational schools according to the procedure laid down by the Minister of Education and Science;</li> <li>3) to receive free immediate medical aid in the manner prescribed by the Health Minister;</li> <li>4) to be provided with free social services in the manner prescribed by the Minister of Social Security and Labour;</li> <li>5) to receive legal assistance guaranteed by the State, unless the laws of the Republic of Lithuania provide otherwise;</li> <li>6) to contact the representatives of non-governmental or international organisations of the Republic of Lithuania.</li> </ol>
	<p><b>Malta</b></p>	<p align="center"><b>Yes</b></p>	<p><b><i>How is the legal capacity to act in the asylum procedure for minors regulated in your country?</i></b>                  The legal capacity to act in the asylum procedure is regulated by the Refugee Act itself.</p> <p><b><i>Is there an age limit for any / certain action?</i></b></p>

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			<p>Applicants under 18 years may apply for asylum, but they need to be assisted by a Guardian appointed in terms of the Children and Young persons (Care Orders) act. Cap 285 of the Laws of Malta) during the Asylum Determination Process.</p> <p><b><i>Do they have a legal adviser who acts in place of them?</i></b> Yes, in our case a legal guardian needs to be appointed.</p> <p><b><i>What are the main legal instruments in respect of this matter?</i></b> The relative instruments are Article (2) s and Article 13 (3) of the Refugee's Act and the Children and Young Persons (Care Orders) Act.</p> <p>Article 2 (s) of Act VII amending the Refugee Act Cap. 420 defines " " <i>unaccompanied minor</i> " as a person below the age of eighteen years who arrives in Malta unaccompanied by an adult responsible for him whether by law or by custom, for as long as he is not effectively taken into the care of such a person and includes any minor who is left unaccompanied after he has entered Malta."</p> <p>Article 13 (3) states that any child or young person below the age of eighteen years falling within the scope of this Act who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be allowed to apply for asylum, and for the purposes of this Act, shall be assisted in terms of the Children and Young Persons (Care Orders) Act, as if he were a child or young person under such Act.</p>
	<b>Netherlands</b>	<b>Yes</b>	<p>In the NL regulation, a minor is defined as an alien under the age of 18. According to Dutch national law, no person under 18 has legal capacity. Therefore, every alien under 18 has the right to a legal guardian. The (asylum) application of aliens younger than 18 has to be signed by the legal guardian. Note: there is no obligation to be represented by a legal guardian. A minor may refuse legal guardianship.</p> <p>Legal guardianship, especially that of minor aliens, is arranged by an organisation called Nidos. According to the Decision of the Ministry of Justice (12 January 2005, nr. 5328242/04/DJJ) that defines the categories of aliens (NL Civil Code, book 1, articles 241 and 302) the guardianship has to be appointed to Nidos by a judge, which enables Nidos to take legal decisions on behalf of the minor alien, whatever the residence status of the alien. Nidos can also be appointed as the legal guardian of children whose parent(s) is/are unaccompanied minor(s) and children that are victims of human trafficking. This foresees in the implementation of article 19 of the COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.</p> <p>According to the Aliens Act implementation guidelines and the General Administrative Law Act (article 2:1), every alien has the right to an authorised representative during the whole procedure. No special requirements are being posed on this representative. The alien has to sign a declaration in which is stated that the guardian is acting on behalf of the alien.</p>
	<b>Austria</b>	<b>No</b>	<p>This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further.</p>
	<b>Poland</b>	<b>yes</b>	<p>18 years is the limit for legal capacity to act in the asylum procedure. In case of unaccompanied minors, the organ which accepts the application immediately applies to court to appoint a guardian, who represents the minor throughout the asylum procedure. The main legal instrument regulating this matter is the Act on granting protection to foreigners on the territory of the Republic of Poland of 13 June 2003.</p>

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	Portugal	Yes	<p><b>How is the legal capacity to act in the asylum procedure for minors regulated in your country?</b>  The legal capacity to act in the asylum procedure for minors is regulated through the <a href="#">Act n. 27/2008</a>, of 30 June, which establishes the conditions and procedures for granting asylum or subsidiary protection and the status of asylum, refugee and subsidiary protection to applicants, by transposing into the national legal framework Directives numbers 2004/83 EC, of the Council, of 29 April; and 2005/85 EC, of the Council of 1 December.</p> <p><b>Is there an age limit for any/certain action?</b>  The <a href="#">Act n. 27/2008</a>, of 30 June, considers an «Unaccompanied minor» any nationals of third countries or stateless persons with less than 18 years of age who enter national territory non accompanied by an adult who, by force of law or custom, takes responsibility for them, whilst they are not actually taken care of by that person, or have been abandoned after entering national territory;  The n. 5 of Article 13, on the submission of asylum request, states that the applicant who is a minor may submit an application in his name.</p> <p><b>Do they have a legal adviser who acts in place of them?</b>  An unaccompanied minor should be represented by a person who acting on behalf of an organization represents his interests, in the capacity of his legal tutor. This representative is a person who acts on behalf of a national organization which, according to the law, is responsible for the minors' assistance and welfare, or any other suitable representative appointed, according to the law, to defend the unaccompanied minors' interests.</p> <p>Before any decision on the application for asylum is pronounced, the applicant is granted with the right to make declarations, in conditions of due confidentiality and enabling him/her to explain the circumstances which justify the respective claim. If the application is submitted by a minor or unqualified person, it is incumbent on <a href="#">Aliens and Borders Service</a> (SEF) to notify <a href="#">Portuguese Refugee Council</a> (CPR) of that fact for representation purposes (Article 16).</p> <p><b>What are the main legal instruments in respect of this matter?</b>  The <a href="#">Act n. 27/2008</a>, of 30 June, establishes some provisions common to applicants' status and asylum and subsidiary protection beneficiaries.</p> <p>The Article 78 regards Minors and states that:</p> <ol style="list-style-type: none"> <li>1- When applying this law, the higher needs of minors should be taken into consideration.</li> <li>2- For the purposes of the provisions of the previous number the following situations are considered as the minor's higher interest: <ol style="list-style-type: none"> <li>a) Its settlement with their respective apt parents; or, if these are not to be found,</li> <li>b) Its settlement with their adult, apt family members; or if these are not to be found,</li> <li>c) With foster families, in special accommodation centres for minors or in places with the suitable conditions for that purpose;</li> <li>d) The non separation of phratries (siblings);</li> <li>e) The stability of life, changing their place of residence as little as possible.</li> </ol> </li> <li>3- Competent entities of Public Administration ensure that minors who have been</li> </ol>
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			<p>victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman or degrading treatments or the effects of an armed conflict have access to rehabilitation services, as well as suitable psychological assistance, providing, if necessary qualified support.</p> <p>The Article 79 regards unaccompanied minors, and it says that:</p> <ol style="list-style-type: none"> <li>1- Notwithstanding the protective measures applicable under protective legislation regarding minors, the latter being applicants or beneficiaries of asylum or subsidiary protection, may be represented by entity or nongovernmental organization or any other form of representation legally accepted.</li> <li>2- Minors' needs should be taken into consideration by means of the respective Tutor or appointed representative, being the object of periodical assessment by the competent authorities and their opinions taken into account, depending on their age and degree of maturity.</li> <li>3- For the purposes of the previous numbers, the rules provided for in the previous article apply to unaccompanied minors, as soon as they are authorized to enter national territory up to the moment when they have to leave it.</li> <li>4- Unaccompanied minors, of 16 years of age or older, may be placed in reception centres for adult asylum seekers.</li> <li>5- With the purpose to protect the higher interests of the unaccompanied minor, Aliens and Borders Service, in articulation with other entities involved in the procedure and the Ministry of Foreign Affairs, should endeavour to find the members of the minor's family.</li> <li>6- In the cases when the life and physical integrity of a minor and his/her close relatives are at risk, namely if they remain in their home country, the gathering, processing and dissemination of information regarding those people are carried out under strict confidentiality, to prevent compromising their safety.</li> <li>7- Staff working with unaccompanied minors should have the suitable training regarding the minors' needs and is subject to the confidentiality duty as for the information they become aware in the course of their duties.</li> </ol> <p>Minors who are granted the status of refugee or subsidiary protection shall be granted full access to the schooling system, in the same conditions as national citizens.</p>
	<p><b>Romania</b></p>	<p align="center"><b>Yes</b></p>	<p>According to the Romanian Law on Asylum, the legal capacity of minors is not handled in a single specific article, as in the German case. All the aspects of the minor's legal capacity in relation with the Romanian asylum procedure result from several provisions of the Romanian Law on Asylum and also from the Romanian Civil Code. Any of these provisions shall be interpreted according to the minor's best interests.</p> <p>According to the Romanian Asylum Law, the forms of protection which can be granted to an asylum seeker are refugee status (the criteria are the same as those provided by the 1951 Geneva Convention) and subsidiary protection (the criteria are the same as those provided by</p>

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			<p>the Directive 2004/83/EC – „Qualification Directive”).</p> <p><b>Applications lodged by minors</b> The interests of a minor alien shall be represented by her or his own legal representative. The minor alien shall lodge her or his asylum application by her or his own legal representative, and in the case the age of the minor is 14 the asylum application may be lodged personally. In case of an unaccompanied minor alien who manifested, orally or written, her or his will to be granted asylum, in front of the competent authorities, shall be registered as asylum applicant and her or his application shall be legally considered as being lodged only when appointing a legal representative who will assist the minor during the whole asylum procedure.</p> <p><b>Interviewing the asylum applicants minors</b> The asylum applicant minor shall be interviewed in the presence of her or his own legal representative. There are no specialized lawyers for unaccompanied minors but special legal assistance can be provided by NGO’s or UNHCR office whose representatives are also allowed to assist the unaccompanied minor asylum seeker during the interview. The legal representative has the legal obligation to inform the asylum applicant minor on the purpose and possible consequences of the personal interview and shall undertake the necessary measures in order to prepare the minor for the interview. The minor asylum applicant either accompanied or not, shall be interviewed if established this is possible according to their physical development. When conducting an interview with the asylum applicant minor, her or his intellectual development and maturity shall be taken into account.</p> <p>There are designated case-officers specialized in <u>vulnerable groups cases</u> (which also includes <u>unaccompanied minors</u>) who make the interview and adopt the decision in such situations. There is no special training focused on unaccompanied minor asylum seekers for the interpreters and no specific room for interviews with minors at present.</p> <p><b>Resolving the asylum application</b> When resolving the applications of the minor asylum applicants, their intellectual development and maturity shall be taken into consideration.</p> <p>A Task Force for vulnerable groups (which is an inter-institutional and multi-functional working group) was established in 2003 by UNHCR. Since 2004 this Task Force has been coordinated by Romanian asylum authorities. All Romanian authorities with asylum competences, UNHCR, IOM and the asylum specialized NGO’s are represented in this Task Force. This Task Force was established for the purpose of assuring the cooperation between all the actors involved in asylum matters in order to take all the necessary measures for the asylum seekers or beneficiaries of a form of protection who have special needs (their right to be respected, to receive the adequate assistance etc.).</p>
	Slovenia	Yes	<p>In Slovenia, an individual gains the legal capacity once he or she is of legal age (i.e.18 years old). Therefore, an applicant for international protection who has no legal capacity (is not yet 18 years old) is by virtue of the law represented by a legal representative. The legal representative are parents of the minor (or one of the parents). In case of an unaccompanied minor applying for international</p>




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			<p>protection, the legal representative is designated by the decision of the competent centre for social work (the so called guardian). In line with the provisions of the Slovene International Protection Act the designated guardian may also be a relative of the minor or an organisation, specialised in dealings with minors.</p> <p>With regard to the above, it is the legal representative who files the minor's application for international protection. The minor is also present on filing the application. Counselling for the minor applicant in the procedure depends on his or her age, mental maturity and the capacity to understand the meaning of the procedure. A minor older than 15 makes the statement in person, in the presence of the legal representative.</p>
	<b>Slovak Republic</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However they have requested that it is not disseminated further.
	<b>Finland</b>	<b>Yes</b>	<p><b>In Finland the legal capacity begins at the age of 18 years.</b></p> <p><b><u>The 6 § in the Aliens' Act</u></b>            (1) In any decisions issued under this Act that concern a child under eighteen years of age, special attention shall be paid to the best interest of the child and to circumstances related to the child's development and health.            (2) Before a decision is made concerning a child who is at least twelve years old, the child shall be heard unless such hearing is manifestly unnecessary. The child's views shall be taken into account in accordance with the child's age and level of development. A younger child may also be heard if the child is sufficiently mature to have his or her views taken into account.            (3) Matters concerning minors shall be processed with urgency.</p> <p><b><u>The 26 § in the Act on the Integration of Immigrants and Reception of Asylum Seekers</u></b>  <b>A representative may be assigned to a refugee child or a child applying for a residence permit or seeking asylum who is in Finland without a guardian or other legal representative.</b> The representative exercises a guardian's right to be heard in matters pertaining to the child's person and assets, decides on the child's living arrangements and manages his/her assets as laid down in chapter 12, section 1 and 2, of the Code of Judicial Procedure, section 16 of the Administrative Procedures Act (598/1982), section 17 and section 18, paragraph 3, of the Act on the Application of Administrative Law, and the Guardianship Act (34/1898). The representative shall protect the child's interests, taking his/her ethnic, linguistic, religious and educational background into account. Before making a decision in a matter pertaining to the child's person or assets, the representative must discuss the matter with the child if this is possible in view of the child's age and developmental level and the nature of the matter. When making decisions, the representative shall take the child's opinions and wishes into consideration. It is not the representative's function to see to the daily or other care or upbringing of the child.</p> <p><b><u>The 14 § in the Administrative Procedure Act</u></b>  <b>The right of a legally incompetent person to be heard shall be exercised by his/her guardian, custodian or other legal representative.</b> However, a legally incompetent person shall self alone exercise his/her right to be heard in a matter pertaining to income or assets in his/her possession.            (2) A legally incompetent person who has attained the age of eighteen years shall self alone exercise his/her right to be heard in a matter</p>

EMN Ad-Hoc Query: Unaccompanied Minors applying for Asylum

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			<p>pertaining to his/her person, if he/she is capable of understanding the significance of the matter.</p> <p><b>(3) A minor who has attained the age of fifteen years and his/her custodian or other legal representative have a parallel and separate right to be heard in a matter pertaining.</b></p> <p><b>The Finnish Child Welfare Act applies to all children in Finland, including the asylum seeking children.</b></p> <p>All applicants of asylum, including the minors, are <b>entitled to a legal adviser</b> if they wish to have one.</p>
	<b>Sweden</b>	<b>Yes</b>	<p>A potential asylum seeker has no legal capacity to act in the asylum procedure until they have reached the age of majority (18).</p> <p>A child within a family is represented by their parents. An unaccompanied child is awarded a custodian that will take the place of a parent. This is regulated in a Swedish act on Custodians for Unaccompanied Minors (SFS 2005:429). The Migration Board and the social authorities in the municipality where the child abides can apply for a custodian in behalf of the child. A public counsel is normally appointed to the unaccompanied child, which is regulated in the Act on Public Counsels (SFS 2005:76).</p> <p>An unaccompanied child over the age 16 has some legal capacity to act in regard to their financial aid.</p>
	<b>France</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1- The legal capacity in France begins at 18 years of age.</li> <li>2- When a minor without legal representative in France is seeking asylum, the prosecutor (procureur de la République), notified by the administrative authority, appoints an ad-hoc adviser. This one assists the child and ensures its representation in the framework of administrative and legal procedures.</li> </ol>
	<b>United Kingdom</b>	<b>Yes</b>	<p>All unaccompanied asylum seeking children are entitled to receive legal aid to assist with their asylum application, regardless of age. A child is defined as a young person under the age of eighteen. The Legal Services Commission (LSC) provides funded legal attendance at the screening and asylum interview. Where a child does not have legal representation, case owners must notify the Refugee Council Children's Panel, who will try to find suitable legal representation.</p> <p>The Refugee Council Children's Panel is a Home Office funded aspect of the work of the Refugee Council, a charitable organisation which works with refugees and asylum seekers. The Children's Panel receives referrals from statutory and voluntary organisations, and directly from children themselves. They work with separated children and young people seeking asylum who are under the age of 18 when they enter the UK. They also work with asylum seeking young people under 21 who, in the absence of a parent, are caring for younger brothers or sisters.</p> <p>Legal representation is a matter for the Legal Services Commission, which runs the legal aid scheme in England and Wales, including the provision of representation in proceedings before immigration courts and tribunals. In Scotland regulation of legal services is covered by the Law Society of Scotland as well as the OISC.</p> <p>The LSC funds specialist legal advice for asylum and HR applications, subject to the means and merits test. Legal Help is available for the</p>

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			<p>initial application and for representation before the Asylum and Immigration Tribunal.</p> <p>Whilst Legal Representative attendance at a Home Office asylum interview was removed for adult applicants from the scope of legal aid in April 2004, the LSC contract with providers continues to allow a legal representative to attend where the client is a minor or claims on reasonable grounds to be a minor. The Legal Services Commission provides funded attendance at the interview for all children.</p>
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