Implementing the Core Standards for guardians of separated children in Europe

Country Assessment: Italy

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With financial support of Defence for Children International Italia

European Commission
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## GLOSSARY AND ABBREVIATIONS

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<tr>
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| ANCI         | National Association of Italian Municipalities  
               Associazione Nazionale Comuni Italiani |
| ASL          | Local Health Agency  
               Azienda Sanitaria Locale |
| BIA          | Best Interests Assessment |
| BID          | Best interests Determination |
| CMS          | Committee for Foreign Minors  
               Comitato Minori Stranieri |
| CRC          | Convention on the Rights of the Child |
| DIRECTORATE - GENERAL | Directorate - General on Immigration and Integration Policies of the Ministry of Labour and Social Policies  
                       Direzione Generale dell’immigrazione e delle politiche di integrazione del Ministero del Lavoro e delle Politiche Sociali |
| EU           | European Union |
| GATE         | Guardians Against Trafficking and Exploitation, project co-financed by the Prevention of and Fight against Crime Programme of the European Union.  
               www.gate-eu.org |
| IMPACT       | Improving and Monitoring Protection System Against Child Trafficking and Exploitation, with the financial support of the Prevention of and Fight against Crime Programme of the European Union European Commission.  
               www.impact-eu.org |
| NGO          | Non-Governmental Organisation |
| SAT          | Structures for Temporary Placement  
               Strutture di Accoglienza Temporanea |
| SCEP         | Separated Children in Europe Programme.  
               www.scepnetwork.org |
| SPRAR        | System of Protection for Asylum Seekers and Refugees  
               Sistema di Protezione per Richiedenti Asilo e Rifugiati |
| SSN          | National Health Service  
               Servizio Sanitario Nazionale |
| STP          | Temporarily Present Foreigner  
               Straniero Temporaneamente Presente |
| UN           | United Nations |
| UN CRC COMMITTEE | United Nation Committee on the Rights of the Child |
| UNHCR        | United Nations Refugee Agency |
| UNICEF       | United Nation Children’s Fund |
ACKNOWLEDGEMENT

Defence for Children Italia strongly believes that the enhancement and qualification of guardianship is a crucial measure for taking the needed step forward in fulfilling separated children’s rights, needs and aspirations, in supporting them in finding their ways into their new life contexts and, therefore, in improving the efficiency and effectiveness of protection measures adopted at national and European level. In this context, the Core Standards for guardians and indicators represent a fundamental, child rights-based and practice-oriented instrument meant to inspire, orient and allow to assess guardians’ day-by-day work as well as reform, policy planning and strategy designing in this field. It is our intention to further advocate, also through this report, for their consistent dissemination and implementation by all the actors, particularly guardians, policy-makers and professionals who are responsible for the care and protection of separated children in our country.

In our actions we always try to put children at the centre, to learn from them while trying to address their needs and expectations. In this light, special thanks go to Lanciné Camara and Solomon Measho Mogos for their cooperation, their advice and their active participation to the project. We would also like to thank all the children who accepted to take part in this project by sharing their experiences, desires and needs with us.

We would like to thank the Department of Juvenile Justice - Ministry of Justice for their sponsorship, as well as the Office of the National Ombudsman for Children and Adolescents for their precious and constant support and collaboration. Special thanks to the DAPHNE III Programme from the European Commission for their financial contribution.

We owe a debt of gratitude to Chiara Mazziotti, Martina Finessi and Julia Pàmias Prohias for their always enthusiastic and proactive collaboration to the realization of the various activities foreseen by the project, as well as to all the project partners for their collaboration, and in particular to our colleagues of the Irish Refugee Council for proofreading the report.

We hope that this work will create further discussion in Italy, will contribute in improving the level of protection of children and step forward the reform of our guardianship system.
1 INTRODUCTION

“The report Closing a protection gap provides core standards that should inspire policies at national and European level in order to improve the protection of separated children in our continent. It also highlights the need for harmonizing the quality of guardianship systems all over Europe and within countries, where huge differences still persist. The goals set for guardians and policy makers are ambitious, but not impossible to attain. It is all about applying systematically these standards in all policies on separated children and using them holistically.”

From the preface of the report ‘Core Standards for guardians of separated children in Europe: Goals for guardians and authorities’ by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg.

“Now we are going to promote the standards for guardians everywhere when it comes to separated children. However, more needs to be done. There have to be European rules on the qualifications of guardians.”

Member of the European Parliament at the launch of the Core Standards for guardians of separated children in Europe, November 2011 in Brussels.

These quotes highlight the support and the need to increase the awareness, implementation and extend the scope of the Core Standards for guardians of separated children in Europe developed in the project ‘Closing a protection gap for separated children in Europe’.

From December 2012 until December 2014 nine project partners will work on the project ‘Closing a protection gap 2.0: Implementing the Core Standards for guardians of separated children in Europe in practice, feeding into policy and legislative instruments on guardianship’.

The objective of this large-scale and groundbreaking follow up project is to take the next important steps to further close the protection gap by working with the Core Standards in practice and taking the work further on towards policy and legislative initiatives at the national and the European level. The overall aim of this endeavour is to provide the strongly needed framework for responsibilities of guardianship systems in order for all separated children in Europe to get the protection to which they are entitled.

The specific objectives of the project are:

1. Raising awareness of the Core Standards, tailor them to the situation in every EU country participating in the project and empower guardians;
2. The national implementation of the Core Standards in practice and advocate for provisions in national legislation;
3. The development of a European initiative/instrument for harmonisation of appropriate guardianship inspired by the Core Standards;
4. Enlarging the scope of the Core Standards for guardians of separated children in Europe in nine other EU countries.

1 The project partners are: Defence for Children-ECPAT The Netherlands (coordinator), Asylkoordination Österreich, Bureau d’accueil et de défense des jeunes (service droit des jeunes), HFC “Hope For Children” UNCRC Policy Center, Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.v., Irish Refugee Council Ltd., Defence for Children International Italia, Conselho Português para os Refugiados, Slovenska filantropija.
2. BACKGROUND

In December 2009 the first ‘Closing a protection gap for separated children in Europe’ project started, financed by the EU Daphne III Programme, as a response to the differences in the level of protection separated children receive in European countries. There are approximately 100,000 separated children in Europe. Separated children have the right to a guardian who protects their rights and best interests. Not only do separated children have to live without their parents in a country they don’t know, but in some countries, they also run the risk of being detained because of their residence status or run the risk of being exploited by traffickers. Separated children can face risks in their country of origin, during their journey and in the host country. The type of protection and care a separated child receives from a guardian depends upon the country which the separated child has (often randomly) entered and it can differ depending on whether or not a separated child asks for asylum.

These differences are not acceptable. All European countries have ratified the Convention on the Rights of the Child (CRC) and have the obligation to take into account the special needs of separated children. Proper guardianship systems are essential to assist in finding a durable solution for separated children, whether that be integration into the host country, transfer to another country or return to the country of origin.

The first ‘Closing a protection gap for separated children in Europe’ project aimed to harmonize the protection separated children receive from their guardian by focusing on the qualifications of the guardian. The mission of this project was to improve the situation for separated children by means of: closing a protection gap for separated children in Europe by developing core standards on qualifications of guardians based on the views of separated children in relation to their rights according to the Convention on the Rights of the Child. Separated children in Europe should get the guardian they are entitled to irrespective of which EU country they entered. The assumption is that when all guardians have sufficient qualifications and mandates to work in the best interest of the child, the level of protection children receive in the different European countries will harmonize.

From December 2009 until December 2011, the project partners developed the Core Standards for guardians of separated children in Europe based on interviews and workshops with 127 separated and former separated children, 68 guardians and 39 other experts (for instance; foster parents, lawyers, social workers). The views have been measured against the Convention on the Rights of the Child (CRC), General comment No. 6 (treatment of unaccompanied and separated children outside their country of origin) and General comment No. 12 (the Right of the child to be heard) of the Committee on the Rights of the Child and the Statement of Good Practice of the Separated Children in Europe Programme. The Core Standards for guardians have been inspired by the Quality4Children standards for Out-of-Home Child Care in Europe. 54 members of the national advisory councils in the eight research countries were consulted and shared their expertise.

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2 In this country assessment the term separated child is used, as described in the Statement of Good Practice of the Separated Children in Europe Programme: separated children are under eighteen years of age, outside their country of origin, and separated from both parents, or their previous legal, or customary primary caregiver. Some authorities and organizations use a different terminology: the unaccompanied minor asylum seeker or unaccompanied minor foreigner.


4 See also: United Nations Committee on the Rights of the Child, General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin (2005), CRC/GC/2005/6, paragraph 3.

5 Available at: www.separated-children-europe-programme.org/.

6 Available at: www.quality4children.info/navigation/show.php3?id=2&_language=en.
The Core Standards and indicators are written from the perspective of separated children and guardians. The Standards reflect the ideal standard of care for separated children and are formulated to address the role of guardians. The Core Standards should empower all guardians in Europe to work towards common goals and they should inspire State authorities to provide the guardian with the work environment and mandates needed to meet the Core Standards. The first six Core Standards focus on the role and responsibilities of the guardian. Core Standards seven, eight and nine focus on the relationship between the guardian and the separated child. Core Standard ten addresses the professional knowledge and competences of the guardian.

**Core Standards as inspiration and goal for guardians**
The Core Standards are a tool for guardians in practice. The Core Standards aim to inspire the guardians in their daily work and they offer a goal to work towards. The project partners, however, recognize the challenges a guardian faces. Due to the current guardianship systems in some countries there are a lot of hurdles to overcome for guardians in order to successfully implement the Core Standards. Guardians with a very high caseload are also confronted with multiple dilemmas. The guardians in these countries should not get frustrated when they cannot fulfil all the Standards immediately. Guardians can incorporate the Core Standards as a guideline for their work irrespective of the guardianship system and legislative framework. The Core Standards can be used as a checklist to monitor their current practice. Where there are Core Standards that are unfulfilled the guardian should feel empowered to advocate for change.

**Core Standards as inspiration and goal for State authorities and guardianship institutions**
The enjoyment of rights stipulated in the CRC is not limited to children who are citizens of a State party but must be available to all children, including asylum-seeking, refugee and migrant children, irrespective of their nationality, immigration status or statelessness. The positive aspect of protection obligations for separated children also extends to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage.

**More to come**
The country assessments are the basis for the development of a toolkit for practitioners to work on the implementation of the Core Standards for guardians in practice. National and European changes in policy and legislation will be advocated during (expert) meetings. Consultations with Members of the European Parliament, the Council of Europe and (international) stakeholders will lead to a draft European initiative/instrument. To enlarge the scope of the project new partners are included in this follow up project and nine organizations from other countries will be trained. All information about the project will be made available on the project website.

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8 See also: United Nations Committee on the Rights of the Child, General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin (2005), CRC/GC/2005/6, paragraph 13.
The main findings of the country assessment derive from desk research aimed at addressing the most relevant developments in relation to migration and guardianship at a national level and from a consultative process that involved separated children, former separated children, guardians and key actors. In addition, further data and information was gained through the outcomes of other recently concluded research initiatives (e.g., the gate – Guardians Against Trafficking and Exploitation initiative\(^9\)) or by valuing the connections with other on-going initiatives (e.g., the IMPACT - Improving and Monitoring Protection System Against Child Trafficking and Exploitation initiative\(^10\)), implemented by Defence for Children Italia in relation to guardianship or including guardianship as a point of attention.

The national process of consultation has availed from its inception of the precious support of two former separated children, respectively from Ivory Coast and from Eritrea, who have been identified based on the contacts established within the context of other initiatives and after several preliminary meetings with them. The two former separated children have been involved in the project as “Advisors” and as such they shared their experience, proposed some orientations and actively participated in both the focus group with children and the workshop with guardians and key actors.

The focus group with separated children took place in a shelter for separated asylum-seeking children. The session was based on a casually structured programme in order to encourage the children to feel at ease and talk freely about their situation. It involved six boys, five minors and one recently come of age. Their countries of origin are Afghanistan, Pakistan, Ghana and Ivory Coast. The facilitation of the two Advisors who had experienced the same path, and in the same structure, was determinant both in obtaining the permission to carry out the focus group and in ensuring the active involvement and participation of children in the discussion.

The workshop for guardians was organised at the Defence for Children Italia premises in Genoa. Other than the two Advisors and four staff members for Defence for Children Italia, participants at the event included various guardians (three lawyers from Genoa and one guardian from Cooperative Dedalus of Naples), four social workers, two representatives of the local authority, two of the judiciary authority and one of the law enforcement agencies. Also in attendance were some key referents: a representative of the LAPoSS (Laboratory of project design, experimentation and analysis of public politics and services -University of Catania), who has managed a project for voluntary guardians for years now in Sicily, and the representative of the National Ombudsman for Childhood and Adolescence who showed keen interest in further discussing the results of the projects and supporting advocacy and training activities on the matter.

The consultation process was prepared through preliminary meetings and contacts with relevant stakeholders at local and national levels, aimed at presenting and disseminating the objectives of the project and at ensuring the participation and involvement in all the activities foreseen by the project. In particular, two preliminary meetings with the National Ombudsman for Childhood and Adolescence and with the Juvenile Justice Department of the Ministry of Justice were organized before the workshop with guardians and other actors.

Relevant information gained through the desk research and consultation with the separated children, former separated children, guardians and other actors was incorporated in the country assessment.

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\(^9\) For more details on the gate, co-financed by the Prevention of and Fight against Crime Programme of the European Union project please see: www.gate-eu.org.

\(^10\) For more details on the IMPACT project co-financed by the Prevention of and Fight against Crime Programme of the European Union project please see: www.impact-eu.org.
The role and responsibilities of the guardian:

Standard 1: The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

The guardian is able to advocate, assess and adjust the best interest of the child on a regular basis, involves all relevant actors and ensures that the assessment of the best interest of the child is based on the views of the child and the individual circumstances.

Standard 2: The guardian ensures the child’s participation in every decision which affects the child.

The guardian provides information in a child friendly way and checks if the child understands and recalls the information, listens carefully to the child and ensures plans are based on the views of the child and shared with the child, is open to feedback and manages expectations.

Standard 3: The guardian protects the safety of the child.

The guardian gives the highest possible priority to the child’s safety, knows the signals of child abuse and trafficking, acts and reports upon signals of any harm or danger, ensures the child knows he is welcome to voice anything concerning his/her safety, only breaks the confidentially norm when a child is at risk, ensures victims get appropriate treatment and is open to being monitored on own behaviour.

Standard 4: The guardian acts as an advocate for the rights of the child.

The guardian is an assertive, committed watchdog, dedicated to defending the rights of the child, shows emotional strength, opposes decisions which are not taken in the best interests of the child and pursues fair procedures concerning the child.

Standard 5: The guardian is a bridge between and focal point for the child and other actors involved.

The guardian keeps in contact with all relevant actors, ensures to be informed about all decisions which have an impact on the child and is where necessary present at meetings, assists in establishing links with the child’s community and developing relationships that gives the child a sense of belonging to a family or group.

Standard 6: The guardian ensures the timely identification and implementation of a durable solution.

The guardian ensures the identification of a durable and safe solution and challenges others to prove that their proposed solutions take the best interest of the child as a primary consideration, supports the reunification of the child with his/her family and supports the integration of the child in the host country when this is in the best interest of the child, defends safety guarantees when a child is returned and prepares the child for all predictable changes which will occur after turning eighteen.
**The guardian and the separated child:**

**Standard 7:** The guardian treats the child with respect and dignity.
The guardian demonstrates appropriate behavior, treats the child unprejudiced with respect to the child’s identity, privacy and cultural differences, supports the child in developing peer relationships and shows a flexible approach tailored to the individual needs of the child.

**Standard 8:** The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.
The guardian is always honest with the child, keeps his/her promises and keeps all information confidential unless it is necessary to break confidentiality to keep a child safe, pays attention to verbal and nonverbal communication, is empathic towards the child and gives moral support and makes clear to the child that a child who disappears is always welcome to return.

**Standard 9:** The guardian is accessible.
The guardian can be reached easily, lives near enough of the child to be able to respond quickly to difficulties, sees the child as soon as possible after his/her appointment and pays visits to the child on a frequent basis and communicates in a way which fits the age and development of the child, making use of interpreters whenever necessary and contacts the child to keep in touch also when there is no specific need to do so.

**The qualifications of the guardian:**

**Standard 10:** The guardian is equipped with relevant professional knowledge and competences.
The guardian is proactive in identifying learning and development needs, manages his/her caseload and available resources, is accountable, works according to a set methodology, knows personal and professional limits, seeks support and counselling whenever necessary and is open to supervision and monitoring.
5. DEVELOPMENTS IN RELATION TO GUARDIANSHIP AND MIGRATION SINCE THE LAST NATIONAL REPORT

A persisting gap: data and statistics on separated children

The fragmentation and lack of coordination and common methodology among the various governmental entities entrusted with the collection of data and elaboration of statistics on different groups of children (asylum-seekers, non-asylum-seekers, victims of trafficking and exploitation, EU separated children) is still one of the main structural obstacles to child protection and care in Italy.

While some steps have been taken to enhance the national data collection system on separated non-asylum-seeking children, run by the Directorate - General on Immigration and Integration Policies of the Ministry of Labour and Social Policies (hereafter Directorate-General)\(^1\), the UN Committee on the Rights of the Child has also recently repeated its concern for the limited data available on refugee and asylum-seeking children (Committee on the Rights of the Child 2011). In addition, the available data should also be considered with caution because it does not take into account both the EU separated children and the separated children who do not come into contact with institutions. In this context, extremely worrying but difficult to estimate is the phenomenon of migrant children “in transit” through the country, mainly from Afghanistan, wishing to reach other EU Member States and deciding not to access the national protection system for fear that being identified in Italy would jeopardize their migratory project (UNHCR 2012, Defence for Children Italia 2012).

As to recent trends, after the outbreak of the North African crisis in 2011 there has been a substantial increase in the number of separated children landing on the Isle of Lampedusa, and also in Sicily, in Apulia and in the Calabria Regions, after crossing the Mediterranean Sea. More specifically, compared to an average number of 2,000 separated children entering the country every year, 4,209 separated children, mainly from Tunisia and Libya, arrived in Italy in 2011 while in 2012 that number decreased to 1,999 (Save the Children 2013). As shown in Table 1, before the so-called “North African Emergency”, the number of separated children in the country had substantially fallen after a peak in 2008 due to the implementation in 2009 of tougher immigration policies, whereas it seems to be increasing in 2013.

Table 1 - Separated non-asylum-seeking children

<table>
<thead>
<tr>
<th>Year</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013 up to 31.7.13</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7,548</td>
<td>7,797</td>
<td>6,587</td>
<td>4,438</td>
<td>7,112</td>
<td>7,370</td>
<td>7,402</td>
</tr>
</tbody>
</table>


According to the latest available data, the number of children who entered the country between 1 January 2013 and 8 July 2013 (1,257) was double the number registered in 2012 in the same period (628) (Save the Children 2013). In 2013 (up to 31 July 2013), 7,402 separated non-asylum-seeking children were reported to the Directorate-General. Of these, 1,452 (a 19.6%) have left Italy with unknown destination. From those who remained in the country, the 80.3% are in the 16-to-17 age bracket and the most part came from Bangladesh (24.3%), Egypt (19%), Albania (12.7%) and Afghanistan (8%)\(^2\), the 93.9% of whom are male.

Whereas the number of disappeared children has remained quite constant over the years, in terms of nationalities there is a substantial increase in the number of children from Bangladesh (=6.6% in 2011) and Albania (almost 6% in 2011). As to separated asylum-seeking children, the Ministry of

\(^{11}\) Currently, the Directorate - General issues every two months a National report on the number of separated non-asylum-seeking children that is accessible at: www.lavoro.gov.it/md/AreaSociale/Immigrazione/minori_stranieri/Pages/Minori_stranieri_non_accompagnati.aspx.

Interior recently made available comprehensive statistics on asylum applications from 1990 to 2011 in which unfortunately no age-disaggregated data are provided\(^\text{13}\). Some data can however be derived from other sources:

### Table 2 - Asylum applications submitted by separated children

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>573</td>
<td>409</td>
<td>306</td>
<td>827</td>
</tr>
</tbody>
</table>


It should be highlighted that the peak reached in 2011 is deemed to be mainly due to the effects of the “North African Emergency”, as the total number of asylum applications has been decreasing since 2009 (the year of implementation of tougher immigration policies, please see the following paragraphs) always remaining below the general trend registered at EU level (Jolles 2010).

### Data and statistics on children under guardianship

In the Italian context there is still no national data collection system on the number of guardians and on the number of separated children under guardianship, whereas some data are collected at local and regional level, by various actors and through different methodologies.

Some information is included in the ANCI report (2012), based on data provided by local authorities, according to which the percentage of children in the second reception phase\(^\text{14}\) who are under guardianship increased in the last two years from 36.21% in 2008, to 65.14% in 2009 and to 65.36% in 2010.

### Legal framework on child protection: structural problems and economic crisis

The Italian legislative framework for the protection of separated children is based on the legal framework that applies to national children as well as on numerous international and European conventions transposed into national law (for more details, please see Defence for Children Italia 2011, 2012). In particular, Italy has ratified the UN Convention on the Rights of the Child (CRC) (Law 176/1991) and the two Optional Protocols to the Convention (Law 46/2002), therefore through the law of ratification the CRC forms part of domestic legislation (for more details please see Moro 2008). As to recent developments, Italy signed the third Optional Protocol to the CRC on a Communications Procedure on 28 February 2012 and on 1 October 2012 the Italian Parliament approved the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed on 7 November 2007, by introducing various paedophilia-related offences in the Penal Code (Law 172/2012).

However, the level of protection and care granted to separated children very much depends on the region and/or local authority where they are hosted. Indeed, in the Italian context, Law 328/2000 introduced a “decentralized” model in which every region is responsible for social interventions and programming, coordinating, and monitoring in line with the minimum level of standards and general orientations set at the national level, while local authorities are responsible for providing services through local public and private social actors. In addition, the federal reform of the State initiated through the revision of the Title V of the Constitution (Constitutional Law 3/2001), the delay in setting comprehensive national standards\(^\text{15}\), the on-going and difficult implementation of a federal reform of the State, including

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\(^{14}\) Even though such a distinction is not clearly defined by the law, in practice the reception of separated children in Italy comprises two phases: the first reception phase and the second reception phase (Giovannetti 2009). The first reception phase is temporary, in fact it can last from thirty days to one hundred and twenty days at the longest, and its purpose consists in offering separated children immediate and temporary shelter through adequate measures. The second reception phase which lasts until they come of age, instead, aims at integration of separated children through long-term education and vocational training opportunities and the realization of adequate socio-educational, recreational and sport activities.

\(^{15}\) The process of definition of the Essential Levels of Service Provision Social concerning Civil and Social Rights (Livelli Essenziali di prestazioni concernenti i diritti civili e sociali delle persone) has recently been started and it is now under the remit of a working group chaired by the National Ombudsman for Childhood and Adolescence. From March 2012 there have been various
the problematic implementation of the so-called “fiscal federalism” (Law 42/2009), and the relevant reduction of the level of national funds transferred to regions and local authorities, in part due to a great deal of emergency financial measures adopted as a consequence of the economic crisis, have increasingly created a complex and fragmented system and deepened the existing differences in the level of service provision among the various regions and local authorities (Gruppo CRC 2012, 2013).

**Changes to the Immigration law and recent trends**

The Italian regulation on immigration and asylum is scattered among a large number of laws, government decrees, ministerial directives and circulars lacking coordination and organization (for more details, please see Defence for Children Italia 2011, 2012). In addition, the recent amendments to the Immigration Act demonstrate the increasing prevalence of an exclusionary approach to immigration issues. The immigration legislative framework changed in August 2009 when a law on “security” was approved by the Italian Parliament (Law 94/2009). This regulation has entailed a restriction of migrants’ rights in general. Particularly some provisions have affected separated children’s rights and welfare among which the introduction of more restrictive criteria to obtain the conversion of the residence permit upon reaching adult age (see paragraph on residence permit) and the criminalization of illegal entry and residence in the country without envisaging an explicit exemption for separated children (Maccanico 2009, Miazzi and Perin 2009, Pepino 2009).

Moreover, despite national and international provisions on international refugee protection and child protection, in May 2009 Italy implemented a “push-back” policy and began to intercept migrant boats in international waters and force them back to Libya from where they had set out, without verifying whether some of the migrant were refugees, asylum-seekers, pregnant women, separated children, or victims of trafficking. In February 2012, in the case of Hirsi Jamaa and others v. Italy, the European Court of Human Rights ruled against Italy for these indiscriminate and collective expulsions that exposed people to inhuman and degrading treatment in Libya or in their countries of origin (Human Rights Watch 2013). More recently, Human Rights Watch have reported practices in breach of several EU provisions, and for which infringement proceedings brought by the EU against Italy are currently on-going, that entail serious children’s rights violations carried out by Italian port officials at the Adriatic ports. These officials fail to consider age or provide access to information on rights, and do not always admit children to the territory in order to determine their best interests before sending them back to Greece (ibidem). Very recently, various NGOs and civil society organizations have denounced the practice currently implemented (since February 2013) in various cities of Italy by local social services and/or the judiciary authority, which promotes, in the name of the fight against child trafficking and exploitation, the re-assessment of the age of groups of children of Bengalese and Pakistani nationality already identified as minors and hosted in child reception facilities. Despite the professed aim of these procedures, it has been widely documented and reported that the examinations for the re-assessment were conducted in inadequate health care facilities (in the case of the city of Rome in a military hospital), without considering the lack of accuracy of the results due to the fact that most of children were close to coming of age, without respecting the safeguards and guarantees for children, and violating the CRC and several national norms. More worryingly, so far two of the children who were summoned for the re-assessment of age have attempted to kill themselves.

Initiatives promoted by third sector organisations with the involvement of experts, scholars and professionals for the definition of the Essential Levels. From February 2013, some of these initiatives are taking part in the working group chaired by the National Ombudsman. For more details, please see Gruppo CRC 2013.

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18 For more information, please see: ASGI, “Minori bengalesi sottoposti a nuova visita medica dal comune di Roma: un ragazzo tenta il suicidio”, 14th June 2013, www.asgi.it/home_asgi PHPn?n=2773&it;
As to the asylum legislation, several problems have been reported over the years in relation to the length of the asylum procedure, the lack of adequate information for children and the implementation of the so-called “Dublin II” Regulation (Council Regulation 343/2003 of 18th February 2003) (ASGI 2011, UNHCR 2012). In this regard, as it is widely acknowledged in the debate on the matter that has been developing over the years at national and European level, several protection gaps and inconsistencies still affect the operation of the system and have led to the adoption, on 12th June 2013, of the “Dublin III” Regulation. In particular, one of the main problems concerns the fact that the implementation of the second paragraph of art. 6 is connected with the results of age assessment procedures which may have, due to the lack of a common procedure at European level, different results in different countries. In fact, there have been cases where children have been returned to Member States in which they had previously been identified as adults or they had applied for asylum without taking into due consideration whether the return is in the best interest of the child and it is consistent with his/her opinions (UNHCR 2012).

**Placement and care of separated children: the “North Africa Emergency”**

According to the Italian Civil Code, a separated child who is in a situation of danger for his/her physical safety and/or psychological well-being has to be immediately provided with a safe shelter until a long-term measure for his/her protection is adopted (art. 403 Civil Code). Placement procedures differ depending on the local context and the situation of minors when they come into contact with social services. In some cases, a central role is played by the local social services, whereas in others it is up to Police forces to identify a proper shelter and to inform social services upon the child’s placement (UNHCR 2012). The presence on the territory of a separated non-asylum-seeking child has to be reported to the social services of the local authority, the Juvenile Court and the Tutelary Judge having territorial jurisdiction, as well as to the Directorate - General that is responsible, *inter alia*, for undertaking family tracing and overseeing conditions of placement. Separated asylum-seeking children also have to be immediately reported to the Central Service of the System of Protection for Asylum-Seekers and Refugees - SPRAR so that they can receive the protection provided by the System and can have access to all the reception services of the SPRAR. Despite the various efforts promoted at the national level (for more details please see Defence for Children Italia 2011, 2012), the quality of provision for separated children in Italy has always been extremely variable due to the different numbers of separated children taken into care by local authorities and also due to the lack of resources at a local level. In addition, the lack of national policy and financial support, of adequate competences and effective coordination and monitoring at local and national levels all impede the ability to deliver services and effectively protect children (Giovannetti 2009, Rozzi 2008, EMN 2009, Candia et al. 2009, Defence for Children Italia 2011, Bender - Bethke 2010, Defence for Children Italia 2012). Another reported protection gap

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19 On 12th June 2013 the European Parliament approved new rules in order to enhance the effectiveness, standards and level of cooperation of the Common European Asylum System, among which the revised Dublin Regulation (604/2013). For more detailed information on the new rules, please see: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm (Accessed July 2013). In this context, a positive development was represented by the EU Court of Justice sentence of the 6th of June 2013 (C-648/11) that restated the correct interpretation of the above-mentioned article of the Dublin II Regulation, that is that a minor can not be obliged to face the asylum process in a place that is chosen by the State through Dublin Regulation but he/she has the right to choose which country is more adequate (e.g. for linguistic reasons) for him/her.

20 The above mentioned art.6 states that: “Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where a member of his or her application for asylum”. The text of the Regulation is available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013R0345:EN:HTML (Accessed June 2013).

21 In this regard, art. 403 of the Civil Code states that: “When a minor is morally or materially abandoned or raised in dangerous or insane locals, or by a negligent person, or by a person that, for negligence, ignorance, immorality or other causes is incapable to take care of his/her education, the public authority, through the bodies dedicated to childhood protection, places him/her in a secure place, until a definitive solution is adopted”.

22 The SPRAR is comprised of local municipalities whose local projects are selected through a call for project proposals and co-funded by the National Fund for Asylum Policies and Services. The aim of the System is to support the implementation of projects by promoting the development of an “integrated reception” system for asylum-seekers and refugees, including appropriate placement, information, legal support, interpretation/cultural mediation, health care, education services and socio-economic integration measures. Within this System, special projects for separated children are run in order to answer to their specific needs for safe accommodation, support and integration. For more information on the SPRAR as well as on the services please visit: www.serviziocentrale.it/ (Accessed November 2011).
concerns the fact that the adoption of family foster care measures, which should be prioritized in case of children deprived of their family (Law 184/1983), are not adequately and homogeneously disseminated and supported throughout the country. There is also a lack of different and more flexible forms of placement (e.g. housing, low-threshold drop-in centres), and a limited number of places available for separated asylum-seeking children within the SPRAR (Defence for Children Italia 2011). In this regard, a recent positive development has to be noted: very recently (23rd September 2013) the Ministry of the Interior has announced that in the next three years the total number of places of the SPRAR would be increased from 3,000 to 16,00023.

The so called “North Africa Emergency” showed the lack of adequate programming and the tendency of an “emergential” approach to migration failing to reinforce the ordinary system, and which posed serious concerns for the quality of service provision and for the procedure adopted for the placement of children. As a consequence of the humanitarian emergency declared by the Italian government in February 2011 and prolonged until the end of 201224, a new procedure for the placement and care of separated children was implemented by the General Director for Immigration and Integration Policies at the Ministry of Labour and Social Policies. According to this procedure, in case of absence of available places in local child reception facility, the Ministry of Labour and Social Policies would try to find a place at national level. If no available place could be found, children would be provided with temporary placement in one of the 24 “emergency” structures, called SAT - Structures for Temporary Placement (Strutture di Accoglienza Temporanea) identified at national level through specific agreements25 until their placement in another child reception facility could be organized and a suitable long-term solution could be adopted. The competence for finding a suitable placement26 for children who wanted to apply for asylum fell to SPRAR (with financial responsibility of the competent regional Civil Protection Department) and, in the case of a lack of places, the Ministry of Labour and Social Policies would only then have the responsibility of finding a suitable placement. In the case that the child expressed his/her intention to apply for asylum at a later stage, and in the event that there was no place in the SPRAR, the decision on the placement was under the remit of the local authority where the child was hosted, after receiving information of the regional Civil Protection Department, which could decide to confirm the same placement or to transfer the child to more suitable reception facilities (Save the Children Italia - Garante dell’Infanzia e dell’Adolescenza della Regione Lazio 2011). During this period, according to several NGOs, some separated children were placed in the temporary reception facilities only after a long stay in centres for immigrants. Also, the length of the stay in the temporary reception facilities was, in some cases, extremely long and in inadequate conditions in terms of service provision. This was due to the lack of experience and competence of managers and professionals of the SAT, who in 15 out of 24 facilities had no previous experience with separated children. Children often lacked adequate information, legal counselling, the adoption of the protection measures envisaged by the law (reporting to authorities, appointment of a guardian, residence permit application etc., etc.) and the definition of an education and care programme (ASGI 2011, Save the Children Italia 2011, Terre des Hommes 2012). More worryingly, the level of competence of the professionals regarding trafficking, exploitation and asylum was reported as inadequate overall, and there was a reported case of suspected work exploitation of children by professionals of one of the SATs identified in Sicily (Save the Children Italia 2011).

New rules on residence permit
The application for a residence permit, being the instrument that allows the regularization of the condition of the child, should be promptly submitted and the relevant residence permit quickly

24 The humanitarian emergency was closed with the Head of the Department of Civil Protection order no. 33 of the 28th of December 2012, available at: www.protezionecivile.gov.it/jcms/it/view_prov.wp?contentId=163702 (Accessed July 2013).
25 For the most part the SAT were in the South (e.g. 11 in the Calabria Region, 8 in Sicily, 2 in Campania Region, 1 respectively in the Basilicata, Puglia and Tuscany Regions). For more details on the territorial distribution, number of children placed and problems identified, please see Save the Children Italia 2011.
26 The procedure to be followed for separated asylum-seeking children was disseminated on the 15th of July 2011 by the Commissioner for the North Africa Emergency (Save the Children Italia - Garante dell’Infanzia e dell’Adolescenza della Regione Lazio 2011).
issued. In 2010 however, 26%\(^{27}\) of separated non-asylum-seeking children hosted in the second reception phase facilities had not yet received any type of residence permit (ANCI 2012). In addition, practices are extremely variable, and often the application for a residence permit is submitted at a later stage, sometimes only after the appointment of a guardian (UNHCR 2012). Since the appointment of a guardian may take several months, this very often causes delays in obtaining the residence permit and a sense of stress and frustration for children.

As mentioned above, the immigration law has recently been changed, with the introduction of more restrictive criteria to obtaining a residence permit upon reaching adult age (Law 94/2009), envisaging the conversion of the residence permit only for separated children who have resided in Italy for at least three years and who have been involved in a social integration project for at least two years. However, the harmful impact of the new provisions has been partially limited by the adoption of Law 129/2001, as a result of strong pressures exerted by NGOs, civil society organizations and lawyers against them. According to the new provisions (art. 32, paras. 1 and 1bis of the Immigration Act) and to the interpretation provided by the circular of the Ministry of Interior on 16 November 2011, separated children who do not fulfil the above-mentioned criteria (3 years of stay and 2 years of integration project) may however have the conversion of their residence permit upon adult age if they are fostered by a child reception facility (art. 2 Law 184/1983) and/or under guardianship, and subject to the positive opinion of the Directorate-General. Less restrictive is the situation of children fostered by a family (art. 4 Law 184/1983), whose residence permit can be converted into a residence permit for study, work or health reasons when the minor comes of age or, in cases when the conversion into another type of residence permit is not applicable and they are still economically dependent on their foster parents, the same residence permit can be renewed for the duration of the foster parent’s residence permit (Ministry of Interior’s directive no. 17272/7 of 28\(^{28}\)th of March 2008). Despite the recent amendment, it is clear however that the new provisions introduced by Law 94/2009 were designed to limit the possibility of integration upon reaching adult age for most separated children, as the great majority of children who enter Italy are in the 16 to 17 age bracket (80.3% in 2013). In addition, it has to be highlighted that the time frame for the issuing of the opinion (that has to be requested by local social services 3 months before the coming of age and that needs to be presented with the renewal application) and the criteria (documentation proving an integration path) for the decision are still uncertain and may prevent children from obtaining the renewal of the residence permit (Caritas/Migrantes 2013)\(^{28}\). The huge debate which has developed on the issue over the years has clearly shown that these provisions are not in line with national and international standards on child protection, jeopardize the economic and professional resources spent for their placement and protection and, despite the declared intention of enhancing the level of “security”, create a condition of insecurity, risk and uncertainty. In addition, it has been stressed that Law 129/2011 is also not compliant with national and international standards. The positive opinion should be issued by the Directorate-General at the very beginning of the integration process, as a consequence of the results of the family investigation and of the decision not to implement a voluntary assisted return measure, and not when the child is close to becoming adult (ASGI 2011).

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\(^{27}\) Even though this percentage is still too high, it represents an improvement compared to previous years when it was equal to 59.2% (2006) and to 57.2% (2008) (ANCI 2012).

\(^{28}\) According to the latest available data, up to 26th July 2012 659 positive opinions were issued concerning for the most part children from Bangladesh (179), Albania (122), Egypt (78), Kosovo (75) and Tunisia (61) who documented an integration project in school (350) and in various working sectors (301) (Caritas- Migrantes 2013).
Within the Italian legal framework on child protection, there are some specific difficulties related to guardianship, such as the obsolescence of the relevant provisions (that date back to 1942[^29]), and the lack of a national policy, including a national training and recruitment strategy, national guidelines on competence, work methodology and the setting up of an effective monitoring system both at local/regional and national level. As in many other sectors (e.g. immigration, social welfare, etc.) it is therefore not possible to define the Italian situation as constituting a “national system” because of the fragmentation of competences and of the heterogeneous implementation of the current provisions in a situation where the level of protection and support granted to children by their guardians varies a great deal depending on the local/regional context as well as on the single guardian’s skills and availability.

### The Regional Ombudsmen and the National Authority for Childhood and Adolescence

Until recently in the Italian context there was not a single national authority specifically dedicated to the promotion of children’s rights, while over the years various regions have approved a law envisaging the appointment of the regional Ombudsman for Children and Adolescents[^30].

However, currently the Ombudsmen for children and adolescents have been appointed only in 10 of the 16 regions that have a law establishing a regional ombudsman. These regional authorities, named Ombudsmen or Public Guardians depending on the single region, have the task of monitoring, protecting and promoting in their territory the rights of the children recognized by the United Nations Convention on the Rights of the Child and of ensuring that the best interests of the child is a primary consideration in all actions affecting children. Some of those Ombudsmen are implementing projects to train, select, assess and support volunteers who are interested in being appointed as guardians for children.

Eventually Law 112/2011 recently established the National Authority for Childhood and Adolescence (Autorità Garante per l’Infanzia e l’Adolescenza), who is appointed by the two Presidents of the Upper and the Lower Chamber of the Italian Parliament[^31], and whose position is incompatible with other public or private roles. Some of the functions that fall within his remit concern: the promotion of the full application of the CRC and of other legal instruments on children’s rights; listening to children, also through the consultation with child-focussed organizations; the promotion of the respect of children’s rights to have full access to health care and education; the signalling of emergency cases as well as of the measures to be adopted; the formulation of opinions on legal matters, on the National Plan on Childhood and on the National Report to the CRC Committee; the realization of studies and research, the request of information and data to public institutions, the promotion of visits and inspections upon authorization of the judicial authorities. Of particular importance is the fact that the National Authority is mandated to chair the National Conference.

[^29]: Current rules on guardianship were in fact conceived in a period (1942) in which the needs of the minors under guardianship substantially differed from those concerning separated children, as the guardian was mainly nominated in cases where minors had remained orphans and were holders of consistent properties that demanded a careful management, often in a familiar context of conflicts and opposed economic interests. Therefore, it was mainly the economic interest that grabbed attention, which is the reason why the Civil Code devotes the majority of articles that describe the institution to property-related questions and to the technical fulfillments to be accomplished by the guardian in name of the interest of the minor (Pubblico Tutore dei minori -Dirs. 199/1998, Defence for Children Italia 2011).

[^30]: Currently, out of the 20 Italian regions, only the following have approved a regional law that establishes the regional Ombudsman for Children and Adolescents: Veneto (Regional Law 42/1998); Lazio (Regional Law 38/2002); Molise (Regional Law 32/2006); Campania (Regional Law 17/2006); Calabria (Regional Law 28/2004); Emilia Romagna (Regional Law 9/2005); Liguria (Regional Law 9/2007); Lombardia (Regional Law 6/2009); Umbria (Regional Law 18/2009); Toscana (Regional Law 26/2010); Piemonte (Regional Law 31/2009); Friuli Venezia Giulia (Regional Law 49/1999); Marche (Regional Law 18/2002); Puglia (Art. 30, Regional Law 19/2006); and Sardegna (Regional Law 8/2011). While two of them, being autonomous provinces, established the Ombudsmen for Children and Adolescents through the approval of provincial laws: Provincia Autonoma di Trento (Provincial Law 1/2009) and Provincia Autonoma di Bolzano (Provincial Law 3/2009).

[^31]: On 30th of November 2011, Vincenzo Spadafora, former President of the Italian section of UNICEF was appointed as the first National Ombudsman for Childhood and Adolescence in Italy. However, the regulation to allow the office to operate was approved only in September 2012 (Gruppo crc 2013).
for the Rights of Childhood and Adolescence, made up of the regional Ombudsmen for children's rights, with the aim of enhancing the level of coordination, the adoption of common policies and the exchange of data and information (Gruppo CRC 2012). The National Authority is also part of the ENOC-European Network of Ombudspersons for Children, and cooperates, depending on the matter, with the various Committee, Ministries or bodies operating at national level. Art. 6 of the instituting law also envisages the possibility for any person to inform the Ombudsman of a possible situation of violation of children's rights.

Appointment of a guardian and models of guardianship
According to the Italian Civil Code the guardianship is a legal institution aimed at protecting personal and economic interests of the child in cases where parents cannot exercise their rights or fail to fulfil their obligations of representation, care and protection of the interests of their child (art. 343 of the Civil Code). In these instances a guardian is appointed by the Tutelary Judge having territorial jurisdiction upon notification of the social services of the local authority, professionals of child facilities, police officers, family members or other authorities. The Juvenile Court is in charge of the appointment of a guardian only in case of suspicion of child abandonment and adoption (art. 10, para. 3, and arts. 11 and 19 of Law 183/1984 as modified by Law 149/2001). However, because of the lack of a common interpretation of the above mentioned provisions, the procedure for the appointment of a guardian may therefore involve, depending on the local context, the Tutelary Judge or the Juvenile Court, or may be the result of an effective coordination of both (Turri 2004, Rozzi 2008, Tarzia 2008, Giovannetti 2009).

As to the person to be appointed as a guardian, according to the Italian Civil Code the Tutelary Judge will assign responsibility to the person named in the Last Will and Testament of the deceased parents, to a family member or to other citizens available, of high moral standing and who are equipped to safeguard the child's right to education and protection and to take into account their capacities, desires and aspirations (arts. 348 and 147 of the Civil Code). Before appointing the guardian, the Tutelary Judge must listen to and take into account the opinion of the child aged 16 years or over (art. 348 of the Civil Code). The Civil Code also envisages the appointment of a pro-guardian (art. 360 of the Civil Code). This figure is not to be thought of as a vice-guardian, in that he/she (hereinafter: he) should play an independent and autonomous role by cooperating with the Tutelary Judge for the monitoring and control of the activity of the guardian, by representing the child in case of conflict between the interest of the guardian and the best interest of the child, by substituting the guardian in case he leaves his office or he dies and, in these cases, by asking the Tutelary Judge for the appointment of another guardian. Despite these provisions, most Tutelary Judges, however, do not ask for the child's opinion and views and do not appoint the pro-guardian (Defence for Children Italia 2011). In addition, in many Italian cities the appointment of a guardian may take up to several months, with all the subsequent legal problems, and sometimes a guardian may not be appointed at all (Rozzi 2008, Defence for Children Italia 2011). With regard to the time frame of the appointment, it has however to be highlighted that, according to the available data, the percentage of separated non-asylum-seeking children in the second reception phase for whom a guardian has been appointed has increased from 36,21% in 2008, to 65,14% in 2009 and 65,36% in 2010 (ANCI 2012).

Only in the case of separated asylum-seeking children, a specific procedure and time frame are envisaged by the directive of the Ministry of the Interior of 7th December 2006 and by art. 26 of Legislative Decree 25/2008, whereas in other cases the general national regulation applies. When a separated child applies for international protection, the authority (Border Police or local Police headquarters) receiving the application should immediately suspend the asylum procedure for the time being; his asylum application must be brought to the attention of the Juvenile Court and the Tutelary Judge having territorial jurisdiction for the appointment (within 48 hours) of a guardian who has the duty to decide whether to confirm the application based on the consideration of the wishes and opinion of the child, assists during the entire process (e.g. application, hearing, etc., etc.) and to keep the child informed of every aspect of the procedure and its possible consequences. In addition, he can appeal to the Court to contest the refusal of the status recognition by the Commission. Similarly, the guardian of a separated non-asylum-seeking child may appeal to the
Court in order to contest the authorization of his/her assisted return. Despite the tight time frame envisaged by the law, the appointment of a guardian for a separated asylum-seeking child very often requires more time, with the added risk for children who are close to coming of age not being able to avail of the dedicated asylum procedure (ASGI 2011). Concerning child victims of trafficking and exploitation, there does not seem to be a specific procedure for the appointment of a guardian except in case of child victims of sexual exploitation (art. 25-bis, Royal Legislative Decree 1404/1934), when a special curator is appointed.

Art. 3, para. 11 of Law 184/1983 prohibits the appointment of legal representatives or professionals of child reception facilities as guardians, even if the same article envisages that, in order to ensure the implementation of the urgent and necessary protection measures for separated children, private and public reception facilities carry out a “provisional guardianship” (so-called “potestà tutelare interinale”), which lasts until the appointment of the guardian. Even though it is not homogeneously applied and known, in the absence of a guardian this provision is extremely important, for instance, for the submission of application for a residence permit, as well as for the confirmation of the child’s asylum application.

In practice, depending on the local context there are two models of guardianship: voluntary guardianship, where skill-based volunteers are appointed as guardians, and institutional guardianship, in cases where representatives of the local authority or of the local social services (e.g., Major, Vice Major, an Assessor or a social assistant) where the child resides are appointed as guardians. Several concerns have been raised in relation to the latter model as, being financially responsible for the care and placement of separated children, the local authority may be interested in reducing the number of separated children present in its territory even against their best interests, in a situation where there is no system of external and independent monitoring (Defence for Children Italia 2011). Similarly, also the appointment of a lawyer as guardian is deemed by some experts not to be adequate, as there may be, also in this case, a conflict of interests and an overlapping of roles that is not functional to the adequate representation of the child’s needs. On the other hand, at times voluntary guardians may not be adequately trained and supported, recognized in their role and authority and involved in all planning and decision-making processes concerning the child.

A crucial protection gap is therefore represented by the fact that the level of protection and care separated children receive from their guardians depends upon the model of guardianship adopted at local level, as well as more generally on the single guardian’s non-standardized level of competences, skills and level of independence.

**Legal responsibilities and tasks of the guardian**

For what concerns the duties and legal responsibility of a guardian, based on art. 357 of the Civil Code the following duties are identified:

- to take decisions relating to the child’s welfare, upbringing and education in order to respond to the child’s personal, emotional and health needs taking into account the capacity, the natural inclinations and aspirations of the child (art. 147, Civil Code);
- to be the legal representative of the child, with the power to represent the child in court proceedings as well as in criminal and civil or administrative matters;
- to manage the minor’s ordinary financial affairs;

The guardian is also, under some circumstances and in civil affairs, responsible for damages caused to third persons by the child while he/she is under his/her supervision (so-called “culpa in vigilando”) (art. 2048 of the Civil Code) and he/she is responsible for any damage he/she causes to the child (art. 382 of the Civil Code) (Pubblico Tutore dei minori - Regione Veneto 2009). As highlighted by the Closing a Protection Gap Italian National Report (Defence for Children Italia 2011), according to scholars, practitioners and guardians themselves, the guardianship of a separated child requires however other responsibilities and competences, which are not explicitly envisaged by the Civil Code, such as:
• a more general function of “negotiation” among all the actors involved in the child’s protection and integration process and based on the best interests of the child;

• listening to the child, intended as the most important instrument not only for the comprehension of his/her protection needs, aspirations and life project and in order to effectively take care of the child, but also for the reliable representation of his/her opinions, ideas and desires and for the immediate detection of signs of abuse, violence, trafficking and exploitation32.

Besides the role played with regard to various ordinary administrative matters related to school, health and other recreational activities (e.g. enrolment in school, consent to some health care interventions, enrolment in recreational activities, etc., etc.), the need for child representation is very important in criminal matters, both when a child has been victim of a criminal offence and when a child has been charged with a criminal offence. In the latter case, the Decree of the President of the Republic 448/1988 states that the guardian should not only hire a lawyer, monitor his/her activity and inform the child, but he/she can also accompany the child in court hearings and he/she can appeal against a sentence (Turri 2004). As highlighted above, the guardian plays also a crucial role with regard to the asylum application and in cases where there is a need to promote an appeal against an institutions’ decisions (e.g. refusal of the refugee status, voluntary assisted return, etc., etc.).

**Training and work methodology of guardians**

Within the Italian legal system there are no provisions or general guidelines concerning guardians’ training, work methodology and competences. The Civil Code only makes reference to the need for a guardian to be “of high moral standing” and equipped to safeguard the child’s right to education and protection and to take into account his/her capacities, desires and aspirations (arts. 348 and 147). In addition, according to arts. 362 and 380 of the Civil Code guardians have the duty only to present the inventory of the child’s possessions to the Tutelary Judge, to keep the general accounts and to submit an annual financial report (for more details, see Pubblico Tutore dei minori - Regione Veneto 2009). While there is no evidence of specific work methodology or training courses for guardians who are representatives of local authorities, local/regional projects for voluntary guardians, that are developing in great numbers in recent years, in general provide for training courses and may share a general work methodology.

**Caseload and remuneration of guardians**

In the Italian legal system there are no general rules concerning a guardian’s caseload, while the limit on caseload is established in the context of local training projects for voluntary guardians. This entails that there is no maximum caseload when the local authority is appointed as guardian, for instance a Mayor of the city can be appointed as guardian of all the separated children residing in the local municipalities. On the other hand, when the guardian is a volunteer the limit is established by the local project, and usually is set at a maximum of 5 children per guardian. For what concerns the payment of guardians, according to the Civil Code “the office of guardian is for free” (Art. 379 of the Civil Code). Only in specific cases (difficulties connected to his/her duties, with particular reference to his/her economic and financial administration tasks) the Tutelary Judge can recognize the guardian as requiring some resources as “fair reimbursement” (Art. 379). However, in some local contexts, e.g. the training courses that are organized by the Regional Ombudsman for Children of Region of Veneto and by the Dedalus Social Cooperative and the Municipality of Naples, a form of reimbursement, that is defined as “symbolic” being equal to a maximum of 100 euros (50 euros per child) in the case of the Region of Veneto project, is made available to support guardians in their activity, as well as a professional indemnity insurance33.

**Monitoring and accountability of guardians**

In the Italian context guardianship is enforced with a judiciary measure and it is carried out under the judiciary system’s supervision and monitoring: it represents therefore a “space” in which the

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32 For more details on the functions guardians should have in practice in relation to the other actors involved in the care of childrens, as well as on the crucial preventive/protective function they should play, please see Defence for Children Italia 2012.

33 See Defence for Children Italia 2011, Save the Children Italia 2012.
public intervention of the State, through the active involvement and the monitoring responsibilities of the judiciary authorities, is stronger than in other cases (Occhiogrosso 2009). While the guardianship entrusts the guardian with parental responsibility, he/she cannot be compared to a parent because his/her activities have to be monitored by the judicial authorities and, under some circumstances, authorized by the Tutelary Judge. The Tutelary Judge however exercises just a formal control on guardians that is limited to financial aspects (in conformity with the Civil Code, please see para. no. 4.5) and not a monitoring for what concerns the relationship with the children and its implications. In the case of voluntary guardians, the monitoring is in general carried out by the institutions organising the training courses, which may be regional institutions (e.g. the regional Public Guardian or Ombudsmen), local authorities or third sector organizations in collaboration with the local authority or regional institution. On the contrary, in the case of institutional guardianship no specific procedure seems to be envisaged.
7. BENCHMARK OF THE CORE STANDARDS FOR GUARDIANS OF SEPARATED CHILDREN

To benchmark the performance of the Italian guardianship system against the Core Standards for Guardians of separated children is a major challenge, first of all because it is not possible to describe the national context as a ‘system’. Neither from a legal/institutional point of view, nor in terms of practices, can the Italian national context be analysed as a unity or single entity.

The above-described fragmentation of the legislation, competences and procedures related to the protection and care of separated children, the complexities and gaps of the immigration and asylum system, together with the lack of an up-to-date legislation, of a single model of guardianship and of a national policy and training strategy on guardianship create a context where the function and impact a guardian may have on the level of protection of children is made strictly dependent on various factors, most of which are extremely variable at local/regional level and depending on the single guardian’s skills, level of independence and relational resources.

Even though some best practices may be identified and some very general positive or negative trends may be highlighted, as we tried to do in relation to each standard, it seems correct to say that to create the minimum conditions for the consistent assessment of the level of fulfilment of the Core Standards for Guardians, a level of intervention, attention and investment is needed at national level that it is still yet to come.
STANDARD 1

The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

**Indicators:**
The guardian:

A) Makes an assessment on the best interests of the child, for example before decisions are taken about:
   - Legal procedures,
   - The choice of a lawyer,
   - Housing accommodation and placement,
   - Education,
   - (Health) care,
   - Leisure activities,
   - Other support.

B) Makes sure that an assessment on the best interest of the child is based on the views and opinions of the child and on individual circumstances.

C) Involves all relevant actors in the determination of the best interest of the child in decisions impacting upon the child to ensure a multi-disciplinary approach.

D) Avoids having a conflict of interest concerning the child and works independently from other actors who make decisions about the welfare and status of the child.

E) Adjusts the assessment of the best interests of the child regularly, while taking at a minimum into account:
   - The child’s personal background and past experience in the country of origin and journey,
   - His/her development,
   - Family situation,
   - Duration of stay in the host country,
   - Phase of residence procedure or immigration status.

The principle of the interests of the child does not appear in the Italian Constitution (1948) but the Constitutional Court has made a constitutional principle of the best interests of the child. Therefore even though it is not fully applied and duly integrated into all legislation, policies and budgets, or in all judicial and administrative decisions and services that have an impact on children, it constitutes a criterion of evaluation in (judicial and administrative) deliberations, and it is deemed to be enshrined (explicitly or implicitly) in various provisions relating to children.

Even though there is no explicit mention of the best interests principle in provisions on guardianship, it is however clear that the guardian’s role and tasks need to be oriented by this principle. Despite the fact that guardianship rules were conceived in a different historical context and were primarily focused on the need to ensure the financial management of the properties

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34 See Decisions no. 341 of 20th July 1990 and no. 303 of 24th July 1996, referring to articles 2 and 31 of the Constitution. Of particular interest is sentence of the Supreme Court-United Sections no. 2799 of 25th October 2010 where in order to allow the better protection of the best interests of her children, a Nigerian woman was authorized to temporary reside in Italy without applying general rules on immigration (exception envisaged by art. 31 of the Immigration Act) and also without the need to prove the existence of a “real situation of emergency, exceptional and transitory” (as generally required), but only on the basis of the damage for the children in case of the separation from the mother taking place.

35 CRC 2002, para. 103.
of children without parents, they include reference to art. 147 ("Duties towards children") of the Civil Code, where it is clearly stated that decisions relating to the child’s welfare, upbringing and education have to be based on the consideration of “the capacities, the natural inclinations and aspirations of the children”.

In general, the reported general persistence of attitudes which tend to privilege the interests of the “adults” (meaning organizational and financial problems)\(^{36}\) and the lack of shared procedure, methodology and tools for both the determination and on-going assessment of the best interest of each single child that affects all the relevant sectors – from social services to child reception facilities, professionals and immigration authorities, to guardians themselves - makes it extremely difficult to assess the overall level of respect of this standard in practice, as well as specifically the influence guardians may have on the determination and assessment processes. More worryingly it seems not to be always clear that in order to be compliant with the true nature, contents and objectives of this principle, its determination and assessment should be made only on an individual basis, should be based on an ongoing process of monitoring and review and on the possibility to develop a relationship of trust with the child:

> “In several situations the best interest of the minor is not taken into consideration at all.” A guardian.

In this context, it also must be highlighted that legislation and practices on immigration and asylum hinder the effective implementation of measures oriented by the best interests of the child. Even though this principle is explicitly recalled by some provisions on the matter\(^ {37}\), as already highlighted in the previous paragraphs, various other provisions (e.g. the new rules for the conversion of the residence permit) and some of the practices adopted in relation to crucial matters (e.g. entry, age assessment, placement, time frame of asylum procedure, release of a residence permit) are definitely not based on careful consideration of the child’s best interests and contribute to creating serious obstacles to the efforts made by guardians and other actors in this regard.

> “I’ll ask you a question: How can we trust the institutions when that the law is what it is?” (he makes reference to Law 94/2009 that has introduced serious limitations for the conversion of residence permit upon coming of age). A guardian.

Conclusion

Despite the increasing attention that has been paid to the best interests of the child, it seems that its aims and contents are not always clearly acknowledged and transposed into an adequate, common and definite methodology for guardians and for the other actors involved in the care of children.

Recommendations

For the competent State authorities:

1. To adopt a consistent and comprehensive Single Act on separated children regardless of their status, for the promotion of their rights and clear identification of competences, procedures and practices to be applied in relation to their individual protection and care needs;
2. To promote a reform of provisions on guardianship in order to put them in line with the

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36 See, for instance ibidem, para. 106.
37 Explicit references to the best interest principle can be found, for instance, in laws and policies on immigration and asylum, such as: art. 28 on the right to the unity of family of the Immigration Act that includes the explicit reference to the best interest of the child and where art. 3, para. 1 of the CRC is quoted; “in all administrative and judicial procedures aimed at fulfilling the right to the unity of the family and concerning children, the principle of the best interest of the children should be taken in consideration with priority”; with respect to programmes for tracing families of separated asylum-seeking children, that must be carried out in compliance with the best interest of the child (art. 8, para. 5 of Legislative Decree 140 of 30th of May 2005 implementing Directive 2003/9/EC).
definition of guardianship included in the CRC (art. 18) and to explicitly link guardians’ role and responsibilities to the determination and continuous assessment of children’s best interests and to the protection of their rights;

3. To promote and support the definition and dissemination of a common methodology/tool/procedure for the determination of each single child’s best interests to be adopted by all the actors involved, at different levels and with different mandates, in the care of children.

For guardians:
1. To facilitate the recognition by all the actors of the need to assess and systematically review the best interests of each single child through an ongoing process and the careful consideration of the child’s personal situation, opinions and views.
2. To create and value every opportunity to meet, get to know and develop a relationship with the child.
3. To base the assessment of the best interests of the child on the careful consideration of the child’s needs, opinions and views and on his/her constant participation.
4. To ask for adequate and specialized training, including a common methodology/tool/procedure on the matter.
STANDARD 2

The guardian ensures the child’s participation in every decision which affects the child.

Indicators:
The guardian:

A) Provides the child with all relevant information concerning his/her rights and information needed for his/her participation in a language the child understands and in a child friendly way, repeats this information as often as necessary and checks if the child understands and recalls the information.

B) Listens carefully to the child and takes his/her views into account in the most appropriate way in accordance with his/her age, development and evolving capacities.

C) Informs the child of the outcome of the decision making process and explains how his/her views were considered.

D) Manages expectations of the participation of the child.

E) Makes sure that action or development plans are based on the views of the child and shared with the child.

F) Ensures that appointments are made with the informed consent of the child.

G) Informs the child about complaint procedures concerning the guardianship and is open to feedback from the child.

H) Uses creative tools, like visual materials, where necessary to ensure participation.

As to the right to be heard, it has to be highlighted that the novelty and scope of article 12 of the CRC was not immediately understood in its entirety in the national context, as it was believed, until Judgment 1/2002 of the Constitutional Court attributed to article 12 of the CRC a self-executing nature, that article 12 would not be immediately executive. The Italian Constitution provides, in a general way, that all persons have the right to freely express their views by way of speech, writing and in any other method of dissemination and, even if there is no specific reference to children, the term “all persons” obviously includes the child.

As to civil matters and criminal matters, the applicable provisions are different depending on the type of proceeding and the role of children. However, in both fields several protection gaps are reported in relation to the fact that the relevant practices are extremely variable depending on the local Court orientation and level of specialized resources, competences and attention (for more details, please see UNICEF Italia 2012).

In this context, the role of the guardian, or of the special curator, is acknowledged as crucial to ensure the effective information and support of children throughout the various, and often delicate, phases of the relevant procedures. However, in practice not always a curator or guardian is appointed, there is a lack of attention and initiatives for the enhancement and qualifications of special curators and guardians and there may be a not appropriate overlapping between the role of the guardian/curator and of the lawyer, for instance in cases where the lawyer is appointed also as curator.

In the family sphere, the duty to listen to the child and to take his opinions into consideration is not explicitly mentioned in legislation. However, it can be inferred from the art. 147 of the Civil Code,

38 CRC 2009, paras. 146-147.
which states that parents have the obligation to carry out their own educative function taking into account the capacity, the natural inclinations and aspirations of their children.

This interpretation is also extremely relevant for the definition of the guardian's duty. As to the protection of children, of particular relevance is Law 149/2001 (which amended Law 184/83 on child fostering and adoption) that established that the measure of fostering by a family or by a reception facility is determined by local social services and made executive by the Tutelary Judge once the minor aged 12 or younger has been heard according to his/her capacity for discernment (art. 4).

Regarding immigration and asylum, the right to be heard for children is envisaged particularly in relation to their placement and in the eventuality of the implementation of a voluntary assisted return procedure. However, in practice, children may not be consulted, particularly in relation to their placement, or may be consulted in different ways, as the hearing of the child is not based on a common methodology and procedure and the level of competence on the matter is extremely heterogeneous throughout the country (EMN 2009).

“...Nobody listens to you and they do not tell you the essential things: the shelter's staff resolve you the practical problems, the guardians just sign the documents and papers, but you find yourself 18 years and you have not understood anything. At this point you do not know what to do....” A separated child.

Despite various national/local initiatives and projects carried out for the enhancement of the level of participation of children⁴⁰, the UNCRC Committee has also recently clearly highlighted that one of the main gaps in the Italian context is represented by the lack of a systematic consultation of children in the process of producing laws and policies affecting them at the national, regional or local levels, and by the absence of more specific guidelines on children's participation in the development of future plans of action concerning them (CRC 2011).

As highlighted also by the Monitoring Report on the implementation of the National Plan on Childhood⁴¹, participation is basically considered as a "general principle" that does not find a concrete, practical application in local and national politics (Gruppo CRC 2012).

“...The reality is that you have to do what they tell you, you are not free.” A separated child.

In such a general context, the performance of guardians in relation to this standard, meaning the

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⁴⁰Among others, it is worth mentioning here the 2010 report on the state of implementation of article 12 of the CRC, elaborated by the PIDIDA – Per I Diritti dell’Infanzia e Dell’Adolescenza, which is an open consultative table on children’s rights. The report is available at: www.infanziaediritti.net/web/pdf/rapporti/rapporto_pilota/1.%20Introduzione011A.pdf (Accessed July 2013); the involvement of children in the monitoring of the National Plan on Childhood, realized by the PIDIDA with the support of the Ministry of Labour and Social Policies, of Health and of Education (Gruppo CRC 2012); the study on different experiences of children’s participation promoted by the National Center of Documentation on Childhood and Adolescence (CNDA), please see Di chi è questo spazio? Un po’ anche mio, Ricerca sulla partecipazione secondo bambini e adolescenti”, available at: www.minori.it/sites/default/files/Risultati_ricerca_partecipazione_2009.pdf (accessed July 2013); the several initiatives under development by the National Authority for Childhood and Adolescence for the enhancement of the level of information and active participation of children, among which the campaign called “I have a dream” aimed at giving children a space to express their dreams and at disseminating them to the national institutions and society. For more details, please see: www.garanteinfanzia.org/node/44 (Accessed October 2013); the various positive experiences that have been promoted at local and regional levels, particularly by Regional Ombudsmen for children’s rights. For more details, please see: www.minori.it/minori/garanti-per-linfanzia-in-italia-il-quadro-attuale-e-le-prospettive-future (Accessed July 2013).

capability of a guardian to effectively communicate with the child and to ensure his/her active participation and information, as well as his/her work practices in this field, is strictly dependent on the resources and competences available at local level (e.g. cultural mediators, psychologists), on the single guardian’s competence and, according to the children and guardians who were consulted, also on the model of guardianship adopted at local level:

"According to my experience, when the children understand that you are a volunteer, that you are doing something for them for free, they will trust you more, they will talk with you." A Guardian.

**Conclusion**

Despite the fact that the adequate information of children is a key element to ensure their protection and their informed choice, there is a lack of systematic and structured attention to the participation of children, and therefore to the definition of a common methodology/tool/procedure and of a national training strategy on the matter. This entails that quality of information provided to children and their level of participation depends not only on the quality and specialization of the resources and competences available, but also on the model of guardianship and on the single guardian’s skills and attention.

**Recommendations**

**For the competent State authorities:**
1. To set up a national training strategy, including common methodology/tool/procedure, for all the professionals of the various fields to ensure the effective and systematic information and participation of children in all the procedures and contexts concerning them.
2. To value, disseminate and improve the best practices and information/awareness campaigns on the matter.

**For guardians:**
1. To give a primary consideration to the information and participation of children, by starting from the recognition and value of the child’s personal history, individual needs and resources and by adopting appropriate, child, cultural and gender-sensitive tools, methodologies and language.
2. To ask for adequate training and specialized support (cultural mediators, psychologists, etc., etc) and to proactively create relationships with available and accessible resources, experiences and competences.
3. To support the child in the expression of his/her opinions, views and needs and in proactively proposing/organizing occasions/places for his/her active participation.
STANDARD 3

The guardian protects the safety of the child.

Indicators:
The guardian:
A) Gives the highest possible priority to the child’s safety and ensures that his/her own conduct does not put the child at risk.
B) Makes sure the child knows he/she is welcome to voice anything concerning his/her safety or any danger that he/she feels.
C) Keeps all information about and from the child confidential unless it is necessary to break confidentiality to keep the child or another child safe and informs the child, when possible, about a confidentiality breach.
D) Can identify the signals of child abuse and trafficking, acts upon signals of any harm or danger to the child and reports those signals to the relevant child protection authorities.
E) Is aware of the additional pressure, dangers and risks presented by those who facilitated the child’s journey.
F) Ensures that if a child is a victim of violence, abuse or trafficking the child gets appropriate treatment.
G) Always reports the disappearance of a child.
H) Is open about being monitored on his/her own behaviour.

The Italian word “tutela”, that is “guardianship”, is derived from the Latin verb “tuère” that means “to look after, to protect”. The key-role a guardian may play in relation to the protection of a child is therefore clearly acknowledged also by the etymology of the word. In relation to this function, the Civil Code (art. 357) envisages several duties of a guardian such as to take decisions relating to the child’s welfare, upbringing and education of the child, to be the legal representative of the child and to assist during all the legal procedures (e.g. asylum, appeals, criminal proceedings), along with the support of a lawyer.

“My guardian was very close to me, I had a difficult operation and she helped me a lot. I felt protected by her.” A separated child.

The capacity of guardians to effectively protect children can be consistently and effectively analysed by adopting a children’s rights-based, systemic and holistic approach aimed at taking into consideration both the systemic and personal factors that may enhance the level of vulnerability of children to risks. This was specifically the approach adopted by a very recent research carried out by Defence for Children Italia within the framework of the Project GATE42, co-funded by the EC Prevention of and Fight Against Crime Programme, where the most important risk factors were identified, also through the direct consultation of children, guardians and other stakeholders. In this context, the two interconnected levels of analysis aimed at:

1. considering the level of inclusion, adequateness, compliance with the CRC and other international standards and effectiveness against trafficking and exploitation of the national protection system;
2. analysing the level of response to children’s needs and rights, processed and discussed according to the four known CRC clusters (Protection, Participation, Development and Protection).

Overall, though it is not possible to analyse here in detail the results of the GATE project, from the study it emerged that there are various systemic factors in the Italian context that, combined with the risk factors connected with the individual history of each child and with the type of relationships he/she has, produce a context that is not sufficiently protective.

Among the identified risk factors there are: the lack of procedure for the first contact with the child as well as for his/her timely, correct and competent identification and age assessment; the lack of procedure for the standardized, competent and appropriate placement, including in low-threshold drop-in centres and in foster families; the limited access to adequate health care services, including psychosocial and psychiatric services; the lack of competence and procedures for the adequate information of children, for the comprehension and respect of every child’s history, personal background, specific needs and competences, active role and culture(s), for the definition of an individualized project of integration, for supporting them in establishing/maintaining positive relationships with families and other social relationships with adults and peers, for accompanying them to adult age and for supporting them after the majority age; the lack of adequate competence for the development of a relationship based on mutual trust and confidentiality; the lack of adequate and shared competences on the risks children are exposed to as well as on trafficking and exploitation (for more details, please see Defence for Children Italia 2012).

In this non protective context, the impact guardians may have on the level of protection of children is hindered, first of all, by the fact that a guardian is never appointed upon entry and he/she cannot assist during age assessment, as a guardian is in general appointed only when a child is identified as such and not in cases where there are doubts about his/her age. In this regard, a good practice is represented by the “Cultural Guardians Project” implemented by the Dedalus Social Cooperative and the Municipality of Naples where cultural mediators who are appointed as guardians are also involved in outreach activities and therefore they very often get in touch with children before being appointed as their guardians and are able to assist them from the very beginning. In addition, they also agreed with other local actors (Police forces, judiciary authorities, local social services, etc., etc.) on a procedure to be adopted for age assessment, so they can be present also when children undergo this procedure:

“We talked with the Juvenile Prosecutor and two years ago we created a technical table including different Police forces (Carabinieri, Polizia, Guardia di Finanza), the Juvenile Court and the ordinary Court, the local authority and local social services, the hospital Santobono (where doctors have specific training on issues related to immigration and separated children) local police (Vigili Urbani) and various NGOs and civil society organizations (...). This agreement protocol (protocollo d’intesa) states that when a separated child is traced, the first thing to do is to bring him/her only to this specific hospital and not somewhere else. It also states that a certification of the results is to be given to the child and a cultural mediator needs to be present because the minor should be aware of what is happening to him (...). In practice, we are applying the “Protocollo Ascone” that has not yet been approved by national institutions”. A guardian.

In addition, the level of control and influence guardians may have on the type of placement, level of access to education/integration and health care services is very much dependent on the resources and competences available at local/regional context, whereas their effectiveness in adequately informing children of the risks they are exposed to, in supporting them in developing a secure network of relationships, in developing a relationship based on mutual trust and confidentiality and in knowing the children’s history and personal background depends on both the individual guardian’s competences, intentions and availability of time and on the level of support, as well as control/monitoring granted at local level.
Finally, the achievement of this standard is also hindered by the fact that, as it emerged from the GATE research, in only very few cases there is evidence of experience and/or adequate competence on child trafficking and exploitation, whereas in the other cases guardians seem to have received only general information on the matter, but no ad hoc training (for more details, please see Defence for Children Italia 2012).

Conclusion
Guardians are in the best position to ensure the effective protection of children and to immediately detect possible risks. However, the level of protection they are able to grant to children is extremely variable depending on various factors that are not under they direct control, such as the timing of the appointment, and on both the individual guardian's competences, intentions and availability of time and on the level of support, as well as control/monitoring granted at local level.

Recommendations
For the competent State authorities:
1. To put in place a consistent national protection system for separated children, based on common model for service provision, for response to specific needs and for the continuous and effective monitoring of the level of service provision.
2. To promote and support the development of a common methodology/tool/procedure for the first contact of the child, including the identification and comprehension of the child’s personal history and background and possible risks.
3. To develop and test a pilot for the timely appointment of a guardian.
4. To adopt a common, multidisciplinary and child-centred methodology for age assessment, including a clear definition of the safeguards for children’s rights and of competences, procedures and practices.
5. To support the development of alternative forms of placement, such as in low-threshold drop-in centres and foster families.
6. To support the development of outreach activities.
7. To adopt a national training strategy for all the professionals involved in the care of children on the various risk factors children are exposed to, including provision of tools for the improvement of children’s self-defence potential.

For guardians:
1. To pay careful and constant attention to the detection, also through the reconstruction of the personal history and experiences of the child, of possible signs of risks, abuse and violence and, when needed, immediately inform the competent authority, ask for specialized support and facilitate the access to adequate resources, professionals and competences.
2. To value and create opportunities to visit the child at the place where he/she lives and to meet the peers or adults, including family members, with whom he/she spends time.
3. To create opportunities to spend some time alone with the child.
4. To inform, by adopting a preventive approach, the child on the various risks he/she may be exposed to in the current situation and in the future and to always focus on enhancing and valuing his/her self-defence potential and resources.
STANDARD 4

The guardian acts as an advocate for the rights of the child.

Indicators:
The guardian:

A) Is an assertive, committed and brave watchdog, dedicated to defending the rights of the child.
B) Is not afraid of taking different points of view from the authorities and acts independently, solely based on the best interests of the child.
C) Opposes decisions which are not taken in the best interests of the child and pursues fair procedures concerning the child.
D) Shows emotional strength to deal with wearing situations, frustrations and hostility or pressure through third parties.
E) Is present during the determination of the best interest of the child at important decisions.

In the Italian context the effective possibility for guardians to act as advocate for the rights of the child depends on various factors, first of all on the type of guardianship model implemented.

As mentioned previously, both skill-based volunteers and representatives of the local authority or of the social services can be appointed as guardians depending on the context. The latter cases often lead to conflict of interests, lack of external monitoring and independence and produce a situation where the guardian may prioritize other needs (administrative, economic) at the expense of the protection and advocacy of the children’s rights. On the other hand, at times voluntary guardians may not be recognized in their role and authority, and therefore may not be involved in all planning and decision-making processes concerning the child, or may not be sufficiently equipped to know what the children’s rights are, to oppose decisions taken by the authorities, to effectively interact with the other actors involved or to look for professional or other support (e.g., by NGOs) (ibidem).

“Here the guardian is a “cold” figure, he/she does a very bureaucratic task...it is not very much about “fighting” for children, at least not always.”
A guardian.

A second factor that may hinder the level of fulfilment of this standard is the timing of the appointment of the guardian, that may occur various months after the entry and placement of the child again depending on the local context, thus depriving some children of the support of the guardian in important phases of the reception process, such as the age assessment, the placement, the asylum procedure or the definition of an individual project of integration. Even though children are in general assisted during those phases by other professionals (e.g. local social services professionals, legal counsellors of the local authority or of the reception facility, cultural mediators, etc...), the lack of a guardian, or the delayed appointment of a guardian, together with the lack of a national training strategy still represents crucial protection gaps that need to be adequately addressed at national level.
**Conclusion**

Guardians should always act as advocate for the children’s rights and should not hold positions that could interfere with their independence. This is still not always the case in the Italian context.

**Recommendations**

**For the competent State authorities:**
1. To promote and support the adoption of a common model of guardianship, based on the recognition of the need for a guardian to be independent and to act as an advocate for the rights of the child.
2. To promote a national awareness raising campaign on the role, protective role and duties of guardians in relation to the protection and promotion of children's rights.

**For guardians:**
1. To be aware and to make all the other actors be aware of the fact that the fundamental objective of guardianship is the identification, representation and promotion of the child’s rights and needs in relation to the context where she/he lives and to any other condition or relationship.
2. To ask for adequate recognition and support for his/her own role, responsibilities and duties.
3. To inform the child on his/her (meaning of the guardian) role, responsibilities and duties in relation to the promotion of his/her rights.
4. To empower the child on the rights and duties he/she has, particularly in relation to the context where he/she lives, the other actors involved, including the guardian him/herself, and the various procedures concerning him/her.
STANDARD 5

The guardian is a bridge between and a focal point for the child and other actors involved.

Indicators:
The guardian:

A) Keeps in contact with and is the focal point for:
   • The lawyer,
   • Reception and social workers (mentors),
   • (Psycho) social and medical care givers,
   • Migration authorities,
   • School teachers,
   • Foster parents,
   • Social Services,
   • (Extended) family members in the host country and/or the country of origin,
   • Other relevant actors.

B) Informs the child about his/her rights and obligations in relation to the other actors.

C) Assists in establishing links with the child’s community and developing key one on one relationships that gives the child a sense of belonging to a family or group.

D) Ensures that he/she is informed about decisions which have an impact on the child and is present at key meetings and interviews where decisions are made.

The capacity of guardians to effectively connect with the other actors is dependent on his/her personal skills and relational resources but also, particularly in the Italian context, on the existing level of coordination at local level. It may in fact be the case that coordination is based on an efficient and well-structured local network involving the various actors or it may be that there is a lack of structured communication and coordination among local actors and no formal or informal mechanism of cooperation. In the latter situation, guardians may face serious difficulties in interacting with the other actors but may also be in the best place to proactively facilitate the setting up of a well-functioning coordination and communication system.

“I think that in order to ensure the full protection of children’s rights, a guardian should consider himself/herself as a proactive “intermediate”, as a link between the child and other actors involved, such as workers of the communities, teachers, social workers, lawyers, migration authorities, etc., etc." A guardian.

Some of the interviewed (voluntary) guardians reported that sometimes they have had problems in cooperating with the workers of the reception facilities or with some of the representatives of the migration authorities because they did not easily recognize the legitimacy of their requests or activities and they were not involved in all planning and decision-making processes concerning the child, but in all of these cases they managed, thanks to their relational skills, to make sure that their role and responsibilities were understood and respected and finally developed a cooperation methodology:

“We have effective and efficient links with all the agencies and institutions involved in the children’s reception, integration and assistance process.

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Sometimes we had problems with some of the workers of the communities of children, because at first they did not recognize and respect our role and functions, but in the end we managed to cooperate, communicate and have links also with them.” A guardian.

While it is impossible to assess the level of fulfilment of this standard at national level, it has to be highlighted that in general where local training courses for guardians are realized, the objectives of the courses are widely disseminated at a local level, guardians are supported in communicating with the other actors, and specific formal agreements between the guardians’ training projects and the local authorities, judiciary institutions and other agencies involved are made in order to ensure the effective and efficient cooperation of all the actors. On the other hand, as to guardians who are representatives of the local authority, who may avail of the contacts already established in their public role, it may be difficult for the children and for the other actors to distinguish between the different roles.

**Conclusion**

The level of fulfilment of this standard is extremely variable as it depends on the level of cooperation at local level as well as on the competences and pro-activity of the single guardian.

**Recommendations**

For the competent State authorities:
1. To promote a national awareness raising campaign on the role of guardians.
2. To value, disseminate and support best practices on the matter.

For guardians:
1. To be aware of the responsibilities and duties towards the other actors involved in the care of children.
2. To map and know the other actors and professionals who are involved in the care of the child.
3. To proactively facilitate networking and cooperation among the various actors.
The guardian ensures the timely identification and implementation of a durable solution.

**Indicators:**

The guardian:

A) Challenges others to prove their proposed solutions and implementation plan take the best interest as a primary consideration, while taking at least the following into account:
   - The child’s family situation,
   - The situation in the country of origin,
   - The adequacy of concrete care arrangements to ensure a safe and secure environment,
   - The safety and risks the child is exposed to,
   - The level of integration in the host country,
   - The mental and physical health of the child,
   - The possibilities of development in the various options.

B) Supports the reunification of the child with his/her family when this is in the best interest of the child taking into account any danger related to the exile grounds for the child or his/her family.
   - The guardian has personal contact with family members and organizations in the country of origin after consent of the child, and checks their abilities to take care of the child in a safe and appropriate way,
   - The guardian considers the signals of trafficking related to the role of family members.

C) Supports the integration of the child in the host country when this is in the best interests of the child, giving particular consideration to:
   - Language,
   - Social contacts,
   - Education and employment.

D) Supports a safe return to the home country when this is in the best interest of the child.
   - Depending upon the wishes of the child the guardian accompanies the returning child or he/she arranges somebody else to do this.
   - The guardian oversees the preparation and monitoring of a life project/reintegration plan before and after the return.
   - The guardian tries to be informed about the wellbeing of the child after he/she is returned to the home country.

E) Prepares the child for all predictable changes which will occur after he/she turns eighteen.

In the Italian context it is not possible to assess the impact a guardian may have on the process of identification and implementation of a durable and suitable solution for children. The possibility of having such an impact depends in fact on various factors, such as the timing of his/her appointment, his/her level of competences, relational skills and capacity to develop a good relationship with the child, the level of coordination existing at local level and of acknowledgment of his/her role.

Moreover, there is no evidence of a specific methodology on how to deal with the identification of a durable and suitable solution, or of a general view on the matter as it is deemed, at least from a theoretical point of view, that it needs to be identified on an individual basis, by considering each child’s personal needs and resources. All the guardians who were consulted stated in fact that the identification of the most suitable and durable solution for each single child is very much the core of their function:
The role of guardians in relation to the family reunification is not clear in practice and none of the guardians who were consulted reported having had any experience in relation to this issue. The role of guardians in relation to the voluntary return (art. 7, DPCM 535/1999) seems to be limited as this measure can be implemented only based on the consent of the child himself/herself; similarly, the role of guardians when a child has been returned to his/her country of origin or a third country is not clear and no experience on the matter was collected. During the focus group, only one of the guardians reported having had an experience of return, specifically a case where the opinion of the child prevailed over his own:

“There was a young boy I would like to be returned to his country, but he did not accept. This was not a good thing, because he had mental problems, so it was dangerous for him. He needed specific support that it is not available here, while at least in his country there was his family. I talked with the family, but their reply was “what can we do with him?”. He remained in Italy but it was very difficult for him, there was no support, no economic resources to pay psychiatric visits. Now he is doing well because we managed to have the Local Health Agency to take care of him, but it was really difficult.” A guardian.

In addition, from the consultation with children and guardians it emerged the crucial importance of supporting children after the age of majority.

“I am really worried about turning 18 ...I will find myself alone. I have refugee status, the State should take care of me, provide me with a place to live, a job...but as soon as I turn 18? I know that there will be no possibilities here for me.” A separated child. “I have just turned 18 and I will have to leave the shelter in June. I figured it out alone how things work here in Italy, but it took me a bit of time, and now, of legal age, I have little time to plan my future as an adult.” A former separated child.

In the Italian framework all children are entitled to protection measures until they reach adult age and a special curator may be appointed only for adults who are debarred on the grounds of mental incapacity. In this regard, it should be noted that the extension of fostering until the child reaches 21 years of age is envisaged by the dated art. 25 of the Royal Legislative Decree 1404/1934 in cases of deviant behaviour and it is in practice enforced in (limited) cases when the child is deemed not to be able to live outside the reception facility. It also has to be highlighted that, according to national and international provisions (Law 218/1995 and the Hague Convention of 5th October 1961), the minority age status should be determined in accordance with the domestic law of the State of the child’s nationality and not with that of the State of his/her habitual residence (arts. 20, 23 of Law 218/1995).

However, guardianship cannot be extended after the age of majority, even though most of the
guardians we met during the first and second project decided to remain in contact with their children and still try to support and guide them.

“For sure I remained in touch with my children! How could I leave them alone when there is no support from institutions? Some social workers work really hard for them, try everything for them, but the “system” is moving in a different way...the main goal is to cut expenses” A guardian.

**Conclusion**
The level of fulfilment depends in practice on the level of availability of the single guardian, as some of them are still in contact with the child even after he/she has turned 18. However, from a formal point of view guardianship cannot be extended after the age of majority.

**Recommendations**
For the competent State authorities:
1. To promote the clear definition of the role of the guardian in relation to voluntary assisted return and family reunification procedures.
2. To promote and support the development of a common methodology/tool/procedure for guardians and all professionals involved in the care of children to prepare to and support them in the crucial phase that leads to the age of majority as well as after they come of age.

For guardians:
1. To make sure that every decision concerning the identification and implementation of a durable solution is based on the careful consideration of the child’s personal situation, specific needs and life projects, and on his/her active involvement and participation at each stage of the decisional process.
2. To keep the child constantly informed on the effects of the decisions to be taken and, where appropriate and requested by the child, involve the family in the decision.
3. To prepare and support the child in the crucial phase that leads to the age of majority and to adult age.
4. To always consider the need to facilitate the creation of sustainable conditions for the future of the child.
STANDARD 7

The guardian treats the child with respect and dignity.

**Indicators:**

The guardian:

A) Treats the child with an unprejudiced, open attitude.
B) Listens to the child’s views and concerns and takes them seriously.
C) Demonstrates the appropriate behaviour and attitude he/she expects from the child too.
D) Shows interest in the child’s life by asking questions without being too obtrusive.
E) Is sensible to cultural and/or religious differences.
F) Respects the child’s right to privacy and informs the child about the possibility to see other professionals on his/her own.
G) Supports the child in maintaining and/or creating his/her identity and self-esteem.
H) Shows a flexible approach tailored to individual needs of the child.
I) Does not breach the right of the child to maintain his/her physical and mental integrity.

The level of fulfilment of this standard at national level is, as for standards 8 and 9, based on the single guardian’s deontology and personal attitude, as this crucial dimension of his/her role does not seem to be subject to an effective and shared monitoring system/methodology.

As already highlighted, in fact, in the Italian context guardians’ activities should be monitored by the judicial authorities and, under some circumstances, authorized by the Tutelary Judge. However, Judges’ monitoring activities are reported to be limited to financial aspects and are very often not effective (Defence for Children Italia 2011).

There is no evidence of specific monitoring procedures for guardians who are representatives of local authorities, a part from those that are derived from their official role. On the other hand, the monitoring procedures for voluntary guardianship are defined by the local/regional projects of which the volunteers are part, being thus extremely variable depending on the single project. More worryingly, there is no evidence of a structured complaint mechanism for children. At national level, as already highlighted, the law establishing the National Authority for Childhood and Adolescence envisages (art. 6) the possibility for any person to inform the Authority of possible situation of violation of children’s rights. However, while several complaints from individuals, associations and organizations were received by the Ombudsman in 2012, no one was received from children themselves (Autorità Garante per l’Infanzia e l’Adolescenza 2013). The enhancement of this dimension of active participation by children has been clearly reported as one of the main objectives of the future action of the National Authority, together with the collection of data and information on the complaints that are received by regional/local Ombudsmen as well as at national level:

Some of the children we met can avail of good relationships with other figures (reception facilities’ operators, cultural mediators, teachers, etc.):

“I have a good relationship with L, she’s my teacher... I trust her... I would talk with her if I had problems with my guardian” A separated child.

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**IMPLEMENTING THE CORE STANDARDS FOR GUARDIANS OF SEPARATED CHILDREN IN EUROPE - COUNTRY ASSESSMENT: ITALY**

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“The most important thing for me is to be close to the children, “talk their language”, that is to be able to establish a relationship, let them open with me...since these children are persons with a life, often dramatic and that you must know and understand.” A guardian.

Others, however, expressed the need to have a free but structured “space” (free from the presence of adults, but somehow structured and involving all the children of the same reception facility) to address and talk about their concerns and needs, and eventually discuss the problems with their guardians.

“It would be nice to have a place where you can find other children or adults that had the same experience as you and are living here now, are integrated in Italy and can give you important information because they know which are the things that you need.” A former separated child.

Conclusion
The level of fulfilment of this standard depends in practice on the personal attitude and deontology of the single guardian mainly because of the lack of an effective monitoring system, of widespread and accessible complaint mechanisms and of national code of conduct and methodology on the matter.

Recommendations
For the competent State authorities:
1. To promote the definition and dissemination of a national code of conduct for guardians.
2. To facilitate and support the setting up of an effective monitoring system at local/regional level on the quality of the exercise of guardianship and on guardians’ conduct.
3. To enhance and disseminate the acknowledgement and accessibility of the complaint mechanism established by the National Authority.

For guardians:
1. To ask for supervision and monitoring and, when needed, specialized support in addressing the multiple dimensions (cultural, gender, religion, etc., etc.) implied in the relationship with the child.
2. To support the child in expressing and submitting complaints, including complaints regarding the relationship with him/her (meaning the guardian).
3. To facilitate the creation of conditions/spaces where the child can share his/her experience with other children, including their experience with their guardians.
STANDARD 8

The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

Indicators:
The guardian:

A) Knows the child personally.
B) Keeps all information about and from the child confidential unless it is necessary to break confidentiality to keep the child or another child safe and informs the child, when possible, about a confidentiality breach.
C) Does not judge the child’s reasons for exile or allow this to effect his/her relationship with the child.
D) Is always honest with the child and keeps his/her promises.
E) Gives clear information about his role and limitations in a way that the child understands and can recall.
F) Demonstrates to the child that he/she really cares for the child – that he/she works from the heart – and that he/she feels responsible for the child.
G) Makes clear to the child that a child who disappears is always welcome to return to the guardian.
H) Pays attention to verbal, nonverbal and emotional communication.
I) Is empathic towards the child and gives moral and emotional support.

The level of fulfilment of this standard is very much based on the single guardian’s personal attitude, skills and relational resources as there is not a general and structured attention paid to the relational dimension of the role of the guardian, also due to the fact that in the national context this legal institution was conceived in order to allow the protection of the personal and economic interests of the child without parents. In addition, in cases where the guardian is an institutional representative, he can hardly ensure the development of a relationship or a bond of trust with children due to excessive caseloads (Defence for Children Italia 2011).

From the results of the field activities it emerged that, on the one hand, the ability of guardians to focus their attention on the development of a positive relationship with the child may be affected by the lack of support they may receive by the other actors, thus creating frustration and negatively influencing the level of commitment they are able to express, or by the fact that for children is not easy to trust that guardians are on their side:

“Sometimes I feel to be perceived as a representative of the Italian institutions instead of a third person who is on the child’s side”. A guardian.

On the other hand, some children reported that they would appreciate a greater degree of trust and a closer relationship with guardians in order to properly address their future aspirations, which represent one of their main worries.

“Apart from the normal conflict among adult and adolescent, a cultural conflict emerges here. Often, if the guardians are Italian lawyers or
professionals they are perceived as too distant to understand these children and their specific situation and experience.” A guardian.

Indeed, the role of volunteer guardians is generally highly appreciated by children and even more the one of the “cultural mediators” in terms of building a relationship based on mutual trust.

“It would be useful to have an association where the boy may choose a guardian. Voluntary guardians can be trusted more easily. Of course, the guardian cannot meet all your needs, but it must be a point of reference and someone you can trust...the best would be to have “brothers” as guardians (meaning guardians from the same country of origin).”

A former separated child.

Conclusion
The level of fulfilment of this standards depends in practice on the personal attitude, relational skills and competences of the single guardian. The two main obstacles for guardians to build a relationship of trust with children may be the lack of support they receive from other actors and the difficulties on changing the perception children often have about the figure of the guardian as a distant person. However, at the same time children would generally welcome a closer relationship with their guardian.

Recommendations
For the competent State authorities:
1. To promote and support the definition of a common methodology/tool and training strategy for the enhancement of the relational resources and competences of guardians.

For guardians:
1. To value relational resources and opportunities and to ask for specialized support and training on the matter.
2. To share with the child his/her own (meaning of the guardian) personal experiences and history.
3. To be open to discuss with the child every issue that he/she may find relevant or important.
4. To create opportunities and moments that may enhance the development of a relationship (e.g. go eating together, have a chat, invite the child at home, etc., etc.)
STANDARD 9

The guardian is accessible.

Indicators:
The guardian:

A) Sees the child as soon as possible after his/her appointment in a face to face talk.
B) Pays visits to the child on a frequent basis.
C) Can be reached easily by the child by phone or E-mail.
D) Communicates in a way which fits the age and development of the child.
E) Should make use of interpreters when necessary.
F) The guardian lives near enough to the child to be able to respond quickly to difficulties.
G) Informs the child where and when they can meet.
H) Contacts the child from time to time to keep in touch also when there is no specific need to do so.

In the Italian framework there is no common work methodology or policy in relation to the day-by-day work of the guardian.

Some indications and support are provided for by local training projects but overall the level of fulfilment of this standard depends on the single guardian's availability of time and personal attitude. Some guardians are always present in the children's life and are easily accessible (e.g. through mobile phone), others intend their role to be limited to the need to fulfil legal requirements (e.g., to sign papers) or solve problems and are accessible only upon request.

"From the very first moment I decided to give children my mobile phone number... otherwise, how can they find me if they need to talk?" A guardian.

"When I need to talk to E. (a guardian who is also a social service professional) I have to ask to A. (reception facility's professional), then he can arrange an appointment with her..." A separated child.

"I never met him (the guardian), I do not even recall his name...." A former separated child.

Conclusion
The level of fulfilment of this standard depends in practice on the personal attitude and availability of time of the single guardian, therefore the accessibility of a guardian varies a lot depending on the cases.

Recommendations
For the competent State authorities:
1. To promote and support the definition of a common work methodology at national level, including provisions on the frequency of visits and the appropriate means to be in contact with children.

For guardians:
1. To ensure accessibility, e.g. by providing phone number, frequently visiting the child, identifying a place where to meet.
STANDARD 10

The guardian is equipped with relevant professional knowledge and competences.

Indicators:
The guardian:

A) Has working knowledge about:
   • Children’s rights,
   • Migration and asylum law,
   • Child developmental psychology,
   • Trauma,
   • Trafficking,
   • Intercultural communication,
   • Child abuse and protection,
   • Social welfare,
   • The situation and life in the home country of the child.

B) Knows his/her personal and professional limits and is open to improve his/her knowledge, methodology and attitude.

C) Is proactive in identifying learning and development needs and requests training when necessary.

D) Manages his/her caseload to give due attention to all the children he/she works with.

E) Is well organized, keeps records and is accountable.

F) Can manage costs and available resources.

G) Works according to a set methodology.

H) Seeks support and counselling whenever necessary and exchanges experiences with his/her colleagues on a regular basis.

I) Is open to supervision and monitoring.

J) Reflects on his/her actions, role and motivation.

The level of fulfilment of this standard is not harmonized at a national level, as there are no general rules or training strategies on guardianship at the national level. The Civil Code only makes reference to the need for a guardian to be “of high moral standing” and equipped to safeguard the child’s right to education and protection and to take into account his/her capacities, desires and aspirations (arts. 348 and 147) and no further requirements are envisaged.

While there is no evidence of specific training when the guardian is a representative of the local authority, probably on the assumption that they should already have a high level of competence, various answers to these questions are given at local level, in particular where specific training courses for voluntary guardians are carried out.

“Tools and resources are lacking... but a big problem is the scarce capacity of the institutions involved in the protection system to talk to each other. Actually an important issue is training of guardians and key actors.”
A referent of a local guardianship project.

In this light, it is worth mentioning the Guardians Project carried out from the Public Guardian for
Children - Region of Veneto since 2001. The strength of this Project is represented by the efficient cooperation mechanism between private and public agencies in response to children's needs, by the dynamism and personal resources of the volunteers and the legitimating, coordinating, monitoring and supporting activities offered by the Office of the Public Guardian for children and the other public institutions involved. Other similar projects identified at regional level are implemented by the Public Guardian for Children - Region of Friuli Venezia Giulia, by the Ombudsman for Children and Adolescents - Region of Lazio in collaboration with the UNICEF and Save the Children, by the Ombudsman for Children and Adolescents - Region of Marche in cooperation with CRISIA (Study and Research Centre for Children and Adolescents of the University of Urbino), by the Public Guardian of Region Molise and recently by the Ombudsman of Children and Adolescent in the Region of Emilia Romagna.

At the local level some municipalities are organising, in cooperation with local authorities and the Juvenile Courts, similar projects for the training and monitoring of voluntary guardians, among which the Cultural Guardians Project carried out by the Dedalus Social Cooperative and the city of Naples. The strength of this Project is represented by the professional, educational and communication skills of cultural mediators appointed as guardians, by their long experience in working with foreign children and by the fact that very often, being also involved in outreach activities, they already know and support the children who become their pupils. Moreover, these guardians, being foreigners themselves, are able to speak “the same language”, in the broader sense of the term, of separated children.

Other local projects aimed at training and supporting voluntary guardians are carried out at the Municipalities of Turin, Genoa, Agrigento and Catania, in connection with the University of Catania/LAPOSS (Laboratory of project design, experimentation and analysis of public politics and services -University of Catania).

**Conclusion**
The level of fulfilment of this standard depends in practice on the level of services and support available at local level or within the single course for voluntary guardians, since there is no national training strategy available for guardians.

**Recommendation**
For the competent State authorities:
1. To promote the adoption of a national training strategy for guardians, including at least:
   - common curriculum and training methodology/tools/objectives to be adopted at local/regional levels;
   - common work methodology and code of conduct (see standards 7,9);
   - common methodology/tool/procedure for: the first contact with the child (see standard 3), the determination and assessment of the best interests of the child (see standard 1); for the active participation and listening of children (see standard 2), for the development of positive relationships with children (see standard 8) and with the other actors involved in their care (see standard 5);

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45 For more details, please see: http://tutoreminori.regione.veneto.it/interne/pagine.asp?idpag=40 (accessed September 2013)
46 For more details, please see: www.regione.fvg.it/tutoreminori/ (accessed September 2013)
47 For more details, please see: www.garanteinfanzia.regione.lazio.it/garante_infanzia/dettaglioProgetti/tutori_volontari/206/214/0/164 (accessed September 2013)
48 For more details, please see: http://garanteminori.regione.marche.it/default.asp?pag=210&dipartimento=800&lin=IT (accessed September 2013)
49 For more details, please see: http://tutoredeiminori.regione.molise.it/?q=node/32 (accessed September 2013)
50 For more details, please see: www.assemblea.emr.it/garanti/attivita-e-servizi/infanzia/attivita/progetti-interventi/i-progetti/dentro-e-fuori (accessed September 2013)
51 For more details, please see: www.coopdedalus.it/mainmenu.htm (accessed September 2013)
RECOMMENDATIONS FOR IMPLEMENTATION OF THE CORE STANDARDS ON NATIONAL LEVEL

Core Standard 1: The guardian advocates for all decisions to be taken in the best Interests of the child, aimed at the protection and development of the child.

For the competent State authorities:
1. To adopt a consistent and comprehensive Single Act on separated children regardless of their status, for the promotion of their rights and clear identification of competences, procedures and practices to be applied in relation to their individual protection and care needs;
2. To promote a reform of provisions on guardianship in order to put them in line with the definition of guardianship included in the CRC (art. 18) and to explicitly link guardians’ role and responsibilities to the determination and continuous assessment of children’s best interests and to the protection of their rights;
3. To promote and support the definition and dissemination of a common methodology/tool/procedure for the determination of each single child’s best interests to be adopted by all the actors involved, at different levels and with different mandates, in the care of children.

For guardians:
1. To facilitate the recognition by all the actors of the need to assess and systematically review the best interests of each single child through an ongoing process and the careful consideration of the child’s personal situation, opinions and views.
2. To create and value every opportunity to meet, get to know and develop a relationship with the child.
3. To base the assessment of the best interests of the child on the careful consideration of the child’s needs, opinions and views and on his/her constant participation.
4. To ask for adequate and specialized training, including a common methodology/tool/procedure on the matter.

Core Standard 2: The guardian ensures the child’s participation in every decision which affects the child.

For the competent State authorities:
1. To set up a national training strategy, including common methodology/tool/procedure, for all the professionals of the various fields to ensure the effective and systematic information and participation of children in all the procedures and contexts concerning them.
2. To value, disseminate and improve the best practices and information/awareness campaigns on the matter.

For guardians:
1. To give a primary consideration to the information and participation of children, by starting from the recognition and value of the child’s personal history, individual needs and resources and by adopting appropriate, child, cultural and gender-sensitive tools, methodologies and language.
2. To ask for adequate training and specialized support (cultural mediators, psychologists, etc., etc) and to proactively create relationships with available and accessible resources, experiences and competences.
3. To support the child in the expression of his/her opinions, views and needs and in proactively proposing/organizing occasions/places for his/her active participation.

Core Standard 3: The guardian protects the safety of the child.

For the competent State authorities:
1. To put in place a consistent national protection system for separated children, based on common model for service provision, for response to specific needs and for the continuous and effective
monitoring of the level of service provision.

2. To promote and support the development of a common methodology/tool/procedure for the first contact of the child, including the identification and comprehension of the child’s personal history and background and possible risks.

3. To develop and test a pilot for the timely appointment of a guardian.

4. To adopt a common, multidisciplinary and child-centred methodology for age assessment, including a clear definition of the safeguards for children's rights and of competences, procedures and practices.

5. To support the development of alternative forms of placement, such as in low-threshold drop-in centres and foster families.

6. To support the development of outreach activities.

7. To adopt a national training strategy for all the professionals involved in the care of children on the various risk factors children are exposed to, including provision of tools for the improvement of children's self-defence potential.

For guardians:

1. To pay careful and constant attention to the detection, also through the reconstruction of the personal history and experiences of the child, of possible signs of risks, abuse and violence and, when needed, immediately inform the competent authority, ask for specialized support and facilitate the access to adequate resources, professionals and competences.

2. To value and create opportunities to visit the child at the place where he/she lives and to meet the peers or adults, including family members, with whom he/she spends time.

3. To create opportunities to spend some time alone with the child.

4. To inform, by adopting a preventive approach, the child on the various risks he/she may be exposed to in the current situation and in the future and to always focus on enhancing and valuing his/her self-defence potential and resources.

Core Standard 4: The guardian acts as an advocate for the rights of the child.

For the competent State authorities:

1. To promote and support the adoption of a common model of guardianship, based on the recognition of the need for a guardian to be independent and to act as an advocate for the rights of the child.

2. To promote a national awareness raising campaign on the role, protective role and duties of guardians in relation to the protection and promotion of children's rights.

For guardians:

1. To be aware and to make all the other actors be aware of the fact that the fundamental objective of guardianship is the identification, representation and promotion of the child’s rights and needs in relation to the context where she/he lives and to any other condition or relationship.

2. To ask for adequate recognition and support for his/her own role, responsibilities and duties.

3. To inform the child on his/her (meaning of the guardian) role, responsibilities and duties in relation to the promotion of his/her rights.

4. To empower the child on the rights and duties he/she has, particularly in relation to the context where he/she lives, the other actors involved, including the guardian him/herself, and the various procedures concerning him/her.

Core Standard 5: The guardian is a bridge between and focal point for the child and other actors involved.

For the competent State authorities:

1. To promote a national awareness raising campaign on the role of guardians.

2. To value, disseminate and support best practices on the matter.

For guardians:

1. To be aware of the responsibilities and duties towards the other actors involved in the care of children.
2. To map and know the other actors and professionals who are involved in the care of the child.
3. To proactively facilitate networking and cooperation among the various actors.

Core Standard 6: The guardian ensures the timely identification and implementation of a durable solution.

For the competent State authorities:
1. To promote the clear definition of the role of the guardian in relation to voluntary assisted return and family reunification procedures.
2. To promote and support the development of a common methodology/tool/procedure for guardians and all professionals involved in the care of children to prepare to and support them in the crucial phase that leads to the age of majority as well as after they come of age.

For guardians:
1. To make sure that every decision concerning the identification and implementation of a durable solution is based on the careful consideration of the child’s personal situation, specific needs and life projects, and on his/her active involvement and participation at each stage of the decisional process.
2. To keep the child constantly informed on the effects of the decisions to be taken and, where appropriate and requested by the child, involve the family in the decision.
3. To prepare and support the child in the crucial phase that leads to the age of majority and to adult age.
4. To always consider the need to facilitate the creation of sustainable conditions for the future of the child.

Core Standard 7: The guardian treats the child with respect and dignity.

For the competent State authorities:
1. To promote the definition and dissemination of a national code of conduct for guardians.
2. To facilitate and support the setting up of an effective monitoring system at local/regional level on the quality of the exercise of guardianship and on guardians’ conduct.
3. To enhance and disseminate the acknowledgement and accessibility of the complaint mechanism established by the National Authority.

For guardians:
1. To ask for supervision and monitoring and, when needed, specialized support in addressing the multiple dimensions (cultural, gender, religion, etc.) implied in the relationship with the child.
2. To support the child in expressing and submitting complaints, including complaints regarding the relationship with him/her (meaning the guardian).
3. To facilitate the creation of conditions/spaces where the child can share his/her experience with other children, including their experience with their guardians.

Core Standard 8: The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

For the competent State authorities:
1. To promote and support the definition of a common methodology/tool and training strategy for the enhancement of the relational resources and competences of guardians.

For guardians:
1. To value relational resources and opportunities and to ask for specialized support and training on the matter.
2. To share with the child his/her own (meaning of the guardian) personal experiences and history.
3. To be open to discuss with the child every issue that he/she may find relevant or important.
4. To create opportunities and moments that may enhance the development of a relationship (e.g. go eating together, have a chat, invite the child at home, etc., etc.)
**Core Standard 9:** The guardian is accessible.

**For the competent State authorities:**
1. To promote and support the definition of a common work methodology at national level, including provisions on the frequency of visits and the appropriate means to be in contact with children.

**For guardians:**
1. To ensure accessibility, e.g. by providing phone number, frequently visiting the child, identifying a place where to meet.

**Core Standard 10:** The guardian is equipped with relevant professional knowledge and competences.

**For the competent State authorities:**
1. To promote the adoption of a national training strategy for guardians, including at least:
   - common curriculum and training methodology/tools/objectives to be adopted at local/regional levels;
   - common work methodology and code of conduct (see standards 7,9);
   - common methodology/tool/procedure for: the first contact with the child (see standard 3), the determination and assessment of the best interests of the child (see standard 1); for the active participation and listening of children (see standard 2), for the development of positive relationships with children (see standard 8) and with the other actors involved in their care (see standard 5);
RECOMMENDATIONS FOR IMPLEMENTATION OF THE CORE STANDARDS FROM THE FIRST CLOSING A PROTECTION GAP PROJECT.

Based on the information received from separated children and guardians, the project partners call upon State authorities to ensure that:

1. Every separated child should have a guardian upon his/her arrival in the host country.
2. The opinion of the child should be taken into account before the appointment of a guardian.
3. Guardians should be appointed before an age assessment is carried out or a pre-phase guardianship system should be in place.
4. A legal basis for guardianship should exist.
5. All separated children should be entitled to the same level of protection, it should not make any difference what age the child is, if the child seeks asylum or not, is documented or not, is an EU citizen or not (non-discrimination principle).
6. Every separated child should have a lawyer in addition to a guardian. This lawyer supports the child and guardian in taking decisions about legal affairs.
7. External monitoring of the guardian should be in place, children should be enabled to contribute to this monitoring and special attention should be given to signals of abuse by the guardian.
8. Guardians should be at least compensated for the costs they incur to fulfil their duties.
9. The caseload of guardians should be reasonable and maximum levels of caseloads should be set.
10. The guardians should be enabled to act independently from authorities who take decisions in order to promote the best interests of the child. Guardians should not be allowed to have different roles that can cause a conflict of interest.
11. The guardianship system and practice (including training) should be harmonized throughout the entire country.
12. Procedures affecting separated children should be treated with priority.
13. It should be promoted that a team of guardians consists of people with different cultural backgrounds.
14. Avoid as much as possible changes in guardians and moving of the children.
15. No separated child should be detained on migration grounds.
16. There should be an exchange of information between States and guardians about returnees and agreements should be made with local authorities and partners.
17. Family reunification in the country of origin or other European States should only be practiced when it is safe and with the help of an organization that is working in the best interests of the child. If support from a guardian or Youth Care is provided for nationals above eighteen years old it should be available to separated children too.


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Core Standards for guardians of separated children in Europe:

**Standard 1**
The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

**Standard 2**
The guardian ensures the child's participation in every decision which affects the child.

**Standard 3**
The guardian protects the safety of the child.

**Standard 4**
The guardian acts as an advocate for the rights of the child.

**Standard 5**
The guardian is a bridge between and focal point for the child and other actors involved.

**Standard 6**
The guardian ensures the timely identification and implementation of a durable solution.

**Standard 7**
The guardian treats the child with respect and dignity.

**Standard 8**
The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

**Standard 9**
The guardian is accessible.

**Standard 10**
The guardian is equipped with relevant professional knowledge and competences.

“A guardian is someone who takes care of you from a distance.”
a separated child

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