

Targeted Approach
to
Unaccompanied Migrant Minors
A monitoring instrument to improve the efficacy of
national policies
The case study of Italy

Serena Matarese

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Mw. prof. dr. H.E.G.S. Schneider
Maastricht University

*Per chi viaggia in direzione ostinata e contraria
col suo marchio speciale di speciale disperazione
e tra il vomito dei respinti muove gli ultimi passi
per consegnare alla morte una goccia di splendore
di umanità di verità.*

Smisurata preghiera, Fabrizio De Andrè

Abstract

Migration represents today, especially for European Countries, one of the most crucial challenges. It is a multifaceted phenomenon, characterized by a plurality of individuals, with different needs and aspirations. Among them, peculiar importance is covered by unaccompanied migrant minors. The latter's recognition is quite recent and it is based on the absence of adults' care, which makes children particularly vulnerable.

In this context, to positively approach migration represents an essential goal to be reached for the satisfaction all subjects involved: migrants, citizens, States.

This Thesis focuses on unaccompanied migrant minors aged between 15 and 18 years (who represent the highest and most complex presence), in order to identify both their peculiarities and the best instruments to provide adequate normative answers. Substantially, two ideas sustain this approach: on the one hand, that each group of individuals composing the migrant population has peculiar needs; on the other hand that the individuation of such characteristics, and the consequent articulation of national intervention, can lead to more efficacy implementation of guarantees and protections.

On the basis of the peculiarities typifying unaccompanied minors above fifteen years of age, a specific Monitoring Instrument has been proposed to improve State's evaluation of existing policies and their development of future legislations.

Finally, the case study of Italy has been analysed, also through the application of the Monitoring Instrument. Thus, the Thesis has been provided with a higher level of effectiveness. Firstly, the phenomenon of unaccompanied migrant minors has been investigated and evaluated in the context of one of the most sensible European State of destination. Secondly, the Monitoring Instrument's efficacy has been evaluated, in order to define future refinements and implementations.

In the whole development of the research and analysis, Human Rights have been recognized a peculiar role: the unavoidable frame for States' constructive interventions. Indeed, Human Rights provide States with general scopes and objectives, leaving space to develop national policies in consideration of different realities, resources and cultures.

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LIST OF ACRONYMS

ANCI	Associazione Nazionale Comuni Italiani
CMS.....	Committee for Foreign Minors
CRC	United Nation Convention on the Right of the Child
CRFEU	Charter of Fundamental Rights of the European Union
DL.....	Legislative Decree
DPCM.....	Decree of the President of the Council of Ministers
ECHR.....	European Convention of Human Rights
EMN	European Migration Network
EU.....	European Union
GU	Gazzetta Ufficiale
HR.....	Human Rights
ICCPR.....	International Covenant on Civil and Political Rights
IOM	International Organization for Migration
MIPEX.....	Migrant Policy Integration System III
MS	Member States of the European Union
UDHR.....	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nation High Commissioner for Refugee

PREFACE

This Thesis originates from the desire to approach the migration phenomenon with a research that could have effective impacts. Increasingly, European Member States are becoming the favoured destinations of migration flows. Consequently, to frame a positive approach to migration is, nowadays, essential for all subjects involved: migrants, citizens, States.

In this context, the experience of children's migration represents a controversial element and, simultaneously, a great challenge for States' future development. It is a multifaceted phenomenon, characterized by many elements and different subjects. Indeed, among migrating children, some are in a condition of peculiar vulnerability: the unaccompanied migrant minors. The latter, characterized by the absence of adults' care, are traditionally considered as a whole, univocal, category. Nevertheless, specific needs can be identified with regard to different age groups. This Thesis will focus on unaccompanied migrant minors aged between 15 and 18 years.

Starting from these preliminary remarks, the following Analysis proposes an innovative approach, based on the dictate of Human Rights (HR) norms, which can frame a constructive intervention of States (Chapter I). Specifically, having regard to obligations arising from the Rights of the Child, national diversities can be emphasized.

Subsequently, specificities typifying unaccompanied minors above 15 years of age will be investigated. Substantially, two ideas sustain this approach: on the one hand, that each group of individuals composing the migrant population has peculiar needs that deserve to be addressed; on the other hand, that the individuation of such characteristics, and the consequent articulation of national intervention, can lead to more efficacy implementation of guarantees and protections (Chapter II).

To improve both State's evaluation of existing policies and develop further legislations, a specific Instrument has been designed for monitoring (Chapter III).

Finally, the case study of Italy has been analysed and the Monitoring Instrument has been applied to an effective reality (Chapter IV).

INTRODUCTION

Unaccompanied migrant minors are increasingly recognized as a constitutive part of the current migration experience and a constant presence into migration flows. “Nevertheless, in research and policy debates, the migration of children and youth is considered a new area of concern and focus. Information on children who are migrating is consequently little reflected in global debates on migration”¹.

To provide an overview of the effective presence of unaccompanied minors in receiving European Countries is crucial both to assess the phenomenon’s dimension and to estimate the actual number of separated children present in the European territory. However, the lack of consideration in researches and the recent recognition of this group of migrants as a special category make particularly difficult to correctly frame minors’ presence. Therefore, in order to offer a constructive general overview, different sources may be combined.

Firstly, information on unaccompanied minors lodging an application for asylum can provide some useful data, even if not all States include this group in their data collection system². In the words of a Study of 2001, in 2000 a number of 16.100 unaccompanied children applied for asylum (in the 26 European Countries analysed). Among these, 52% were of an age between 16 and 18 years and only the 27% were female³. Accordingly, the European Migration Network Study reports that, in 2008, “there were a total of 11.292 applications for asylum lodged by unaccompanied minors in the 22 Member States participating in the study”⁴, showing an increase of 33% compared to the previous year. Also in this case it has been observed that the most significant group of minors seeking asylum was composed by males, aged 16 years or above.

¹ International Organization for Migration, 2011, p.11.

² On this regard, it shall be noted that, under the Italian system of data collection on unaccompanied migrant minors, separated children lodging an application for asylum are not included. The latter, in fact, are comprised in a separated system of asylum’s data collection. In addition, it is important to underline since now the peculiar situation of Italy according to which, despite the large number of unaccompanied minors present in the territory of the State, those seeking asylum represent a relatively low percentage.

³ United Nations High Commissioner for Refugees - Division of Operational Support, 2001.

⁴ European Migration Network, 2010, p. 8.

Secondly, the same Study introduces an additional source of information: separated minors in care of the State's competent authorities. According to the collected data, the total number of children in the care of public authorities has been of 15.788 in 2005 and of 20.073 in 2008, with an increase of the 27%. Also in this case, it is possible to observe a larger presence of males (with only 2.195 girls taken in care), and a significantly high majority of minors aged between 15 and 18 years.

In conclusion, the available statistics lead to an estimate of around 40.000 unaccompanied minors in the territory of the observed European Countries, showing a constant increase of separated children's presence. However, as mentioned, "this number is [likely to be] unreliable, in view of all of the imperfections in the various data collections"⁵.

Another element which needs to be stressed is the legal definition of unaccompanied minors provided at the supranational level.

In the European Union (EU) framework, a complete identification and definition of "unaccompanied migrant minors" is quite recent and rather broad. According to Council Resolution (97/C 221/03), the expression indicates both "*third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person*" and "*minors who are nationals of third countries and who are left unaccompanied after they have entered the territory of the Member States*"⁶.

This definition has been and elaborated by several supranational legal instruments. Under the Council Directive 2001/55/EC, "unaccompanied minors" are defined as "*third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered*

⁵ France Terre d'Asile, Consiglio Italiano per i Rifugiati & Institute for Rights Equality and Diversity, 2010, p.14.

⁶ Council of the European Union, Council Resolution (97/C 221/03), Article 1.

the territory of the Member States”⁷. Meanwhile, Recommendation Rec. (2007)9, adopted by the Council of Europe, states that “*the expression ‘unaccompanied migrant minors’ includes separated children and minors who have been left to their own devices after entering the territory of the member state*”⁸.

In general, despite different wordings and details in the normative instruments, three recurring core elements qualifying unaccompanied minors can be noticed. Such elements may be named as: third-country nationality (non-European citizenship), minority age (usually, below the age of 18 years), arrival or presence on the territory of a Member State (MS) without the accompaniment of a responsible adult (parent or legal guardian).

Unaccompanied minors, as defined, are the addressees of numerous normative dispositions, elaborated by States at both external and national level. Nevertheless, an organic legislation defining or harmonizing policies hasn’t (still) been drawn by any supranational legislative body. The absence of a structured approach led to the definition of an articulated and multifaceted complex of norms, whose picture will be provided by Chapter I.

Beside the normative aspects, the whole experience of unaccompanied minors is definable as a many-sided phenomenon. Thus, it shall not surprise the use of a various terminology, according to which unaccompanied minors are identified also as: unaccompanied alien children, child migrants, unaccompanied migrant, unaccompanied migrant minors, separated children or juvenile migration. Researcher, legislators and operators often use these terms interchangeably, in order to identify the same group of migrating, third country national, children.

The coexistence of several (and often different) elements within the same concept emerges also when approaching the reasons of the move, which drives children to face dangers and risks related not only to the migration experience in itself, but also to their peculiar conditions. Travelling alone - usually in very bad and poor conditions,

⁷ Council of the European Union, Council Directive 2001/55/EC, Article 2(f).

⁸ Committee of Ministers of the Council of Europe, Recommendation Rec (2007)9, Section I.4. A definition of “unaccompanied minors” is provided by the same Recommendation at Section I.5, while Section I.6 gives the definition of “separated children”.

in groups with adults and in a situation of illegality – increase the minor’s exposition to perils, such as exploitation, violation, trafficking and abuse. However, it is important to underline that migration is not inherently negative for children, as positive effects may arise when the movement occurs in safe conditions. “It may offer a rapid route out of poverty or violence at home, and may lead to opportunities, such as education, that children may have missed otherwise. In some cases, movement is a route to safety for children who have no choice but to leave their communities because of conflict or natural disasters”⁹.

As it has been observed by the European Commission, “the reasons behind the arrival of this particularly vulnerable category of children are manifold”¹⁰. The European Migration Network (EMN) Report of 2010 offers an interesting overview of minors’ motivations and circumstances for entering European borders. According to the Report, therefore, “there [are] several, varied and interconnected reasons established [...] as motives for an unaccompanied minor to enter the Member States. Clearly there are interlinks between these different motivations and an unaccompanied minor could enter the EU for more than one of these reasons and/or move from one category to another”¹¹. Moving from this assumption, impulses for children to migrate may be classified as follow: economic aspiration; fleeing persecution and seeking protection; family reunification; medical reasons; culture of migration (as a transition to maturity); affiliation with the migrant community; escape from trafficking; smuggle; abandonment¹².

The reasons behind the choice to migrate also impact on the definition of unaccompanied children given above, with regard to the element of “separation”. Different motivations for moving across borders to European Countries, indeed, imply a different involvement of parents and/or family. Information collected by receiving States testifies that in some occasion, despite being formally unaccompanied, children

⁹ Save the Children UK, 2008, p.7. For a complete overview on positive and negative aspects of Children’s independent migration, consult: Hashim, 2006.

¹⁰ European Commission, COM (2010) 213 final, p.2.

¹¹ European Migration Network, 2010, p.28.

¹² An interesting analysis of Children’s migration project related to working and educational aspiration has been conducted by: Punch, 2007.

entering the EU have strong relationship with their families and their migration is considered a formalization of such relationship. Often the family affords the journey's costs and family members keep in contact with the child after its arrival. Usually relatives are the recipients of remittances sent to the Country of origin. Consequently, it shall not surprise that "in the statistics the minors themselves often do not know why they have been sent to the EU, and the motivation behind their migration is actually that of the parent or guardian"¹³. The possibility, for the child, to find in Europe better living conditions, care and job opportunities usually embodies an aspiration of parents, which pose great expectations for the unaccompanied minors' migration. The multifarious involvement of families in the migration process of separated children constitutes an important aspect of the phenomenon, which shall not be underestimated when developing policies and legislations on this matter.

In addition, few words shall be spend with regard to the "age" aspect of unaccompanied migrants – as mentioned, their being minors (commonly, below the age of 18) is considered as a qualifying element of the analysed category. Moreover, States face a peculiar obligation to protect third-country nationals if they are below the age of majority, derogating to current national migration laws applying to adult migrants. Consequently, a correct evaluation of the age is instrumental to avoid both the denial of protection to children eligible to it and the enjoyment of special rights by people not entitled to.

On this regard, it is important to refer to the numerous techniques adopted by States in order to establish the chronological age of separated children, whose civil status is not-existent or disputed¹⁴. Age assessment is characterized by a variety of methods and approaches used by States¹⁵. According to a comparative Study of 2010, "most of the Countries determine the age by primarily relying on a medical expertise (Spain, France, Italy, Romania), while others have established procedures that also consider the youth's story and situation (Great Britain, Sweden). Finally, certain

¹³ European Migration Network, 2010, p.30.

¹⁴ This aspect gains importance in consideration of migration flows' increasing and contingent scarcity of States' resources.

¹⁵ For a global overview of the existing legislations and practices adopted by some European MS, consult: Save the Children, 2011.

countries do not in practice rely on a medical examination, despite being allowed by the law, whether this is beneficial (Hungary) or detrimental (Greece) to the youth”¹⁶. Different methodologies are based on several techniques variously combined, which are carried out by diverse bodies, usually (but not always) with medical or psychological expertise. Specifically, age assessment procedures are based on: physical examinations (to determine the maturity ground of specific parts of the body)¹⁷; radiological test (commonly based on the hand and wrist x-ray, through which skeletal changes are scrutinized)¹⁸; practical observation (conducted through visual, cognitive, behavioural appraisal and psychological techniques of evaluation). The main weakness of the mentioned examinations is that the latter difficultly takes into account ethnic variations, personal situations and exceptions. For this reason, a margin of error is usually indicated by the procedures.

Regardless of the topicality of the debate on age determination procedures, this Thesis will not focus on it. Nevertheless, the implications arising from it shall be taken into account, especially when approaching the subject of adolescent unaccompanied minors. Misleading evaluations of age, in fact, directly affect those children whose minor age is not easy to be identified. Thus, the development of updated procedures is necessary in order to ensure a full and effective protection to all migrating children. The necessity of higher level of accuracy and precision becomes, in this context, an urgent (pre)condition for the effectiveness of children’s enjoyment of rights. In addition, erroneous recognition of minority age leads to the inclusion of adults within circuits specifically designed for minors, thus underestimating and negatively bearing their protection.

In conclusion, from these brief preliminary remarks, the current centrality of unaccompanied migrant minors in the Union’s scenario appears. Consequently,

¹⁶ France Terre d’Asile, Consiglio Italiano per i Rifugiati & Institute for Rights Equality and Diversity, 2010, p.87.

¹⁷ On this regard, the physical examinations most commonly used are based on sexual maturity’s assessment and on dental observations.

¹⁸ This method has been extremely criticized challenging that tables and medical material on which the evaluation is based have not been updated since the 1930s. Moreover, the existing instruments are the results of tests conducted on a group of individuals only having United States origin, not considering ethnical differences.

European Countries are called to develop legislations and policies in order to effectively guarantee rights and protection to this special group of children, with great consideration to their peculiar needs. The individuation of needs and proposals of consequent States' interventions will be the objects of the following Chapters of this Thesis, which addresses unaccompanied minors aged between 15 and 18 years. Next Chapter will provide an overview of the relevant supranational legislative framework.

Objectives and Methodology

This Thesis is aimed at reaching the objective of strengthening national policies on unaccompanied migrant minors. Specifically, the aim is to reinforce the efficacy of State's legislations through a targeted approach with regard to different groups of migrants.

In order to achieve these results, the following procedure will be applied. Firstly, the relevant supranational legislation on unaccompanied migrating minors' rights will be analysed, in order to picture the normative framework and States' obligations and responsibilities. Particular attention will be devoted to the relationship between the normative on Human Rights and its impact on migration law issues involving unaccompanied minors¹⁹.

Secondly, the analysis will focus on the individuation of specific characteristics and peculiar needs of separated children in the age group between fifteen and eighteen years. On this regard, the objective is to demonstrate that migration flows are composed by several categories of individuals, with different specificities. In a smaller dimension, the same argument can be made with regard to unaccompanied migrant minors. Indeed, the expectation is that, among them, age differences lead to different necessities, which should be addressed by the Country of destination in order to develop more efficacy policies.

¹⁹ For a general overview on the relationship between Human Rights and Migration Law, consult: Bogusx, 2004. Moreover, references to principles and provisions of European Migration Law are offered by: Hailbronner, 2000; Guild, 2001; Higgins, 2004. The implications of the recent EU Lisbon Treaty on EU Migration Law are offered by: Hailbronner, 2010.

On the basis of the emerging elements, a specific Monitoring Instrument of national policies on unaccompanied migrant minors above the age of fifteen years will be developed. The mechanism will be based on an auto-evaluative approach (which would take into better account State's characteristics and resources) and it will use different indicators for each aspect of the age group's specificities. The Monitoring Instrument will be drafted in order both to provide an assessment of national policies and to support Countries in individuating areas of intervention.

In the final part of the Thesis, the case study of Italy will be approached. This Country has been chosen for the peculiarities of its migration's experience, which makes it, simultaneously, representative of Europe's shape of the phenomenon and characterized by local specificities. This part of the analysis will be aimed at two objectives: firstly, it will be evaluated if Italy applies legislations based on a targeted approach to unaccompanied minors and if, consequently, this approach has (or not) an effective influence on the efficacy of State's policies. Secondly, the Monitoring Instrument will be practically applied, in order to test its implementation and usefulness.

Finally, general conclusions and Country-specific recommendations will be provided.

CHAPTER I – Supranational Normative framework on Unaccompanied Migrant Minors

In this Chapter, a brief but exhaustive overview of the most relevant supranational legislations in approaching the phenomenon of unaccompanied minors will be provided²⁰.

Before getting into the detailed analysis, preliminary aspects should be underlined. The first element to be taken into account is the absence of an organic legislation on unaccompanied minors. The numerous dispositions, in fact, arise from different legal contexts and are developed by different supranational institutions (namely: United Nations (UN), European Union, and Council of Europe). Nevertheless, they constitute the unavoidable framework, inside which national legislations are developed.

The second aspect to be considered regards the object of norms. Beside those (relatively recent) specifically designed for the special category of unaccompanied minors, the significant legislation usually addresses the general group of children. Regardless of this difference, however, both typologies commonly provide special protections and safeguards for minors in consideration of their “vulnerability”. Consequently, when referring to adolescents (minors aged between 15 and 18 years), the protections designed by legislators appear insufficient to grant the effective enjoyment of rights: normative’ spectrum is too broad and/or not considering the situation of transition to adulthood. For this reason, in the following Chapter, norms providing rights for children will be approached as a mere starting point: only a developmental implementation, taking into account also peculiar needs involved, could really ensure guarantees’ effectiveness.

²⁰ This Chapter is not meant to illustrate the entire regulatory landscape on unaccompanied minors at supranational level. Consequently, certain documents and legislations will be omitted. The attention will be focused on those essential instruments for the following analysis.

I.1 – Human Rights Instruments

Generally speaking, “all legal provisions in respect of third-country nationals adopted both at the national and the Union levels must comply with fundamental rights and EU principles of law as well as international human rights documents”²¹. Consequently, with regard to the protection of unaccompanied minors, the most meaningful basis can be founded within the Human Rights legislation²². The latter is relevant from two different perspectives. On the one hand, unaccompanied minors’ guarantees fall within Human Rights norms and documents specifically addressing the rights of child. On the other hand, the whole Human Rights legislation, read in a holistic approach, offers a solid system of care.

The fundamental text, on which the entire system of unaccompanied children’ protection is based, is the United Nations Convention on the Rights of the Child (CRC), signed in New York on 20 November of 1989²³. This document constitutes the first legally binding instrument recognizing a vast category of rights (civil, cultural, economic, political and social), developed in the light of “the best interest of the child” principle – which underpins all CRC’s provisions. It is defined by Article 3 of the Convention²⁴, which states that *“in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*²⁵. Consequently, in the Committee on the Rights of the Child’s²⁶ view, it shall be ensured

²¹ Wiesbrock, 2010, p. 163.

²² This Chapter does not provide an exhaustive list of the entire legislation on Human Rights (only the relevant documents and provisions will be recalled). For a complete picture of the Human Rights landscape, consult: Nowak, 2003; Felipe Gomez, 2006; Gibney, 2008; Joseph & MecBeth, 2010.

²³ The CRC counts, today, 140 Signatories States and 193 States Parties. For further information on the CRC’s status of ratification, see:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last consulted on 08/07/2012). Moreover, detailed analysis over the CRC’s rights and provisions, with particular attention to its implementation and its development over the years, is offered by: Fottrell, 2000; Franklin, 2002; UNICEF (ed.), 2007.

²⁴ For an exhaustive interpretation of CRC, Article 3, consult: Freeman, 2006.

²⁵ United Nation General Assembly, Resolution 44/25, Article 3.1.

²⁶ The Committee on the Rights of the Child is a body of independent experts monitoring the implementation of the Convention on the Rights of the Child by State parties. It also monitors the implementation of the two optional protocols to the Convention, respectively on involvement of children in armed conflict and on sale of children, child prostitution and child pornography. On 19 December 2011, the UN General Assembly approved a third optional protocol, which opened for signature in 2012

“that the best interests of the child are a primary consideration in all actions concerning children, and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government”²⁷.

Relevant rights enunciated in the CRC will be subsequently recalled in this dissertation. However, in this context it is significant to refer to Article 4 of the Convention, which identifies the nature of States Parties’ obligations, articulated in two elements. On the one hand, States have a general obligation to take “*all appropriate and other measures for the implementation of the rights recognized*”²⁸. On the other hand, a reference is made to economic, social and cultural rights, for whose implementation a State “*shall undertake such measures to the maximum extent of available resources*”²⁹. Additionally, “Article 4 states that, where needed, the progressive nature of the implementation of economic, social and cultural rights should be undertaken within the framework of international co-operation”³⁰.

With regard to unaccompanied minors’ protections, States’ obligations arise also from the norms contained in the general Human Rights documents³¹. On this regard, a first reference shall be made to Article 25 of the Universal Declaration of Human Rights (UDHR). Within the definition of the “right to a standard of living adequate for the health and well-being of everyone”, in fact, second paragraph states that childhood is “*entitled to special care and assistance*”.

Interesting is also to observe the norms contained in the International Covenant on Civil and Political Rights (ICCPR). In this document, many references can be found to the special treatment which shall be reserved to children. Specifically, we can find it in Article 14 (on the right to equal treatment before Courts and Tribunals), in Article 18 (in the right to freedom of thought, conscience and religion), in Article 23 (on the right

and will enter into force upon ratification by 10 UN Member States. An interesting analysis of the Committee competences and functions is offered by: Verheyde & Goedertier, 2006. For further information, see also: <http://www2.ohchr.org/english/bodies/crc/> (last consulted on 25/04/2012).

²⁷ Committee on the Rights of the Child, CRC/GC/2003/5, Paragraph 45.

²⁸ United Nation General Assembly, Resolution 44/25, Article 4.

²⁹ Idem

³⁰ Rishmawi, 2006, p.1. For further information about States’ obligation, see also: Skogly, 2006.

³¹ An exhaustive analysis of the legal nature of International Human Rights disposition is provided by: Addo, 2010.

to family and dissolution of marriage). However, the most important provision of the ICCPR on this field is Article 24, which is entirely dedicated to the rights of the child. Its dictate is really interesting, as the first paragraph states that “*every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State*”.

Furthermore, explicit norms on the rights of minors are stated by the Charter of Fundamental Rights of the European Union (CFREU)³². Beside Article 14 concerning the right to education and Article 32 addressing the prohibition of child labour, the entire Article 24 laid down the rights of the child, stating the following: “*children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests*”.

As anticipated, general Human Rights instruments are not only relevant with regard to provisions directly related children. These documents, in fact, shall be addressed through a holistic approach: it is the logical consequence of the application of both indivisibility and interdependence principles. Consequently, in order to approach the issue of proper treatment of unaccompanied children, human rights as a whole shall be considered. Effectively, “the importance of other international human rights instruments to the protection of the child is also recognized in the preamble of the Convention”³³. Consequently, especially human rights stating the right to life, survival, development, private life, non-discrimination and opinion appear to be extremely significant to the purpose of this analysis³⁴.

³² CFREU has been proclaimed in 2000; it has become legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.

³³ Committee on the Rights of the Child, CRC/GC/2005/6, Paragraph 6.

³⁴ These rights and others provided by Human Rights documents will be recalled in next Chapters.

In conclusion, two main principles are behind the Human Rights provisions on children: the first one is the idea that minors necessitate of additional and peculiar grounds of protection, by virtue of their special status of vulnerability and higher exposition to risks. Secondly, in order to achieve such specific grounds of protection, the best interest of the child shall be taken into account in developing all policies, legislations and procedures involving minors.

I.2 – Special legislation on unaccompanied minors

In recent years, with the increasing of migration flows and a growing movement of unaccompanied minors, normative documents addressing this phenomenon have been developed at supranational level. A brief introduction on these instruments is really interesting in this context.

On this regard, the legal value of such norms shall be taken in great account. Indeed, these documents are not legally binding for States, having a merely interpretative or programmatic character. Nevertheless, they represent an important step forward for the development of national policies.

As it has been underlined with regard to Human Rights' framework, also the specific legislations on unaccompanied minors are characterized by the presence of the mentioned two founding ideas: the need of higher level of protection for children, by virtue of their particularly vulnerable status, and the best interest of the child as founding principle.

Within the context of supranational regulations on unaccompanied children, it is firstly to be considered the General Comment No. 6, drafted by the Committee on the Rights of the Child in 2005, on the “treatment of unaccompanied and separated children outside their country of origin”. Specifically, the General Comment has the objective to “*draw attention to the particularly vulnerable situation of unaccompanied and separated children; to outline the multifaceted challenges faced by States and other actors [...]; and to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided*

by the *Convention on the Rights of the Child*³⁵. To this end, the General Comment identifies not only the specific protection's needs, but it also develops ideal procedures and instruments to satisfy such needs.

In the legal framework of European Union, the Council Resolution of 26 June 1997 “on unaccompanied minors who are national of third countries” should be recalled. This Resolution has the purpose “*to establish guidelines for the treatment of unaccompanied minors, with regard to matters such as the conditions for their reception, stay and return*”³⁶. Additionally, of great importance for the further development of policies at European level is the “Action Plan on Unaccompanied Minors (2010 – 2014)”³⁷, edited by the European Commission in 2010. This document shall be read in conjunction with the previous Communication of the Commission of 2009³⁸. The latter, indeed, defining “an area of freedom, security and justice”, requires EU and its Member States to “*pay particular attention to unaccompanied children*”³⁹. In the Commission's view, this special consideration should be reflected both in more careful provisions within migration policies and in actions devoted to promote a more integrated society. Consequently, with the Action Plan, the EU body identifies steps in order to “*ensure that any child needing protection receives it and that, regardless of their immigration status, citizenship or background, all children are treated as children first and foremost*”⁴⁰. To reach these goals, the European action should “*also be based on solidarity and sharing of responsibilities between Member States and with the countries of origin and transit, as well as on enhanced cooperation with expert civil society organizations and international organizations*”⁴¹. This document has been followed by a Council's Resolution, which touches many aspects as: guarantees,

³⁵ Committee on the Rights of the Child, CRC/GC/2005/6, Paragraph 1.

³⁶ Council of the European Union, Council Resolution (97/C 221/03), Article 1.3.

³⁷ European Commission, COM (2010) 213 final.

³⁸ European Commission, COM (2009) 262 final.

³⁹ *Idem*, p. 34.

⁴⁰ European Commission, COM (2010) 213 final, p.3.

⁴¹ *Idem*.

cooperation among Member States, cooperation with third-Countries, integration and return⁴².

Another important developmental level of normative instruments on migrating children is within the Council of Europe framework. The commitments of this Institution, in fact, led to the development of Recommendation Rec (2007)9, which defines “life projects for unaccompanied migrant minors”. Through this document, the Council of Europe adopted an innovative approach to unaccompanied minors, strengthening the attention on the child’s special needs, overcoming traditional basic guarantees. The objective of this Recommendation, in fact, is broader than the mere protection of vulnerable individuals. Its aim, more complexly, is to “*develop the capacities of minors allowing them to acquire and strengthen the skills necessary to become independent, responsible and active in the society. In order to achieve this, life projects [...] pursue objectives relating to the social integration of minors, personal development, cultural development, housing, health, education and vocational training, and employment*”⁴³. The innovativeness of such approach makes this regulation an innovative perspective for the future development of structured policies⁴⁴.

I.3 – Migration Law

Specific references on unaccompanied minors can be found also within legislations addressing migration issues. Indeed, Migration Law is strictly related to the International legal framework and it is subjected to the general Human Rights’ dictate⁴⁵. In the context of EU, for example, the European Court of Justice “has on various

⁴² See: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114900.pdf (last consulted on 28/04/2012).

⁴³ Committee of Ministers of the Council of Europe, Recommendation Rec (2007)9, Section I.1.

⁴⁴ The Committee of Ministers of the Council of Europe Recommendation Rec (2007)9 will be addressed and analysed into more details in Chapter III. It constitutes an interesting basis for the development of national policies and monitoring instruments.

⁴⁵ For the relationship between the two normative levels, consult: Aleinikoff, 2003 and Peers, 2001. In addition, an interesting analysis of further development and future challenges of Migration Law is offered by: Cholewinsky & Perrouchoud, 2007.

occasions relied upon international human rights treaties signed by the Member States to determine general principles of Community law”⁴⁶.

Consequently, in most migration laws, single norms are dedicated to unaccompanied minors. This practice finds its justification in the common consideration according to which migrating children are considered as particularly vulnerable migrants, entitled to exceptions or special provisions. This need is also explicitly recognized, in the Annual Report on Immigration and Asylum (2010), by the European Commission: “*unaccompanied minors deserve specific attention. Many of these children are asylum seekers and, as such, they are protected by the asylum legislation, but there also those who arrive to the territory of the EU irregularly and they are the most vulnerable*”⁴⁷. Indubitably, the migration experience, together with the status of abandonment, has a great impact on minors’ lives, strongly affecting their mental, psychological and sometimes even physical growth.

As a consequence, specific dispositions addressing the issue of migrating children can be found in many legislative documents of the European Union. Some examples of this trend are: Section 6 of the Annex VII to the Regulation (EC) No. 562/2006 establishing a Union Code on the rules governing the movement of persons across borders; Articles 17 and 19 of the Reception Conditions Directive⁴⁸; Article 20 of the Qualification Directive⁴⁹; Articles 17 and 30 of the Procedures Directive⁵⁰; Article 10 of the Council Directive 2003/86/EC on the right to family reunification; Articles 10 and 17 of the Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals.⁵¹

⁴⁶ Weisbrock, 2010, p. 208.

⁴⁷ European Commission, COM (2011) 291 final, Paragraph IV. It is interesting also to notice the differentiation made by the Commission between unaccompanied migrant minors and unaccompanied children seeking asylum. This document is followed by: European Commission, COM (2012) 139 final.

⁴⁸ Council of the European Union, Directive 2003/9/EC.

⁴⁹ Council of the European Union, Directive 2004/83/EC.

⁵⁰ Council of the European Union, Directive 2005/85/EC.

⁵¹ This is not an exhaustive list. However, the norms mentioned in this brief list can contribute to picture the general trend. Provisions and legislations specifically relevant for the further analysis will be recalled when necessary.

I.4 – Final considerations

This Chapter illustrated different grounds and approaches of supranational legislations with regard to unaccompanied minors. Essentially, three aspects can be pointed out⁵².

Firstly, the application of protective norms developed for the general category of children and the contemporary absence of a structured legislation addressing special elements and needs characterizing minors on the move. Secondly, the individuation of the “best interest of the child” principle as elemental inspiration for further definition of policies and norms. Thirdly, the increasing attention of supranational legislators to this subject, with the consequent (slow) introduction of expressly designed legislations.

These elements picture a fragmented normative scenario, highly partly superficial. Consequently, only a first stage of protection is effectively granted to minors and their “best interest” is not fully pursued and realized. The current approach leads to controversial situations, compromising the whole system of guarantees, especially for those minors who arrives cross European borders when they are older than fifteen. Moreover, regulatory shortcomings can easily turn into both a threat to the rights of the child and a useless loss of money and energies for the host Country. Contradictory situations also arise from lack of consideration of all distinctive elements of the migrating minors’ phenomenon. Chapter II will address these issues, with the scope to identify special needs inherent to the peculiar situation of unaccompanied children.

Before moving to the further analysis, however, few words should be dedicated to the current debate on the legislative level actually entitled to elaborate norms and procedures for the unaccompanied minors’ protection. Having specific regard to the European Union context, the question is whether it would be preferable the articulation of Communitarian norms binding for Member States⁵³, or if it would be more desirable to leave the latter with a margin of appreciation and implementation. Essentially: which

⁵² Generally speaking, these three elements characterize also the current national legislations on this matter. Further investigation on national legislations will be addressed in Chapter IV, with specific regard to the case study of Italy.

⁵³ At least with an obligation of result.

is (or should be) the institutional body called upon to fill the legislative gaps in the field of unaccompanied minors' protection?

At one first analysis, both solutions present positive and negative aspects. On the one hand, in fact, a supranational legislation would create a minimum degree of protection, which should be granted by every Member States. In this case, higher harmonization's standards would be reached, with a consequent simplification of MS's cooperation. At the same time, however, common procedures face the risk to not being sufficiently adaptable to concrete situations, different in each State. On the other hand, domestic legislation is more likely to answer to specific local and personal need. Nevertheless, with this approach it is easier to lower the standards of protections and guarantees, creating non-homogeneity among European States.

Apparently, a good approach could be reached through a virtuous balance between the two scenarios. European Union should be called to define minimum standard, whose realization shall be granted by domestic legislations. In this way, unavoidable protections would be guaranteed, but States would maintain a certain margin of appreciation, not only in the implementation but also for the development of procedures to address local situations and peculiarities.

CHAPTER II – Unaccompanied migrant minors between 15 and 18 years of age: a special category.

The definition of unaccompanied migrant minors, as it has been illustrated in the Introduction, comprehends the whole category of children who face, without the supervision of an adult in charge of them, the experience of migration. Despite normative instruments traditionally use a general approach to this group of minors, children of different ages, who have experienced different situations, have disparate – and often divergent – needs. This simple assumption is of great importance, and should be taken in consideration, when developing policies on migrating children. For this reason, this chapter will approach the limited group of unaccompanied minors above the age of fifteen⁵⁴.

With regard to unaccompanied minors, the first element which shall be stressed is their migration experience. The latter has been defined as a “complex psycho-social process, with lasting effects on an individual’s identity”⁵⁵. Indeed, both the journey from home to a new Country and the realities people face in the new destination produce unavoidable consequences on migrants’ psychology⁵⁶. On the one hand, migratory movements usually happen through unconventional routes, in conditions of extreme poverty, vulnerability, lack of essential goods and violence, whose experience is unforgettable. On the other hand, the arrival in the host State requires aliens to undertake a difficult path of adaptability, changes of identity, cultural and language barriers, discrimination and others. Psychological consequences have been observed by several psychologists and psychiatrists, who often register behavioural problems such as depression, anxiety, post-traumatic stress disorders.

All the mentioned elements can have a great impact on unaccompanied migrating children, who afford all these situations alone, especially when they are older and with a higher level of conscience and awareness. As a consequence of this unusual moment of children’s life, the development of specific treatments is necessary.

⁵⁴ This choice is justified both by their massive presence and the complexity of problems States face in dealing with them.

⁵⁵ Akhtar, 1995.

⁵⁶ An interesting analysis on this topic has been conducted by: Rossi, 2008.

The experience of migration, however, constitutes only one of the aspects contributing to picture the complex and fragmented picture of peculiar necessities. Not only being migrating people, in fact, children of the age of about fifteen enter puberty, a period of deep changes, which strongly influences their bodies, psychology, behaviours and feelings. Thus, the concomitant events of migration and puberty may have a great impact on the child, who should therefore be granted a specific support. To this end, protections justified only on the ground of the minority age appear insufficient. In order to be more efficacious, policies should be deepened and fostered in the light of the presence of characteristic exigencies.

Moving from this preliminary remark, this Chapter will be focused on unaccompanied minors between 15 and 18 years of age, with the aim to identify peculiar situations from which peculiar needs arise and on the basis of which specific legislations should be developed. Issues concerning gender, integration and evolving capacities will be further investigated.

II.1 – Gender and sexuality

A central issue impacting on children around the age of fifteen is that complex process of changes, which affects every aspect of the person, commonly known as puberty, or adolescence. Despite the intensity of the physical impact, with the evidence of sexual characters and feelings of sexuality, such change affects the behavioural, temperamental, emotional, relational and psychological sides of the child's personality. The connection among all these aspects is indissoluble and, despite some of them have a higher "visibility", they should be considered as different pieces of the same picture.

Modalities and repercussions of this process of change depend on many elements, such as: age, personal history, social environment, ground of information, support. Additionally, studies have shown the influence of gender on adolescence: usually, for males, this is the moment of personal affirmation, while for females the picture is more composite, as they usually approach this moment of life manifesting discomfort and disharmonies.

As far as it concerns unaccompanied minors, the process of growth, during puberty, is complicated by their peculiar conditions, which usually contribute to emphasize negative components and to increase vulnerability. In this section, the impact of puberty on this category of children will be investigated, with specific regard to special needs consequently arising.

Approaching the relationship between puberty and consolidation of differentiation between males and females, this Section will be developed on a gender-based perspective. In fact, despite most problematic issues inherent to adolescent unaccompanied minors are the same for girls and boys, their impact is strongly gendered.

These considerations are particularly interesting, especially in consideration of the collected data on unaccompanied minors in European territories, which show a significant disproportion between male and female presence⁵⁷. However, despite a lower representation, today female migration is an increasing phenomenon. Indeed, “recent decades have seen an increase in women migrating independently and as main income-earners. Women may migrate in search of better opportunities (labour, education), to be able to send back remittances to support their families and children, to escape sexual violence and abuse, social stigma, pressure to marry, to join a migrant spouse or their parents (family reunification), or to flee from gender discrimination and constraining gender norms”⁵⁸. Therefore, girls’ migration presents both positive and negative sides. “Undoubtedly, the increase of female migration has raised both prospects and challenges. It can advance gender equality and women’s empowerment through opportunities offering them greater independence and self-confidence. It can be a vehicle for enhancing the status of women by breaking through oppressive gender roles. Migration may provide women with income, but also with the status, autonomy, freedom and self-esteem that come with employment. However, gender inequalities, including violence against women, can increase with migration, therefore generating risks and vulnerabilities. Compared to men, migrant women face greater obstacles, as

⁵⁷ See Introduction.

⁵⁸ Abramovich, Ceriani Cernadas, Morlachetti, 2010, p. 7.

the types of jobs they can obtain are very limited, low skilled, and badly remunerated”⁵⁹.

Moving to data, the European Parliamentary Forum on Population and Development⁶⁰ registers that in 2010 “more that 10 million girls aged 10-19 live outside their countries of origin as international migrants. 2.6 million of them live in Europe (including 1.7 million in the European Union)”. These numbers, not including illegal circuits of migration, only marginally give a correct dimension of the phenomenon: generally, in fact, unregistered migrating women (comprehensive of minors) are more than men. The disproportion of traceability between male and female migrants finds its justification in the constant entrance of women and girls into illegal channels, especially of sexual exploitation and illegal labour. Furthermore, in many occasions an indissoluble relationship, based on trust or gratitude or fear, is established between the girl and her exploiter, so that situations of illegality and vulnerability are perpetrated and remain unknown.

On the basis of these preliminary remarks, specific topics will be addressed in this Section. Particular attention will be dedicated to the analysis of those elements on which sexuality and gender have a stronger impact: risk of sexual abuses and violence, housing, pregnancy. For every of these aspects, the most controversial components will be stressed, with peculiar regard to gender-based implications.

The first aspect which deserves to be stressed is the risk for unaccompanied minors to be victims of sexual exploitation and abuses. On this regard, it is important to underline that “child trafficking is a violation of the Human Rights of a child. It is a criminal offence under international law, and under national law in nearly all European countries. Child trafficking is not a form of migration. [...] Even though trafficking and migration are two distinct phenomena, it is nevertheless important to acknowledge and understand existing links. Migration or the wish to migrate can increase children’s vulnerability to exploitation and abuse, including recruitment into trafficking. Migration

⁵⁹ Abramovich, Ceriani Cernadas, Morlachetti, 2010, p. 7.

⁶⁰ European Parliamentary Forum on Population and Development, 2011, p. 2.

and trafficking routes often coincide, and traffickers operate along these routes”⁶¹. Referring to the gendered impact of violations, the United Nation High Commissioner for Refugees observed that *“both girls and boys are at risk, but girls are often the principal targets of sexual exploitation, abuse and violence”*⁶². Many reasons have been identified at the basis of the disadvantaged situation of female minors, especially when above the age of fifteen. Among these, a focal role is played by their sexual characters, which make older girls more susceptible of interest. In addition, both their lower level of education and their deep male-chauvinist culture facilitate the increasing of exploitation. Lacking the cultural instrument to rise against disadvantaging situations, it is easier for them to be taken into cycles of violence and prostitution, and to accept a certain degree of abuses, perceived as the normal consequence of a consolidated structure of roles and submission. In addition, commonly minors travel without economical resources: to have a sexual intercourse can be used by girls as a bargaining to pay a leg of the journey, food and water, the release in case of detention. As consequence of standardized practices, often sexual exploitation constitutes an instrument perceived as “positive”, or at least useful, by unaccompanied girls: it provides them with protection and economical resources. This idea makes easier to perpetuate these episodes and, at the same time, it is more difficult to offer a suitable alternative to girls. Moreover, a prolonged relationship of subordination contributes to the establishment of personal links with the exploiter: on its regards, usually a rooted sense of gratefulness and moral commitment arises from that appearance of protection. Furthermore, commitment and sense of responsibility girls have towards their family enhance their subordination when, in exchange for sexual abuses, they receive money to send home.

A further element, relevant for a gender-based analysis of adolescent unaccompanied minors’ specificities, is the particular connection that sexuality has with children’s housing policies. In fact, despite having different legislations on housing and care of minors, all Member States of the Union provide the opportunity to place

⁶¹ Swärd & Bruun, 2007, p. 3.

⁶² United Nations General Assembly, 2003, p.3.

unaccompanied migrating children within appropriate care structures⁶³. Usually, both structural and organizational articulations of these facilities are developed in order to ensure protection of minors, also through the separation between girls and boys and the identification of personal spaces. However, the interaction between the two groups is unavoidable. Notably, a correct integration between male and female children is to be considered as positive for their growth. Nevertheless, especially during adolescence, in a condition of lacking in a parental point of reference, and taking into account a usual male-based cultural background, the instauration of wrong relationships among the two groups is likely to be verified. Consequently, when additional and appropriate extra-measures are not taken, or when social workers are not properly trained, negative episodes may occur. Specifically, not only premature sexual relationships are established between children, but also reiterated mechanisms of violence may be developed among them. In several situations, these behaviours can be structured into role of dominance and subordination, becoming a real violence against the child in the subdued position. The consequences of these practices can be even more severe when individuals erroneously identified as minors are housed together with minors.

Also in these cases, notwithstanding experiences identifying both girls and boys as victims, the risks for girls are higher. As mentioned before, several elements contribute to the greater victimization of girls: the early development of sexual characteristics, the absence of an adequate level of education, the rooted recognition of male supremacy. As a consequence, it is not surprising that, in most of these episodes, a gender-targeted trend can be observed, with a higher percentage of girls playing the subdued role.

Specifically targeted as a gender issue is the matter of pregnancy. Together with adolescence, in fact, girls not only develop external sexual characters, but their body becomes also able to get pregnant. Lacks of knowledge on the use of contraception, together with the particular situations in which migrating girls are, strongly increase the cases of undesired and premature pregnancy. As mentioned in the Introduction, in fact, unaccompanied minors usually travel alone, in a condition of promiscuousness with young and old men. In these conditions, episodes of sexual violence and intercourse,

⁶³ An overview of the rights of children in care is offered by: Gudbrabdsson, 2006.

especially when used as bargaining, are inevitable. On this regard, the words of Mirela Shuteriqi, Technical Advisor on migration and trafficking for Terre des Hommes International Federation, should not surprise when revealing that today “many girls are migrating with children, getting pregnant on the way or leaving children behind”⁶⁴. Furthermore, the above-analysed situation of lack of specific protection within care structures, and the consequently possible episodes of sexual relationship and violence among housed minors, extends the probability for girls to get pregnant when already arrived in the hosting Country. Pregnancy of unaccompanied migrant minors is a very complicated issue, which affects several aspects of their protection and whose management should be based on a multifaceted approach. Still with the words of Mirela Shuteriqi, in fact, “to prevent girls from such situations, interventions should be done in all migratory pathways, including in the country of origin, on the move, in transit and in the country of destination. Education must be improved, together with employment opportunities, the system of protection against child abuse, the fight against gender based violence and the diffusion of massive information on safe migration”⁶⁵.

II.2 – Integration policies

The process of integration constitutes a central feature in contemporary migration policies. Besides norms regulating modalities of entry, stay and work in the Country of destination, States are developing a new consciousness, according to which a positive presence of aliens can be reached through their active participation in economic, social and cultural life⁶⁶. Specifically, according to the International Organization for Migration (IOM), “integration policies are an essential part of a comprehensive migration management system. They are designed to: allow migrants to realize their personal, economic, and social potentials; ensure that the human rights of migrants are

⁶⁴ Darcissac, 2011. See: <http://tdh.ch/en/news/girls-in-migration-and-what-about-their-children> (last consulted on 01/07/2012).

⁶⁵ Idem.

⁶⁶ In consideration of the EU frame work, Carrera has observed that “at a time when the development of a common EU immigration policy remains far from a reality, the integration of migrants has been placed at the very top of the EU agenda”. Carrera, 2005, Abstract.

protected; reduce levels of alienation and marginalization, and thereby contribute to national security; help establish and maintain social cohesion and harmony”⁶⁷.

In order to achieve these goals, different policies are mostly implemented by States, with some mechanisms and procedures elaborated at the supranational level. Among the latter, it is firstly important to recall the commitment on integration developed by EU. Several instruments have been settled by the Union, inspired by the idea that a virtuous management of diversity, unavoidably descending from migration, can constitute “a competitive advantage and a source of dynamism for the European economies”⁶⁸. Specifically, an instrument to effectively promote integration has been articulated by EU: “The European Agenda for Integration of third-country nationals”, adopted on 20 July 2011⁶⁹. On the Union’s approach to integration, Cecilia Malmström, European Commissioner for Home Affairs, affirmed that “successful integration implies that migrants are given the opportunity to participate fully in their new communities. Learning the language of the receiving country, getting access to employment and education and having the socio-economic capacity to support themselves are crucial elements for a successful integration. To date, integration of migrants in Europe has not been very successful. We must all do more – for the sake of the people coming here, but also since well-integrated migrants are an asset for the EU, as they enrich our societies culturally and economically”^{70 71}.

Integration is an approach developed with regard to all migrants, with the aim to “ensure equal rights, obligation and opportunities to all”⁷². Nevertheless, unaccompanied migrant minors are recognized a specific position within this broader framework.

⁶⁷ See: <http://www.iom.int/jahia/Jahia/about-migration/managing-migration/integration-of-migrants> (last consulted on 05/05/2012).

⁶⁸ See: <http://ec.europa.eu/ewsi/en/eu.cfm> (last consulted on 05/05/2012).

⁶⁹ European Commission, COM (2011) 455 final.

⁷⁰ See: <http://ec.europa.eu/ewsi/en/eu.cfm> (last consulted on 05/05/2012).

⁷¹ Additionally, an interesting instrument of Integration, designed together by British Council and Migration Policy Group, is the MIPEX - Migrant Integration Policy System, developed to evaluate, compare and ameliorate integration of migrant in the host State. For further information see Chapter III.2.

⁷² European Union, Draft Declaration, 2010, p. 12.

Usually, the integration of children is based on language and education, which are considered the two instruments through which their involvement in society can be fully realized. The importance of these two elements is indubitable. Learning the national language is, for all migrants, the first basic instrument to communicate and interact with the national environment: “the key factor in a successful integration process of immigrants, as it is a crucial precondition for participation in the labour market and society”⁷³. At the same time, education not only equips unaccompanied minors with the necessary skills for their future, but also provides them with knowledge of local culture, history, habits and traditions. In addition, to attend national schools, with classmates of host Country’s origin, strengthens the creation of affiliation’s feelings and affective links between the unaccompanied minor and the territory.

Learning of national language and education produce the conditions for those two typologies of integration commonly recognized as “cultural integration” and “interactive integration”. Respectively, the first concept (also known as “acculturation”) refers to the acquisition of “the core competencies of [the host Country’s] culture and society. In this respect, integration refers to an individual’s cognitive, behavioural and attitudinal change”⁷⁴. The second typology of integration is, instead, used to indicate the process through which immigrant people constitute relationships and social networks within the State of destination. The interconnection between these two typologies has been pointed out, as “certain core elements of cultural integration, particularly communicative competencies, are preconditions for interactive integration”⁷⁵.

These aspects of integration process, commonly implemented for foreign minors, shall be approached with peculiar care for unaccompanied migrant minors above the age of fifteen, on whose regard elements of complexity emerge. On the one hand, the guarantee of proper articulation of learning and educational instruments should not be taken for granted: the age impacts on the child’s ability to study and learn. Indeed, it is a common understanding that learning abilities decrease with the increasing of age. According to professor Anitei, “scientists at University of Oxford have found that adults

⁷³ Wiesbrock, 2010, p. 629.

⁷⁴ Bosswick & Heckmann, 2006, p. 10.

⁷⁵ Idem.

really store new information in a slower pace than children because their neurons in memories' centres of the brain function differently. Investigating neuronal activity in rats, the researchers concluded that younger brains may be more rapidly on learning”⁷⁶. Nevertheless, the same professor recognizes that “older brains may store information more efficiently”⁷⁷. The higher capabilities to learn of young children compared to those of older guys and adults are today debated by several doctors, linguists and psychologists. On this regard, Professor Keith Kendrick, head of cognitive and behavioural neurosciences at the Babraham Institute of Cambridge, introduced the idea that “young brains do tend to be able to absorb new information better than old ones, although not necessarily to integrate it as well with what has been learned previously. [...] More extensive learning experience could perhaps also lead to more efficient representation and integration of information using existing 'active' synapses leading to a reduced dependence upon the presence of naive 'silent' ones”⁷⁸. Additionally, it has been observed that “adults tend to resist a learning process which is incongruent with their self-concept as autonomous individuals and does not correspond to their needs and interests”⁷⁹. Veritably, this aspect is specifically interesting in assessing older migrating children’s approach to language and educational instrument of integration. To have developed specific areas of interest, the roots of different learning methods and the attachment to the culture of origin are just some of the several factors effectively affecting their willing to take part to the activities proposed by the Country of destination. Consequently, without prejudice to the indubitable importance of these integration’s tools, the peculiar elements analysed deserve to be taken into account during the planning stage of such activities, in order to develop targeted actions and achieve the best integration results possible.

On the other hand, if it is justly tenable that language and education can be a sufficient instrument for a progressive assimilation of younger children, the same results

⁷⁶ Anitei, 2006.

⁷⁷ Idem.

⁷⁸ Idem. See also: Graceffo, 2012.

⁷⁹ Muller, 1993, p. 240.

cannot easily be achieved only through this approach for older ones. Specifically, elements deserving explicit attention will be further investigate in the following lines.

Firstly, the most controversial issue is the paradoxical situation of children arriving in the State of destination no more than a couple of years before the majority age, who, turning eighteen, do not meet the requirements to remain within the host territory. In most European Countries, the procedure states that, after being declared illegal, unaccompanied children turned adults are addressed with a removal order. However, it is important to say that, in many occasions, the impossibility for unaccompanied minors to fulfil the legal requirements for stay is clear since their first reception. It is the case, for example, of those countries requiring, as qualification for the resident permit's conversion, minimum periods of stay before turning eighteen that cannot be met. In these situations, by virtue of minor age, the child is anyway guaranteed the whole system of protection for unaccompanied minors. Nevertheless, his presence into the host Country, his participation in school classes and activities, his knowledge of the language, his steps through the integration process become meaningless, regardless also of costs incurred by national administrations. The presented situations clearly require interventions to avoid an incongruent implementation of integration policies. The latter, in fact, should be developed in order to create the conditions for all minors to fulfil requirements for remaining. Generally speaking, the traditional approach to integration and minors should be reviewed, with the aim to introduce elements providing effective qualification, for children turning eighteen, to legally remain in the Country of destination. Thus, together with (targeted) activities based on language and education, further steps should be taken in order to facilitate the continuation of studies, or to create a direct connection with working careers and employment. Simultaneously, common delay in the beginning of integration procedures should be avoided at least with regard to borderline situations, when it would affect future enjoyment of rights and opportunities for the child.

Secondly, in relation to integration, policies based on the minor's reintegration in the Country of origin should be briefly discussed. Nowadays, many European Countries are developing programs for the accompaniment of children through reintegration

process in the home State⁸⁰. This approach presents at least a couple of perplexities with regard to integration issues. Firstly, integration processes are aimed at the creation of a relationship between the unaccompanied minor and the hosting State. Through integration procedures, in fact, a special connection is created between these two subjects. Consequently, the subsequent disconnection should be justified by good reasons, taken having regard to the child's interest. Secondly, despite the possible positivity of these procedures for the future life of the child⁸¹, reintegration in the home Country cannot become the exit-strategy, for States, to avoid considering the problem: it shall be conceived as a prosecution of the integration process, supported and followed by the State of destination.

Thirdly, a further relevant element involves the procedure of integration with special consideration to the child's culture. In the framework of minors' education, in fact, special attention is usually reserved by States to the knowledge of local traditions, history and uses of the destination Country. Thus, under the name of integration, minors are introduced to a new national culture. During time, the latter often overlaps that of the Country of origin, becoming dominant for the minor. This can be a very simple process for a young child, who grows within the context of the destination State and can easily assimilate local traditions. However, the same process may be particularly complicated for older minors, for who home traditions are deeply rooted and represent their primary link with life, family and friends they have left behind. Sometimes, integration procedures are inspired to keep together the two cultures, in order to find common elements among them and, through these, develop in the migrant a feeling of affection for the destination Country. Addressing cultural integration issues with regard to adolescent unaccompanied minors, this methodology should be reinforced and developed on a case by case approach, with the involvement of psychologists and trained personnel. Correct integration procedures constitute and added value both for

⁸⁰ For an overview of family reunification policies and procedures, see: Wiesbrok, 2010, pp. 498-515; International Committee of the Red Cross, International Rescue Committee, Save the Children UK, United Nations Children's Fund, United Nations High Commissioner for Refugees & World Vision International, 2004, p. 29.

⁸¹ Notably, reintegration and family reunification are not in every situation the best solutions applicable, in consideration of the best interest of the child.

unaccompanied minors and States of destination: when not properly implemented, a sense of rejection may occur in the child. This, besides being a waste of public money for useless approaches, may entail significant difficulties in the management of the young, both in the host structure and in its social context, with potential adverse impact on other children.

II.3 – Evolving Capacities

The concept of evolving capacities of children is defined by Article 5 of the Convention on the Rights of the Child, which states, among other things, that States shall take the appropriate steps “*in order to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights*”.

Despite the absence of universal consensus in the interpretation of this statement, a doctrine has developed on the principle of evolving capacity. Specifically, the latter has been interpreted as an issue strictly related with the creation of the best environmental conditions to foster minor’s positive development, through levels of protection designed on the basis of different ages and different needs.

Referring to unaccompanied minors, the concept of evolving capacity arises particular relevance, as it represents both a right of the child and an instrument for the best enjoyment of rights. Moreover, peculiar needs emerge with regard to older unaccompanied boys and girls. As rightly observed by Lansdown, indeed, “childhood is not an undifferentiated period. A 17-years-old has profoundly different needs and capacities than a 6-years-old baby, while being entitled to the same rights”⁸².

Through an evolving capacities approach, the best interest of the child is developed to involve the child itself, acting in its quality of rights holder, in the implementation of rights and procedures relating to him⁸³. In other words, evolving capacities focus on the abilities of the child, rather than on its age, to guarantee the best application of human rights norms. Thus, generally speaking, the older the child is, the

⁸² Lansdown, 2005, p. vii.

⁸³ An interesting approach to the autonomy of children’s rights is offered by: Willems, 2007.

higher his involvement should be when making decision that affect and interferes with his person. However, approaching the issue of evolving capacities with regard to unaccompanied minors above the age of fifteen, two controversial elements need to be carefully addressed. On the one hand, the peculiar level of maturity of the separated child shall be considered with reference to the migration experience; on the other hand, the transition from a triangular relationship (child – family – State) to a bi-dimensional relationship (child – State) deserves attention.

As described by the above analysis, the migration experience has a great impact on the life of a child, especially when he or she travels alone, facing by himself the challenges inherent to this experience, and has an age which empowers his understanding and memory. Indeed, migration involves several risks, violence, situations of poverty and submission, lack of primary goods, solitude, scarcity of reference points, uncertainty and others. To these situations, the environmental living conditions of the minors before the departure shall be added. These aspects of the unaccompanied migrant minor's life directly affect his psyche and, consequently, his growth.

However, as mentioned above, effective consequences may migration have on the child depend by several factors, both internal and external. Such consideration is directly linked to the adoption of an “evolving capacity approach”. As a matter of fact, it is a general recognition that “children in different environments and cultures, who are faced with diverse life experience, will acquire competencies at different ages, and their acquisition of competencies will vary according to the circumstances”⁸⁴. Thus, with regard to unaccompanied minors, how they have been affected by migration shall be considered carefully, in order to verify whether this experience contributed to strengthen their maturity or, conversely, if traumatic episodes slow down their entrance in adulthood. The recognition of a separated child's possession of skills and understanding necessary to participate in the evaluation of his rights, indeed, is a crucial element to be addressed through a specifically oriented, case by case, approach. Therefore, different procedures should be implemented with regard to different situations: if a child, despite

⁸⁴ Lansdown, 2005, p. ix.

the age, developed higher level of maturity, he should receive a greater involvement in the decision-making process. On the contrary, if the stage of maturity of an unaccompanied minor has been negatively influenced by external factors, his involvement should be suitably identified. Moreover, a targeted action should be realized, in order to promote and reinforce the evolution of his or her capacities and competences.

Moving to the second perspective from which the issue of evolving capacities should be addressed with regard to unaccompanied minors, “it is important to emphasize that the realization of children’s rights is not contingent on the ability to exercise agency, or on the acquisition of a given age. [...] The issue in question is to what extent children themselves exercise those rights, and what responsibilities are undertaken on their behalf by parents or other caregivers, and how the process of transition takes effect”.⁸⁵

Generally speaking, children’s rights are based on the idea of a triangular relationship between the child, his family and the State. Notwithstanding the role of families in identifying the minor’s necessities, the State is recognized with a direct relationship with the child, in order to intervene to protect and guarantee his rights, in case of lack or inability of the family. In this trilateral dimension, therefore, the State has a subsidiary, guaranteeing, role, aimed at ensuring maximum protection to the child. When unaccompanied minors are involved, this three-levels-based relationship is replaced by the binominal child-State. However, the host State’s position, covering its role in a bi-dimensional relationship, is quite controversial. National administrations, in fact, are, at the same time, the body entitled to develop migration policies and the protective organ called to ensure higher level of protection in case of violations of minor’s rights. As defined in the previous section, migration policies may have a negative impact on older minors (especially in their turning eighteen). Nevertheless, if it is true that the enjoyment of the rights shall not be influenced by the age and the capabilities of the child who is too young to take care of himself, the same concept should be applied on opposite situations: being too old shall not impede the child a full

⁸⁵ *Idem*, p. 5.

enjoyment of rights. In fulfilling his double-dimension role, therefore, the State should strengthen the relevance of minors' requirements and opinions, in order to provide them with equal possibilities and perspectives. At the same time, when evolving capacities of an older child are affected by his negative experiences, this disadvantage cannot constitute an obstacle for his future opportunities and the State should intervene with extensive protections.

II.4 – Final considerations

The three aspects considered above contribute to picture specific situations and needs affecting unaccompanied minors between fifteen and eighteen years of age. As showed in this Chapter, in fact, the age of children strongly impacts on their situation. Several elements contribute to the creation of specificity: children's attachment to their origins, their level of physical and psychological maturity, the migration experience's impacts, the consolidation of culture, the relation with new social environment. These elements, therefore, are translated in peculiar needs of children above the age of fifteen, which are sometimes different, sometimes additional, to those generally requested by minors. Consequently, in order to offer a correct answer, International Organizations and States are required to guarantee older children not only with basic instruments for their protection, but also with specifically developed policies (ensuring, among others: preservation from abuses, opportunities of growth and development, integration procedures and job opportunities, correct growth conditions, participation, etc.).

The necessity of specified policies finds its basis not only in the mentioned peculiar conditions of these minors, but also in Human Rights provisions. A complete, virtuous, implementation of some Human Rights norms, in fact, would naturally involve the mentioned aspects. Thus, just to give some examples, Article 27 of the CRC requires States Parties to “*recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development*”⁸⁶. The same concept, with different words, is recalled by the Charter of Fundamental Rights of the EU, where Article 24 states that “*children shall have the right to such*

⁸⁶ See Commentary by: Eide, 2006.

protection and care as is necessary for their well-being". According to these provisions, minors shall be granted, irrespectively of their conditions and origins, with all necessary tools for development and growth. Such conditions shall be expressly designed to be adequate to their specific needs. Reading these norms in perspective, two considerations shall be done: firstly, these norms clearly apply also to the category of unaccompanied migrant minors; secondly, when approaching children in the puberty age, targeted policies shall be implemented, as to fulfil the requirement of "necessity". This concept, indeed, imply that the mere articulation of theoretical policies is unsatisfactory if the prescribed results are not achieved.

Furthermore, human rights documents provide norms which, more or less directly, touch the situations mentioned in this Chapter. It is the case, for example, of the following CRC's Articles: 8 (right to preservation of identity)⁸⁷; 13 (right to freedom of expression)⁸⁸; 20 (rights of children deprived of their family environment)⁸⁹; 28 (right to education)⁹⁰; 34 (protection from sexual exploitation and sexual abuse)⁹¹. Also Article 14 of the European Charter (right to education) and Article 24 (children's rights) of the ICCPR can be mentioned.

With regard to children's rights, it is important to stress here a relevant characteristic. The character of interrelatedness and interdependence of human rights creates an indissoluble link between all the provisions stating them. Thus, it is true that children's rights are developed with to address the peculiar condition of minor's vulnerability, to guarantee additional protect. Nevertheless, the perspective of future is unavoidably consequential. The rights of the child, in fact, are stated with the aim to avoid that disrespectful conditions of childhood would compromise the minor's correct growth and development. Consequently, policies involving minors' rights should be directed to plug disadvantaging gaps in order to effectively offer children equality in the enjoyment of rights, not only in the present but also in their future, as adults.

⁸⁷ See Commentary by: Doek, 2006.

⁸⁸ See Commentary by: Thorgeirsdóttir, 2006.

⁸⁹ See Commentary by: Cantwell & Holzscheiter, 2006.

⁹⁰ See Commentary by: Verheyde, 2006.

⁹¹ See Commentary by: Muntarbhorn, 2006.

In several occasions the adoption of policies inspired to human rights provisions actually decrease the targeted attention that unaccompanied migrant minors require. Being focused only on the “childhood”, national implementations fails both to address peculiar needs and to develop policies in perspective of the near adulthood. For this reason, Chapter III will focuses on the issues raised from the current Chapter, in order to translate the emerged specificities into indices for evaluation, monitoring and development of national policies.

CHAPTER III – A monitoring instrument to assess and improve national policies on unaccompanied migrant minors between 15 and 18 years of age.

Chapter II offered an overview of the most relevant elements that have a significant impact on needs of unaccompanied migrant minors above the age of fifteen. From the above analysis emerged that especially issues related to gender, evolving capacities and integration generate peculiar conditions, which are reflected in peculiar necessities.

To correctly address such necessities is (and should be) a priority for destination Countries, especially within the European Union framework. This commitment firstly arises, as already mentioned, from a correct implementation of policies in accordance with the deep dictate and scope of Human Rights norms. Additionally, the correct administration of unaccompanied migrant minors policies constitutes an invaluable resource for the hosting State to create and preserve the functioning of national (and European) society, granting a full participation of all individuals to economic, social and cultural life.

With this regard, indeed, a proper interpretation (and answer) of migrating children's demands represents the basis for a future positive involvement of immigrant adults in national social life. This process is commonly defined as "social integration", which "can be defined as the inclusion and acceptance of immigrants into the core institutions, relationships and positions of a host society"⁹². It is interesting to notice, once again, that the constitution of a positive connection between the immigrant person (the child, in this case) and the host State is essential for both subjects and it can be achieved only through their both involvement. Technically, social integration has been identified as an interactive process. "For the immigrants, integration means the process of learning a new culture, acquiring rights and obligations, gaining access to positions and social status, building personal relationships with members of the host society and forming a feeling of belonging to, and identification with, that society. For the host society, integration means opening up institutions and granting equal opportunities to

⁹² Bosswick & Heckmann, 2006, p. 11.

immigrants”. Thus, this bi-dimensional relationship is articulated in three phases: the State provides all immigrants with appropriate instruments to undertake their personal process of integration, immigrants achieve a position allowing them to approach national institutions, the effective access to institutions is granted by the State. In this process, the individuation and implementation of correct instruments by the Country of destination constitute the precondition to start the social integration process in itself.

The mentioned aspects are relevant when referring to unaccompanied migrant minors above the age of fifteen. In order to achieve a full social integration of minors, with positive consequences for both the child and the State, the latter should develop policies capable to create effective preconditions to allow the minor’s integration process. To reach this result, the State of destination should take in great account the dictate of international Human Rights norms, having regard to involved specificities and needs during implementation. For this reason, the definition of a monitoring instrument of national legislations can be extremely useful.

In this Chapter, elements identified as special needs of unaccompanied minors aged more than fifteen will be addressed from a technical perspective, in order to develop a mechanism for the evaluation of national policies. Starting from monitoring instruments developed at supranational level, and taking into account the human rights legislation on children’s rights, specific indicators will be defined and articulated. The objective is to create a standardized model of monitoring, assessment, amelioration and planning of national policies, which could be applied by any European Member State with regard to unaccompanied migrant minors’ administration.

III.1 – A specific Monitoring Instrument for unaccompanied migrant minors between 15 and 18 years of age: perspectives and objectives.

The project to develop a specific instrument to monitor national policies on unaccompanied migrant minors finds its first basis on the importance recognized, especially by the EU, to a monitoring approach for the evaluation of Member States’ implementation of migration Laws. Union measures, indeed, have been enacted to articulate procedures and mechanisms in this direction. On this regard, it is interesting

to mention the Council Decision 96/C 11/01 “on monitoring the implementation of instruments already adopted concerning admission of third-country nationals” and the Council Decision 96/749/JHA “on monitoring the implementation of instruments adopted by the Council concerning illegal immigration, readmission, the unlawful employment of third-country nationals and cooperation in the implementation of expulsion orders”. These documents are particularly useful for their contribution to identify modalities, instruments and objectives through which the monitoring activity should be performed.

In both Decisions the Council of the European Union indicates the use of a peculiar questionnaire as the tool designed to “*show how [Member States] have implemented the resolutions and acts already adopted by the Council*”⁹³. In addition, the two Documents contain practical information with regard to the content of the questionnaires, which will be briefly referred to in the following Section.

Besides the favour of EU to this type of observation of migration policies’ national management, two are the fundamental ideas upon which this project is based.

The first one is the concept of *affirmative action*⁹⁴. The exact meaning of this legal notion is particularly complex and debated. However, according to the most common interpretation, “affirmative action denotes positive steps taken [...] to improve the status of disadvantaged groups”⁹⁵. Several words have been used to indicate this approach, such as: *positive action*, *special measures* or *positive discrimination*. Regardless of the used terminology, however, emphasis is posed on the State’s intervention through the adoption of targeted measures - ensuring a preferential treatment to a specific group. The objective of State’s action is to remove existing

⁹³ Council of the European Union, Decision 96/C 11/01, Article 1.

⁹⁴ When approaching the concept of *affirmative action* it is important to note the distinction, which has been draw by several authors, between two kinds of affirmative action: the non-discriminatory affirmative action and the discriminatory affirmative action. Specifically, the second one “uses race, sex, religious, etc. discrimination as the mean for reaching policy objectives, while non-discriminatory affirmative action does not. It is the presence or absence of discrimination that distinguishes the two, not the goals of the measures. [...] Discriminatory affirmative action is absolutely prohibited by the absolute right of non discrimination”. Abramson, 2008, pp. 75, 80. In this Thesis, the term affirmative action solely refers to non-discriminatory ones.

⁹⁵ Joseph, Shulthz & Castan, 2004, p. 728.

barriers and, consequently, enable members of the addressed group to effectively enjoy the same conditions and rights of people not belonging to it.

This concept is for some aspects controversial, especially because of its strong connection with the Right of Non-Discrimination. This Right is recognized by all texts on HR and it is considered as a fundamental, general, principle of Human Rights⁹⁶. Its dimension is particularly broad and, as is has also be observed by the Committee on Civil and Political Rights, normative documents recognizing the Non-Discrimination Right “*neither define the term ‘discrimination’ nor indicates what constitutes discrimination*”⁹⁷. Nevertheless, its definition arises in connection to the principle of equality. Indeed, “it is widely accepted that equality and non-discrimination are positive and negative statements of the same principle. In other words, equality means the absence of discrimination, and upholding the principle of non-discrimination between groups will produce equality”⁹⁸. Being a general principle of Human Rights Law, Non-Discrimination is an absolute right: it cannot be interfered with, regardless of the public interests involved. However, “*not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate*”⁹⁹ under Human Rights norms. Consequently, affirmative action can be considered as falling within allowed differentiation of treatment when their application is instrumental to the creation of conditions for true equality among individuals.

The Committee on Civil and Political Rights itself recognizes this interpretation of the Right of Non-Discrimination in affirming that “*the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination*”¹⁰⁰. States'

⁹⁶ With regard to children, Abramson noted the following: “Generally speaking, people understand that human rights include children. In addition, because of their particular position, children have been given special provisions; moreover, the CRC can be considered *lex specialis* with regard to the Universal Declaration of Human Rights. And at the very beginning of the CRC, in Article 2, children have a *right not to be discriminated against*”. Abramson, 2008, p. IX.

⁹⁷ Office of the High Commissioner for Human Rights, 1989, paragraph 6.

⁹⁸ Weiwei, 2004, p.7.

⁹⁹ Office of the High Commissioner for Human Rights, 1989, paragraph 13.

¹⁰⁰ Idem, paragraph 10.

responsibility to adopt necessary affirmative action is reinforced by the relationship occurring with Human Rights law. In fact, as observed by Abramson, “the State has an inherent duty to take affirmative action: the State *must take action* to fulfil each right – it cannot remain passive [...]; and the action must be *affirmative* – the State cannot rely only on prohibited measures. [...] *Non discriminatory* affirmative action is not only lawful, it’s mandatory – whenever the well-being of any segment of society is lagging behind the rest of the Nation”¹⁰¹.

The Monitoring Instrument of national policies on unaccompanied migrant minors between 15 and 18 years of age that will be illustrated later in this Chapter is strongly founded on this principle. The recognition of specific needs of this group of young migrants, in fact, requires host States to intervene with proper and targeted actions, in order to grant them effectiveness of equality in their enjoyment of rights and protections. Peculiar needs, in fact, if not properly addressed, can easily lead to *de facto* discriminatory situation. Merely ensuring a general protection to migrating minors, without making opportune differentiations due to different status, not only may result insufficient to ensure rights but it also can lead States to violate Human Rights’ obligations. To evaluate if national legislations and implementation actually have proper instrument to give a correct answer to involved specificities of unaccompanied minors is a precondition for the improvement and integration of national norms. For this reason, monitoring can constitute a virtuous resource.

The second idea upon which the development of a specific monitoring instrument with regard to unaccompanied migrant minors’ national policies is based is the concept of *margin of appreciation*. This principle is strictly related to State’s sovereignty and Human Rights obligations, as it can be defined as “the power of a Contracting State in assessing the factual circumstances, and in applying the provisions envisaged in international human rights instruments”¹⁰². As it has been observed for the concept of affirmative action, also the margin of appreciation theory and its inherent meaning are currently debated. Some authors, indeed, underline the possible conflict between this

¹⁰¹ Abramson, 2008, p. 80.

¹⁰² Bakircioglu, 2007, p. 710. See also: Yutaka, 202.

principle and the universality of Human Rights laws. In the words of Benvenisti, liberally apply the margin of appreciation doctrine, interpreted as “based on the notion that each society is entitled to certain latitude in resolving the inherent conflicts between individual rights and national interests or among different moral conviction, [...] can undermine seriously the promise of international enforcement of human rights that overcomes national policies”¹⁰³.

With regard to this Thesis, however, a different perspective and meaning of the concept are relevant. The development of a specific Monitoring Instrument of national policies on unaccompanied migrant minors above the age of fifteen, is fact, is based on the idea that States have, to some extent, the opportunity to better intervene in the criticisms of their social life. Thus, the founding idea is that “each society is entitled to certain latitude in resolving the inherent conflicts between individual rights and national interests or among different moral convictions”¹⁰⁴. As a consequence, the accent is posed on national Institutions’ capability to positively approach and solve internal controversies, using local resources and strengths. In other words, centrality is recognized to the “measure of discretion allowed the Member States in the manner in which they implement the Convention’s [and other Human Rights documents’] standards, taking into account their own particular national circumstances and conditions”¹⁰⁵. This approach is consistent with the interpretation of the European Court of Human Rights, which both stresses the subsidiary nature of Human Rights provisions and states that “the national authorities remain free to choose the measures which they consider appropriate in those matters which are governed by the Convention. Review by the Court concerns only the conformity of these measures with the requirements of the Convention”¹⁰⁶.

Consequently, concerning unaccompanied minors, two aspects can be noticed: on the one hand, each State of destination faces different problematic situations and

¹⁰³ Benvenisti, 1999, pp. 843-844.

¹⁰⁴ Murat, 2008, p. 201.

¹⁰⁵ Idem, p. 202.

¹⁰⁶ Murat, 2008, p. 205. Reference to: “European Court of Human Rights, Belgian Linguistic Case, Judgments of 9 February 1967 and 23 July 1968, Series A Nos. 5 and 6 (1979-80) 1 EHRR 41- 252, Paragraph10”.

challenging aspects of the children's migration phenomenon; on the other hand, each State of destination disposes of different resources to address such situations and aspects. For this reason, this Chapter proposes an "open" monitoring mechanism, based on an auto-evaluative approach. The objective is to individuate results that each Country should ensure, to guarantee Human Rights protection of older unaccompanied migrant children, offering proper answers to their specific needs. The modalities and procedures through which such goals are achieved, however, remain in the hand of national administrative Institutions.

This approach could lead to a more efficient and effective protection of minors, as well as to a constructive uniformity, among Member States, with regard to their management of migration issues. An internal Monitoring Instrument that identifies general objectives creates the conditions to increase the value of national diversities, characteristic elements and specificities. Additionally, it facilitates harmonization and cooperation among MS.

This concept is of extreme importance especially in the framework of EU legislation on migration. Despite the absence of a uniform *supranationalisation* of migration policies at the European level, indeed, the Union is nowadays investing in strengthening the creation of a common legislation among Member States, firstly reinforcing their cooperation. Economical, cultural and political differences between States' histories had a strong impact on the development of internal norms on migration flows and made particularly difficult to share common standard. Consequently, "27 nations making up the European Union have their own laws regulating immigration and asylum, long considered a fundamental right of sovereign states"¹⁰⁷. Nevertheless, a process of harmonization has been started by the European Union, identifying cooperation as the basic pillar. Such cooperation has been initiated with the Maastricht

¹⁰⁷ Collett, 2010. See <http://www.migrationinformation.org/Feature/display.cfm?ID=768> (last consulted on 01/07/2012).

Treaty in 1992, and it has been continued (and incremented) through the Tampere program and the subsequent Hague Program and Stockholm Program¹⁰⁸.

In this context of progressive interaction among European Countries, the development of a specific Monitoring Instrument on unaccompanied migrant minors could give a significant contribution. As mentioned, it would not lead to the adoption of a common set of rules, whereas a common realization of objectives would be favoured. Moreover, the individuation of common achievements could significantly increment the possibility to reach common results. Therefore, the diminution of significant differences between States' experiences on unaccompanied migrant minors' administration could make easier the cooperation among them in the management of local and cross-borders criticisms, as well as the exchange of virtuous practices.

On the basis of the mentioned perspectives, and with the aim to reach the described objectives, the Monitoring Instrument that will be presented in this Chapter has been ideated and developed.

III.2 – Materials and Methods

The specific Monitoring Instrument for national policies on unaccompanied migrant minors above the age of fifteen has been elaborated having as a reference several elements. Specifically, supranational instruments, already produced both by the International Union and the European Union, have been considered. Relevant aspects of these policies and mechanisms have been extrapolated. It is important to notice since now that the reference has been made to instruments with different nature, which nevertheless constitutes the ground for further developments. The mechanisms to which mentions have been made will be briefly introduced in the following lines. In addition, the relevant aspects, indicators and inspirations will be pointed out.

¹⁰⁸ Specifically, “in the Presidency Conclusions of the 1999 Tampere European Council, the importance of cooperating with sending and transit countries in establishing a comprehensive approach to migration, addressing political, human rights and development issues was recognized”. Wiesbrock, 2010, p. 154.

III.2.a – European Framework

The first important reference has been the European legislation introducing monitoring instruments for the evaluation of Member States' implementation of migration laws¹⁰⁹. As illustrated, the two Council Decisions of 1996 are based on the use of questionnaires addressing Member States' policies. Decisions' provisions, therefore, manifest the Union's favour for this evaluative mechanism and leave space of the auto-evaluation. In fact, the nature of the questionnaire presupposes a first analysis made by State, subsequently evaluated by the Council. On the Country's auto-evaluative approach the Monitoring Instrument on unaccompanied migrant minors between 15 and 18 years of age is based.

In addition, the two Decisions contain indications on the sections through which evaluation is articulated. The Council proposes a simple structure, based only on four questions. Specifically, Council Decision 96/749/JHA, Article 2 identifies the following interrogations: *“provisions adopted during the preceding year by the Member States in any of the areas covered by [EU legislation]; any difficulties encountered in adopting such provisions; practical application of the aforementioned instruments and provisions; the likelihood of provisions in the areas referred to in the first indent being adopted in the near future”*. With little differences in wording, but similarly, Article 2 of Council Decision 96/C 11/01 states that *“the questionnaire shall refer to the following: provisions adopted during the preceding year by the Member States in any of the areas referred to by the instruments already adopted; difficulties in adopting those provisions; the possibility of any provision on those areas being adopted in the near future; application in practice of the instruments, irrespective of the adoption of internal provisions where appropriate”*. These questions have been taken in great consideration in articulating the monitoring questionnaire. Moreover, not only the dictate of the two provisions has been recalled, but also the idea of defining a pretty simple mechanism, which leaves space to States' experiences and realities. A clear model, indeed, facilitate its filling by the competent institution and strengths its efficacy.

¹⁰⁹ See: Chapter III.I.

Still referring to European Union's framework, it shall be underlined that peculiar mechanisms of assessment and indicators have not been developed in the framework of the regulation on unaccompanied migrant minors. Nevertheless, some elements are interesting and deserve to be pointed out. Firstly, attention shall be paid to the Annex of Council Resolution 97/C 221/03. It defines the obligation of Communitarian Countries in relation to measures to combat trafficking minors, stating that: "*Member States, mindful of the particular vulnerability of minors, should take all measures to prevent and combat the trafficking and exploitation of minors, and cooperation on this regard*". As mentioned in Chapter II, trafficking and exploitation, especially when involves sexual elements, is a sensitive issue with regard to unaccompanied migrant minors above the age of fifteen, especially female ones. Therefore, the Annex is relevant, as it not only requires States to intervene specifically, but also underline the importance of cooperation on this issue. These elements will recur in the proposed Monitoring Instrument.

The second Communitarian legislative document, which consultation has been of direct relevance for the articulation of the Monitoring Instrument, is the "Action Plan on Unaccompanied Minors (2010 – 2014)"¹¹⁰. The latter has been developed by the Commission after consultation with Member States and civil society organizations, taking into account researches and reports. On this basis, the European body approached unaccompanied migrant minors' issues with the aim to identify both problems and solutions. Specifically, some aspects have been considered by the Action Plan: legislative assessment and implementation; networking among Agencies and States; information raising; unsafe migration and trafficking (with attention to national external cooperation with both Member States and third Countries); reception and procedural guarantees in the EU territory, finding durable solutions. As emerges from a first look, most of the treated subjects are interesting with regard to special needs of migrating minors above fifteen years of age and have been considered for the development of the Monitoring Instrument.

¹¹⁰ European Commission, COM (2010) 213 final.

On unsafe migration and trafficking of older migrating children has already been said with regard to the Council Resolution 97/C 221/03: the same aspects recur in the Action Plan. Nevertheless, a couple of other elements shall be underlined. Firstly, the Commission's document identifies as transversal the necessity to reinforce data collection and exchange of information. These elements constitute a pre-condition to implement effective policies at the national level. Effectively, only through a correct individuation of the phenomenon and of its dimension, national administrations can intervene to guarantee protection. The second element contained in the Action Plan which deserves special mention is the Cooperation among Agencies, Member States and with Countries of origins (both those from which unaccompanied minors start their migration and those of which they have nationality). This aspect, despite not directly referred to the condition of children above the age of fifteen, is conceived by the Union as the prior direction in which European States have to move in the shortest period. For this reason, some references to this element will be founded in the developed Monitoring Instrument.

Beside the mentioned content, however, the Action Plan on Unaccompanied Minors' aim is "to provide concrete responses to the challenges posed by the arrival of significant numbers of unaccompanied minors in EU territory, while fully respecting the rights of the child and the principle of the best interest of the child"¹¹¹. To achieve this goal, the European Commission elaborated a mechanism based upon "three main strands for action: prevention, regional protection programmes, reception and identification of durable solutions. Protection and the principle of the best interests of the child have been mainstreamed throughout all actions"¹¹². This approach, which recognizes centrality to the principle of the best interest of the child, is the inspiring assumption and prerequisite over which this analysis is based. The idea in itself to define a special procedure to monitor and improve national policies on unaccompanied minors finds its origin in this principle.

¹¹¹ Idem, Section 6.

¹¹² Idem, Section 1.

Furthermore, also in the Action Plan the European Union confirms its preference for simple models of assessment and evaluation. As mentioned, this approach is followed also by this analysis.

Finally, the three steps in which State's policies should be articulated (namely: prevention, regional programmes, durable solutions) deserve some words. On the one hand, indeed, these elements appear consistent, even if not identical, to those individuated by the two Directives on migration's policies monitoring questionnaires, as they refer both to adopted provisions and to future enactments and solutions. On the other hand, however, the Action Plan makes an explicit reference to preventive actions: as a matter of fact, precautionary interventions are necessitated to address special needs of adolescent unaccompanied minors. For this reason, when relevant, this element has been included in the Monitoring Instrument.

III.2.b – Integration Indexes

A second group of inspiring documents, which have been used as reference for the project of the Monitoring Instrument, are those introducing Integration Indexes. These documents structure monitoring mechanisms to assess State's legislations on migrations, with specific regard to aliens' integration in the local society. Each mechanism has a different structure, through which norms and practical implementations are investigated and evaluated. Nevertheless, the individuation of indexes, on which basis the analysis is developed, constitutes a common element among them. This idea has been recalled for the conception of the Monitoring Instrument on unaccompanied minors above the age of fifteen. Moreover, the investigation of these documents offered an invaluable contribution to structure tools for data's evaluation.

The proposition of new Index Mechanisms on integration represents today a growing trend both at national and supranational level. Among the several existing, two have been taken in special account: they will be briefly illustrated in the following lines, and relevant indicators will be emphasized.

The first Integration Mechanism which has been deeply analysed is the one introduced by the Ministerial Conference on European Integration of 16 April 2010¹¹³. Specifically, this instrument is the results of the intentions emerged in the framework of the 1999 European Council of Tampere, dedicated to the creation of the so-called “Area of freedom, security and justice” of European Union¹¹⁴ and it is connected to the Communication of the European Commission “The Hague Programme: Ten priorities for the next five years Partnership for European renewal in the field of Freedom, Security and Justice”¹¹⁵. In occasion of the Ministerial Conference of 2010, among other things, Ministers agreed “*to promote the launching of a pilot project with a view to the evaluation of integration policies, [...] analysing the significance of the defined indicators taking into account the national contexts, the background of diverse migrant populations and different migration and integration policies of the Member States, and reporting on the availability and quality of the data from agreed harmonized sources necessary for the calculation of these indicators*”¹¹⁶. Thus to plan a monitoring instrument for the evaluation of immigrants’ integration policies has been introduced in the European Agenda.

Reading the dictate of the Declaration, some aspects of great importance emerge. Firstly, Ministers consider necessary to address not only different integration policies developed within national legislations, but also the inevitably different backgrounds and migration experiences of the foreign population. This, together with the definition of this project as “pilot”, can be read as a legitimization for the implementation of *ad hoc* instruments, which could better address delimited areas and situations. Secondly, the document’s wording suggests the scope of this project, whose implementation has been defined “*also important to promote evaluation mechanisms at local and regional level*”¹¹⁷. This provision opens the space for national management and assessment of

¹¹³ European Union, Draft Declaration, 2010.

¹¹⁴ For the Tampere European Council of 15 and 16 October 1999, Presidency Conclusions, see: http://www.europarl.europa.eu/summits/tam_en.htm (last consulted on 27/05/2012).

¹¹⁵ European Commission, COM (2005) 184 final.

¹¹⁶ European Union, 2010, Paragraph 15.

¹¹⁷ Idem, Paragraph 15.

collected data: the approach on which basis the Monitoring Instrument of national policies on unaccompanied minors above fifteen years of age has been developed.

Moreover, the Ministerial Conference led to the individuation of indicators to monitor national policies. Specifically, “*indicators refer to a limited number of simple, quantitative elements indicating important developments within vital fields of integration policy. The function of the indicator is to give an overview of, and the possibility to monitor the situation, and to indicate if something essential is happening, considering that integration is an ongoing process irrespective of different interventions*”¹¹⁸. Once again, what emerges is the will to establish simplified procedures and manageable evaluations. Consequently, Ministers identified four indicative areas (Index) to monitor the outcomes of national policies - employment, education, social inclusion and active citizenship. In addition, indicators have been individuated for each Index.

With regard to indicators, the Declaration specifies that they “*should build on broad political consensus to ensure independence of temporary policies as well as long and stable time series in terms of the collection of data. [...] [They should also be:] based on existing and comparable data for most Member States; limited in number; comparable in time; productive and cost-effective; simple to understand and easy to communicate; and focused on outcome*”¹¹⁹. These guidelines have been followed also for the drafting of the Monitoring Instrument which will be presented in the next Section of the current Chapter.

To conclude, some indicators of the area of Education are of direct interest with regard to unaccompanied minors above the age of fifteen: *highest educational attainment and share of early leavers from education and training*.

The second Index of Integration, which has been taken as a reference for the developing of the Monitoring Instrument for unaccompanied migrant minors above the age of fifteen, is the Migrant Policy Integration System III (MIPEX). This mechanism of assessment has been elaborated by the British Council and the Migration Policy

¹¹⁸ Idem, Annex.

¹¹⁹ Idem, Annex.

Group, with the participation of “37 national-level organizations, including think-tanks, non-governmental organizations, foundations, universities, research institutes and equality bodies”¹²⁰. MIPEX is conceived as “a fully interactive tool and reference guide to assess, compare and improve integration policy. MIPEX measures integration policies in all European Union Member States plus Norway, Switzerland, Canada and the USA up to 31 May 2010”¹²¹.

The mechanism is based on 7 policy areas (namely: labour market, mobility, family reunion, education, political participation, long-term residence, access to nationality and anti-discrimination), which are evaluated on the basis of 148 policy indicators¹²². The latter consist of questions, directly related to each of the policy areas.¹²³ Specifically, “using 148 policy indicators the MIPEX creates a rich, multidimensional picture of migrants’ opportunities to participate in society by assessing governments’ commitment to integration. By measuring policies and their implementation it reveals whether all residents are guaranteed equal rights, responsibilities and opportunities”¹²⁴.

Moreover, MIPEX is structured in order to offer an evaluation of policies: the answer of every question is estimated on a scale of three points. Three points are recognized when policies reach the higher standard of integration and equality; two points are recognized when high standards are not obtained but policies are on the right direction to reach it; one point is recognized for policies that are far from the achievement of high standards, or in case of absence of policies. As emerges, this integration’s instrument proposes a more articulated and detailed structure: on the one hand, in fact, its purpose is to accurately picture integration’s policies implemented by each State; on the other hand such analysis is not based on a self-evaluation by the

¹²⁰ For further information, see: <http://www.mipex.eu/> (last consulted on 28/05/2012).

¹²¹ *Idem*.

¹²² For the full list of MIPEX indicators, see: http://www.mipex.eu/sites/default/files/downloads/mipex_indicators_2010.pdf (last consulted on 28/05/2012).

¹²³ Policy Indicators “have been designed to benchmark current laws and policies against the highest standards through consultations with top scholars and institutions using and conducting comparative research in their area of expertise”. Huddleston, Niessen, Chaoimh & White, 2011, p. 7.

¹²⁴ Huddleston, Niessen, Chaoimh & White, 2011, p. 6.

State. However, in order to require a national Institution to currently adopt an assessing procedure, the latter should be based on a simple model: for this reason, the complexity of MIPEX has not been followed in the drafting of the Monitoring Instrument of this Chapter.

Nevertheless, the variety of indicators proposed by MIPEX offers a large assortment of indicators, many of which have been of great importance in consideration of adolescent unaccompanied migrant minors' matters¹²⁵.

To conclude, also in the case of MIPEX, the final objective is coherent with the aim of this Thesis's project. The System, in fact, has been elaborated in order to provide States with instruments for the evaluation of their policies, the comparison with virtuous realities and the improvement of national legislations: indeed, "integration actors can struggle to find up-to-date, comprehensive research data and analysis on which to base policies, proposals for change and projects to achieve equality in their country"¹²⁶.

The last Instrument which has been directly taken as a reference in the elaboration of the Monitoring Instrument presented in this Chapter is the Council of Europe's Recommendation Rec(2007)9¹²⁷ on "life projects for unaccompanied migrant minors"¹²⁸. As mentioned in Chapter I, the Recommendation introduces an innovative instrument to develop virtuous policies for migrating children: the *life projects*. Specifically, "*every project is based on a comprehensive, integrated and therefore multidisciplinary approach. [...] Every life project should take account of the child's*

¹²⁵ Thus, with regard to "labour market mobility", the following indicators have been specifically considered: Equality of access to education and vocational training, including study grants, Recognition of academic and professional qualifications acquired outside the EU, State facilitation of recognition of skills and qualifications obtained outside the EU, Equal working conditions, Active policy of information on rights of migrant workers by national level.

Access to compulsory-age education, assessment in compulsory education of migrants' prior learning and language qualifications and learning obtained abroad, support to access secondary education (targeted measures to increase successful participation in secondary education and access to academic routes that lead to higher education), access and support to access and participate in vocational training, provision in schools of intensive induction programmes for newcomer pupils, teacher training and professional development programmes, provision of option (in or outside school) to learn about minor's cultures and their Country of origin, measures to promote societal integration and indicators related to intercultural education: these are the indicators which have been considered of an higher relation with educational specific needs of unaccompanied minors older than fifteen.

¹²⁶ *Idem*, p. 9.

¹²⁷ Committee of Ministers of the Council of Europe, Recommendation Rec (2007)9.

¹²⁸ For technical details see Chapter I.2.

*specific situation. It should take account of several elements, in particular: the minor's personal profile [...]; the minor's migration itinerary [...]; the minor's family environment and particularly the nature of his or her family relations; the minor's expectations, wishes and perceptions; the situation in the Country of origin [...]; the situation in the host Country [...]*¹²⁹. Clearly, most of these elements contain those aspects elaborated in Chapter II as peculiar needs of unaccompanied migrant minors above the age of fifteen.

What is particularly meaningful in the Council of Europe's provision is that it requires States to implement projects on a singular, individual approach¹³⁰. This method, strengthening child's distinctiveness, would necessarily lead to more effective and efficient protections and guarantees.

Moreover, in the Paragraph on the conditions required to implement life project, the necessity to “*establish or reinforce procedures guaranteeing the identification and registration of unaccompanied migrant minors*”¹³¹ is stressed: as mentioned, the latter's correct identification (which comprehend a correct age assessment) is an unavoidable presupposition to ensure guarantees' efficiency. The same Paragraph introduces two important concepts related to educational and integration peculiar needs of unaccompanied minors older than fifteen. On the one hand, in fact, it state that “*the Member State should guarantee access for the unaccompanied migrant minor to classes in the language of the host country, to education and/or to appropriate vocational training on an equal footing with nationals. The minor should also have the possibility of entering the labour market*”¹³². On the other hand, it is recognized that “*where a minor involved in the implementation of his or her life project attains the age of majority and where he or she shows a serious commitment to their educational or vocational career and a determination to integrate in the host Country*”¹³³, he or she

¹²⁹ Committee of Ministers of the Council of Europe, Recommendation Rec (2007)9, Paragraphs II.7, II.8.

¹³⁰ “Life project should comprise individualized, open-ended objective which the minor undertakes to pursue”. Idem, Paragraph III.16.

¹³¹ Idem, Paragraph IV.22.

¹³² Idem, Paragraph IV.25.

¹³³ Idem, Paragraph IV. 26.

should be granted this opportunity with proper means. References to both these elements can be found in the Instrument that will be presented in next Section.

In addition, the Regulation stresses the necessity to follow the implementation with monitoring and revision of the projects. In order to achieve this objective, Authorities and professionals involved in unaccompanied minors' management are required to elaborate procedures for monitoring the practical implementation of each life project and dealing with difficulties. On this regard, some "space" is allowed for national individualities: "*these [monitoring] procedures may vary depending on the national circumstances*"¹³⁴. Nevertheless, defined time frames are required.

Finally, coherently with the other described instruments, also the Recommendation stresses the necessity to reach adequate levels of cooperation on policies and practices at every level: among national agencies, among European States, with third Countries. All these elements have been considered in the drafting of the Monitoring Instrument.

III.3 – A specific Monitoring Instrument for national policies on unaccompanied migrant minors between 15 and 18 years of age.

The analysis elaborated in Chapter II and the study conducted in the previous Section led to the development of a "Specific Monitoring Instrument for national policies on unaccompanied migrant minors above the age of fifteen".

As mentioned, this Instrument is based on the two ideas of *affirmative action* and *margin of appreciation*, interpreted in accordance with the meaning described above. Specifically, the Monitoring Instrument is aimed at maximizing protection guaranteed by Member States to unaccompanied child located on their territory. On the one hand, in fact, it facilitates State's evaluation of existing instruments; on the other hand, it individuates both objectives and areas where focused intervention is necessary. Thus, on the basis of the results emerging from the Monitoring Instrument's application, each Country is not only provided with the assessment of existing policies, but also with an

¹³⁴ Idem, Explanatory Memorandum, Paragraph V.iii. 27. For a practical implementation of Life Projects, consult: Drammeh, 2010.

overview of regulatory failures (which should be plugged). . The ultimate purpose of this Thesis, in fact, is to offer States an instrument to strength laws and implementation of projects, calibrated on the specificity of this category of unaccompanied minors above 15 years of age. Moreover, proper and virtuous management of the migration phenomenon, specifically with regard to migrating minors, would be an inestimable advantage not only for children, but also for the host State. The correct individuation of criticalities and the subsequent, coherent, articulation of targeted norms would entail a higher efficiency of policy from a social, cultural and economical perspective.

The proposed mechanism is articulated in a targeted questionnaire, simply designed, to be filled by each Member State.

Specifically, to fully exploit its potency, the Monitoring Instrument has been thought to be implemented at programmed regular intervals of time. On this regard, suggestions to States can be advanced, on the basis of the assumption that the analysis of questionnaire's answers can be useful to evaluate what has already be done and achieved, to identify the existing gaps and to elaborate further policies. Consequently, the Monitoring Instrument can be conceived as a preliminary step in the procedure of legislative drafting. To this end, two alternative solutions are proposed: the assessment could be placed at every time there is a new Government's installation, or with fixed rate, after certain amount of years. In the first case, each Government would have the occasion to define what has been done by the previous legislature, in order to develop subsequent interventions: great relevance would be given to the political approach. In the second case, time to procedures and legislations would be left to manifest their impacts and effectiveness, irrespectively of Governments' succession: this approach would stress the technical management of the phenomenon. Additionally to one of the two solutions, a third periodicity is proposed: an annual assessment, in order to calibrate and redirect implemented policies.

With regard to the practical use of the Monitoring Instrument, it is important to spend some words on the subject designated to answer questions and analyse results. It has been stressed several time the auto-evaluative nature of the mechanism. Consequently, its practical use can be designed, by the State, as a tool of the Institutions

responsible for unaccompanied migrant minors' management. Nevertheless, each Country is free to eventually identify "external" subjects, other than the Public Administration, to collect data and assess results.

Finally, it is extremely important to underline that the Monitoring Instrument for national policies on unaccompanied migrant minors between 15 and 18 years of age has not be conceived as an exhaustive tool. This assumption shall be read on a double direction. On the one hand, this Instrument has been developed on the basis of the analysis on Children's Human Rights and unaccompanied migrant minors' needs, focusing on a specific age range and on specific aspects. The proposed Monitoring Instrument is the result of this analysis. The latter, however, did not consider the whole phenomenon and all its elements. Consequently, areas covered by the questionnaire are limited. On the other hand, the proposed Monitoring Instrument is not exhaustive because, to express its effectiveness, it requires a prior, virtuous, intervention of States to guarantee general rights to the whole category of unaccompanied children. Basic protection and guarantee of rights, in fact, are taken for granted, as the unavoidable precondition for further development, which must be ensured by every State¹³⁵. Effectively, the State which has been considered as a reference for the Instrument's drafting is a virtuous State, where the rights of a child are fully ensured and guaranteed to migrating minors.

Moving from these assumptions, the following Monitoring Instrument of national policies on unaccompanied minors between 15 and 18 years of age has been developed:

¹³⁵ An overview of "Minimum guarantees for unaccompanied minors" is offered by Council of the European Union, Resolution n. 97/C 221/03, Article 3. Among these, the Resolution identifies: establishment of a minor's identity, collection of information, entitlement to necessary protection and basic care irrespective of legal status, family trace, representation and guardianship, access to education and school, appropriate medical treatment.

Does your country provides for actions on the following areas?	YES through State's legislation	YES through regional or municipal legislation	YES through practical implementation in absence of normative framework*	NO	
Gender e sexuality					
policies of prevention and contrast of female sexual exploitation/prostitution					
implementation of suitable alternatives to illegal circuits					
targeted training of social workers					
targeted psychological assistance on sexual exploitation and pregnancy					
targeted gynaecological, health and social care					
targeted sexual education					
Integration Policies					
targeted cultural integration (access to language education; appropriated education and/or vocational training)					
intercultural education (option in/outside school to learn about the minor's culture and country of origin)					
teacher training for specific teaching methods and targeted educational programs					
targeted programs to enter the labour market					
granted opportunity to remain in the host country at the majority age (in case of the minor shows serious commitment to its educational career/vocational career/integration)					
targeted actions for interactive integration					
Evolving capacities					
account of the child's specific expectations/situations					
assessment of minor degree of maturity (consequence of migration experience)					
appropriate involvement of unaccompanied migrant minors in the decision making process					
targeted actions to promote/reinforce capacities and competencies					
Transversal Policies					
collecting data					
cooperation with national agencies					
cooperation among member states					
cooperation with third countries/country of origin					
	Value:	3	2	1	0

* i.e. developed by associations, organizations, private actors, other agencies, etc.

Evaluative table:	
0-9	no efficacy
10-24	insufficient efficacy
25-39	scarce efficacy
40-49	average efficacy
50-60	adequate efficacy

Annex 1

As it can be observed, the Monitoring Instrument is articulated in four sections: gender and sexuality, integration policies, evolving capacities and transversal policies. The first three are those areas, deeply analysed in Chapter II, characterized for a direct impact on the reference group: specificities emerging in these areas are reflected in peculiar needs emerging in relation to the condition of migrating children during adolescence. The fourth section, on the contrary, refers to aspects not preferentially connected to the analysed age range. Nevertheless, these aspects have distinctive direct impacts on policies on unaccompanied minors aged more than fifteen, and need to be considered together with specifically targeted ones. Transversal policies should be considered having regard to this segment of the migrating population.

For each area, indicators have been identified¹³⁶. The indicators have a double role. Firstly, they indicate the level of protection's effectiveness offered by the State to unaccompanied migrant aged between fifteen and eighteen years. In order to achieve this objective, each State's response is matched by a pre-defined score. Through the result of the scores' sum, national level of efficiency is calculated. Secondly, the indicators contribute to paint the picture of protections offered to adolescent migrating children by each State. The total twenty identified indicators represent those areas where targeted and timely intervention of governments is necessary to ensure effectiveness to protection. Through the response to the questionnaire, therefore, States are facilitated in finding areas where legislation is lacking or absent, in order to develop virtuous policies.

Concerning the four types of possible questions, it should be firstly underlined the choice to simplify the questionnaire's structure to strength its efficiency. For each possible answer, a score is given. Specifically: 3 points are recognized in case of existing policies in consequence of State's legislation; 2 points are recognized when policies are provided only by regional or municipal norms; 1 point is designated to interventions which are not supported by laws at any level (it is the case, for example, of actions developed by NGOs, private actors or organizations, religious institutions, etc.); 0 points are assigned to those areas, for which any policy has been implemented.

The score has been defined on the basis of several reasons. On the one hand, it is believed that every action and intervention to protect children's rights can have more vigour, and offer more guarantees, when it is supported by legal sources providing for both establishment and implementation. On the other hand, a centralized articulation of minors' rights and guarantees offers higher levels of equality and harmony among national regions and territories.

With regard to the four possible answers, it should also be noticed that they do not include any merit's assessment about ways and means through which results are

¹³⁶ It can be noted that the Monitoring Instrument identifies a small number of indicators. This choice has been inspired by the tendency, shown by the existing monitoring instrument, to articulate a simple structure, easy to understand and to fill.

pursued by Member States. As mentioned earlier in this Chapter, it is the result of a conscious choice. The “free space” left by the questionnaire is designed not only to permit but also (and especially) to support different interventions by each Nation (in view of both the availability of different sources and the typology of phenomena they face).

As mentioned, the sum of the results obtained by each State is indicative of the overall effectiveness of national policies for the protection of unaccompanied children aged between 15 and 18 years. To this end, five areas of results have been identified: local policies are therefore regarded as ineffective, with insufficient efficacy, with limited effectiveness, with average efficacy and with adequately high efficacy. It is possible to note that three groups or results out of five are qualified as unsatisfactory (specifically, where the State’s score is between 0 and 39 points); while only two sets of results refer to policies positively judged. The choice has been consciously made and it is justified on the basis of the idea mentioned above. The effectiveness of protection, indeed, is subjected to an (at least satisfactory) articulation of legislative norms – centrally or peripherally developed. Guarantees and procedures not supported by legislative structure, although operative, do not provide sufficient protection – especially in consideration of their durability and of homogeneity’s need in the Country. The sets of results, as conceived, show the average level of State policy in the area: it can be the results of actions all having the same nature and characteristics, or by the presence of different types of intervention in the four areas.

III.4 – Final considerations

The proposed Monitoring Instrument for national policies on unaccompanied migrant minors has been developed on the basis of a circumscribed analysis on peculiar needs, with regard to unaccompanied migrant minors belonging to a specific age range (15-18 years old). Following the results of the investigation, the intention has been to imagine, project and design a practical tool, which could be used by States to improve effectiveness of their policies. Indeed, being able to give a proper answer to adolescent unaccompanied minors shall not only being conceived by States as the fulfilment of

Human Rights' obligations, but also as entailing positive consequences for all subjects and actors involved.

The Monitoring Instrument has been developed moving from existing mechanisms: for this reasons, many common elements can be founded between the proposed questionnaire and those already operating. On the one hand, through this approach, the most functional and efficient aspects of existing monitoring instruments (especially with regard to indicators and evaluative tools) have been considered and are a constitutive part of the new system. On the other hand, to use already known mechanisms contributes to simplify both comprehension and utilization of the proposed Monitoring Instrument by governmental actors (who are called to actually implement it).

The objective is, secondarily, to contribute to the harmonization of international landscape on migration policies, especially with regard to unaccompanied migrant minors. To reach this goal, not only common purposes should inspire States' intervention, but also common mechanisms of evaluation and assessment should be implemented. The Monitoring Instrument proposed in these pages, with its "free space" and large categories, is aimed to facilitate both results.

Despite resulting from a punctual analysis, the Monitoring Instrument is at its initial drafting phase. Consequently, it's efficacy and utility need to be tested. In the following Chapter, the developed mechanism will be applied to Italy. It will be verified whether, and how, it can constitute a virtuous tool in migration policies, with specific regard to unaccompanied migrant minors above the age of fifteen. Moreover, Italian legislation on migration children will be investigated, both evaluating national existing policies and identifying areas where further intervention is necessary or desirable.

CHAPTER IV- The case study of Italy

In this chapter, Italian approach to unaccompanied migrant minors' policies and legislation will be analysed. The choice to focus on the peculiar condition of this State follows some considerations.

Firstly, Italy is a relatively new Country of immigration: "Italy is a country with a long history of emigration and a very short experience of immigration"¹³⁷. From a large tradition of movements outside its borders, in fact, in recent years the State became one of the main destinations of migration flows travelling to Europe. Due primarily to economic reasons (both slow development of national economy and contemporary economic growth in other Countries), "during the period 1861-1976 over 26 million people emigrated [from Italy], half of them towards other European countries, the rest towards North and South America"¹³⁸.

The reversal of trend – from emigration to immigration – emerged from the '90s and it has been characterized, since its first appearance, by several elements. The national legislation dealing with the phenomenon does reflect its complexity: Italian legislation deals with an immigration experience extremely multifaceted.

"Today, immigration poses several challenges to Italy. Its southern border has made it an easy target for undocumented immigrants. Regional conflict has fuelled an increase in those seeking work and asylum in Italy and, from there, other countries. Meanwhile, non-traditional sending countries to Italy are providing a growing number of immigrants, further diversifying Italy's immigrant population"¹³⁹.

Secondly, during the last 10 years Italy received unpredictable and increasing migration flows. From the analysis of data, the following process emerges: until the mid-80's, the immigration experience remained relatively unalterable, with a growth of immigrant population constantly on a rate of 7%. Breaking this trend, in the '90s the phenomenon significantly augmented, moving from an average of around 500 thousand to over 1 million alien citizens on the national territory. However, the real change is

¹³⁷ Del Boca & Venturini, 2003, p.1.

¹³⁸ Idem, p.1.

¹³⁹ Hamilton, 2002.

traceable after mid-2000, when the foreign population more than doubled from 2 million (in 2004) to 4 million (2004). Statistics show that in 1990 migrating individuals amounted to the 1.4% of Italian population: this percentage fell over 3% in 2004, over 4% in the following year and became certifiable around 5% in 2007 – with a steady growth¹⁴⁰. In 2011, the immigrant presence in Italy overcame 4.3 million of individuals.

The mentioned elements have a direct impact on unaccompanied migrant minors' conditions and administration in Italy. Therefore, in those years when Italy definitively became a Country of immigration, migrating children became a significant and stable component of the immigrant population residing in the State.¹⁴¹ Specifically, “in Italy, the question of [unaccompanied minors'] reception and protection has been addressed since the late nineties, in consideration of the great impact it has on local welfare system; special attention has also been paid to the observation of the phenomenon's evolution”¹⁴².

The above-mentioned elements make Italy an interesting Country to analyse. On the one hand, this State presents a high percentage of immigrant population and, consequently, of unaccompanied migrant minors. On the other hand, relatively new interventions have been (and are) developed in recent years to address the phenomenon.

The application of the Monitoring Instrument to this national framework is useful both to identify strengths and weaknesses of national policies and to test the instrument in its practical application. To achieve these results, therefore, to analyse Italy's experience could be attractive and profitable. Moreover, it could represent the starting point for further evaluations and developments.

¹⁴⁰ Data from: Ministero del Lavoro e delle Politiche Sociali, Comitato per i Minori Stranieri, 2011, pp.2-3; Ministero dell'Interno, 2007, pp. 52 -58.

¹⁴¹ This circumstance characterizes the global scenario: as introduced in previous Chapters, at the international level migrating children are always more protagonists of a new migration processes. Especially in the last ten years, the presence of unaccompanied migrant children has become a common factor of migration flows: their numbers have dramatically increased in many Countries and they are a target segment of the population seeking protection (and asylum). As a consequence, both central legislations and regional policies have been developed.

¹⁴² Associazione Nazionale Comuni Italiani, 2009, p.9.

IV.1 –Data and national normative framework

In 2011, 62,692 migrants arrived in Italy by sea. Of a total of 4,499 children, 290 were unaccompanied migrant minors, while the others 4,209 had a different status.

Most unaccompanied migrant minors arrived on the coast of Sicily (3309) and in particular in Lampedusa (2737)¹⁴³. Specifically, according to the information provided by the Italian Ministry of Labour and Social Policy, Directorate General for Immigration, considering the period of 2011 updated at the 31st December 2011, 7.750 unaccompanied migrant minors have been tracked and registered in Italy. Of them, 5959 (76.9 %) are still present on the territory at the reference date, while 1791 children (23.1 %) result untraceable. Among the presents, only 350 (4.5%) are females, where the highest percentage (72.4%, with a number of 5609) are males; proportionally, the untraceable children are 67 (0.9%) girls and 1724 (22.2%) boys.

In addition, the ministerial report addresses and illustrates the distribution by age. According to the data, therefore, among the presents only 564 (7.3%) are aged between 0 and 14 years: the remaining 69.6 % (5395 presences) is composed by children above the age of fifteen. The concentration of age is registered also with regard to untraceable minors: as predictable, among the 23% of untraceable unaccompanied children, only 2% are under 15 years, while the remaining 21.1% (in total, 1637 individuals) are older¹⁴⁴. With regard to the mentioned data on unaccompanied migrant minors, a significant concentration in the age group between 15 and 18 years manifestly emerges. “This finding suggests that these may be ‘economic migrants’, on which family invested and whose migration project is, in these cases, characterized by both desire and need to work”¹⁴⁵.

Finally, among the registered elements, the Ministry report documents the typology of placement. On this regard, it is really important to notice that almost all of the present unaccompanied minors are housed in reception centres (66.1%): this is,

¹⁴³ Gruppo di Lavoro per la Convenzione sui Diritti dell’Infanzia e dell’Adolescenza, 2010, p. 110.

¹⁴⁴ All data are from: Ministero del Lavoro e delle Politiche Sociali, Comitato per i Minori Stranieri, 2011. For further information consult: http://www.lavoro.gov.it/NR/rdonlyres/E9268A95-5406-439A-B513-29AD15B4ABA0/0/REPORTMSNA_31_12_2011.pdf (last consulted on 18/06/2012).

¹⁴⁵ Save the Children Italy, 2010, p. 16.

indeed, the preferred (almost unique) mode of reception adopted by the national legislative system.

Coherently with the European framework, the definition of unaccompanied migrant minor has been recently developed by Italian legislation. Specifically, a punctual description of this concept can be founded in the dictate of Article 1 of the Decree of the President of the Council of Ministers (D.P.C.M.) n. 535/1999. The legislation, however, makes a distinction between unaccompanied migrant minor *present* in the State's territory (paragraph 2) and unaccompanied migrant minor *temporarily received* in the State's territory (paragraph 3). The first concept refers to "*minor*¹⁴⁶, *not having Italian citizenship or other of the European Union, who, not being an asylum seeker is for any reason within the territory of the State without assistance or representation from parents or other adults legally responsible on the basis of laws in force in the Italian legislation*". On the other side, "temporarily received minors" are those who, fulfilling the same above mentioned citizenship conditions and being over the age of six years, "*came in Italy under temporary care of solidarity programs sponsored by institutions, associations or families*". Despite the similarity of words used by the legislator, the second category (of temporarily received minors) presents characteristics profoundly different than the first one. In this analysis the term "unaccompanied migrant minors" is used having exclusively regard to the first meaning.

Moreover, it shall be underlined another element emerging from the normative dictate: minors who, despite being unaccompanied, are EU citizens or asylum seekers are not included in the definition¹⁴⁷.

With regard to requirements qualifying "unaccompanied migrant minors" under national law, the Italian legislation indirectly refers also to the (il)legality of their status

¹⁴⁶ According to Article 2 of the Italian Civil Code, "*the age of majority is fixed at the age of eighteen years. With the majority age the ability to perform all acts, for which a different age, is established is acquired*". Moreover, according to Article 42.2 of the Law n. 218/ 1995, "*the norms contained in the Hague Convention of 1961 also apply to persons deemed as minors only by their national law*". Therefore, the protection for minority age is extended when more favorable.

¹⁴⁷ Unaccompanied minors who are EU citizens or applying for asylum protection are not covered by Italian legislation on unaccompanied migrant minors (consequently, they are not covered by this analysis).

(alluding to “any reasons” of their presence in the national territory). This segment of the norm shall be read in conjunction with Article 19 of the Legislative Decree (D.L.) 286/1998, which states the principle of *non-refoulement* of foreign children: according to the provision, it is forbidden the deportation of a minor, irrespectively of its legal status¹⁴⁸. Consequently, unaccompanied migrant minors are entitled to obtain a residence permit (on the ground of “minority age”) valid until the age of eighteen years. Additionally, Article 11 of D.P.R. n. 394/1999 provides for the issuance of an additional residence permit for integration, after consultation with the “Committee for Foreign Minors” (Comitato per i Minori Stranieri – CMS)¹⁴⁹.

Specific (and special) legislative protections guaranteed, by the Italian legislator, to unaccompanied minors find their legal justification in the relevance of International and Communitarian dispositions peculiarly concerning Children’s Rights. Specifically, the CRC has been ratified and implemented by Italy through Law 176/1991. Following these dispositions, minors (and, among them, unaccompanied migrant minors) are guaranteed with a wide set of protections: “foreign minors in Italy are granted the right to education, to health care and to the same labour protections as for Italian minors (including the prohibition of working if the minor is below 16 years of age and has not yet fulfilled school obligations). Moreover, unaccompanied minors are legally granted special protection and assistance, such as accommodation in a safe place, the principle of non-refoulement, the right to a ‘minor age’ residence permit and the possibility of recurring to guardianship or foster care”¹⁵⁰.

In consideration of the peculiar conditions of unaccompanied migrant minors, a specific procedure has been developed in Italy in order to guarantee protection to these

¹⁴⁸ Exception to this principle can be justified by reasons of public order and state security. In these cases, however, the Juvenile Court is the body in charge to eventually enforce the expulsion.

¹⁴⁹ Further information on the Committee for Foreign Minors will be provided later in this paragraph.

¹⁵⁰ European Migration Network Italy, 2009, pp. 11 - 12.

children¹⁵¹. The procedure is articulated over three aspects: identification, care and identification of family members¹⁵².

The process¹⁵³ starts when the child's presence in the national territory has been officially reported. Therefore, Public Officials¹⁵⁴, Public Service Providers and other agencies, especially of health and care, have an obligation to report the presence of unaccompanied migrant children to the Committee for Foreign Minors, by filling a specific form¹⁵⁵. In addition, the presence of unaccompanied minors shall be reported to the Public Procurator at the Juvenile Court and to the Tutelary Judge.

The first of the mentioned aspects - identification - takes place contemporaneously with the first identification: according to the procedure, indeed, to ascertain the identity of the child¹⁵⁶ is entrusted to the Public Authority, which exercise this duty in cooperation with the competent diplomatic-consular representatives. The same Public Authority is in charge to provide the minor with the above-mentioned residence permit for minors, which is valid until the completion of family tracing procedures.

With the closure of identification's procedures, the second phase - the child's care - takes place. This stage comprehends several different elements, which are: placement of the child, residence, custody and (legal) guardianship. Specifically, Municipalities are responsible to minor's care, for which they provide through the

¹⁵¹ For further information, see:

http://www.lavoro.gov.it/Lavoro/md/AreaSociale/Immigrazione/minori_stranieri/Minori_stranieri_non_a_compagnati.htm (last consulted on 20/06/2012).

¹⁵² Italian procedure on unaccompanied migrant minors is particularly complicated. In these pages it will be presented in its simplified form. Moreover, it should be noted that the procedure's complexity is amplified by its practical implementation: indeed, while developing each phase, different competent authorities, operating in different part of Italy, makes exceptions and derogations from the official (however not legally defined) process.

¹⁵³ It is important to underline, again, that this procedure applies only to unaccompanied migrant minors who do not submit an application for asylum protection.

¹⁵⁴ On this regard, Law n. 184/1983, Article 9 states that “*anyone may report to Public Authorities a situation of child's neglect*”.

¹⁵⁵ Form for the monitoring of unaccompanied migrant minors:

<http://www.lavoro.gov.it/NR/rdonlyres/DAF165E8-4616-4494-A577-C5FD4DA17D9F/0/schedacensimentariaminoristranieri.pdf> (last consulted on 19/06/2012).

¹⁵⁶ The identification of the child covers several aspects, among which: age, personal data, documents, means of arrival in Italy, ascertainment of citizenship, presence of any relatives in Italy. The aspects concerning age are of particularly importance as they constitute, as explained, the pre-condition for the application of the *non-refoulement* principle.

activation of emergency reception services. The latter are aimed at ensuring: unaccompanied minors' rights defined by both national and international laws; the regularization of the legal status of the child; the progressive independence of the child, and its inclusion in the social environment. Minor's housing is one of the most important aspects characterizing this phase. According to the dictate of the Article 2 of Law 184/1983, *“the child temporarily deprived of a family environment may be entrusted to another family, a single person or a family-type community; however, if it is impossible to provide foster care, it is allowed the admission of the child in an institution of public or private care”*. The data illustrated in the first part of this Paragraph clearly show the preference for the second modality of assistance of unaccompanied minors. After receiving the child, institutions of care are required to periodically update the Tutelary Court with relevant information on housed minors. The responsible Tutelary Judge makes inspections in Centres (both public and private) and reports to the Juvenile Court on minors' conditions.

Finally, the third phase - family tracing - is developed by the CMS. This moment starts with a preventive collection of data and telephone numbers of parents and relatives in the Country of origin (or third Countries), in order to launch subsequent family studies. The latter has been defined as a “socio-economic investigation” with the scope to know the child's origin environment (family, school, work) and, in consideration of the collected information, develop an integration project in Italy or an eventual re-integration program in the Country of origin¹⁵⁷. To develop the investigations, the Committee “concludes agreements, on the one hand with national humanitarian organizations or associations or, on the other hand, with international ones, in order to implement programs aiming to track down the unaccompanied minor's family in his country of origin. This kind of research, carried out in the best interest of

¹⁵⁷ The re-integration of the minor in its Country of origin is a very complex issue. Despite being really interesting, this aspect will not be covered by this analysis. Nevertheless, it is important to underline that this possibility is merely voluntary, as it necessitates of the preventive approval of the involved child. The relationship between this procedure and Human Rights guarantees and obligations is really debated. Here it is sufficient to recall that the implementation of such procedures through modalities effectively consistent with the human rights' dictate cannot be taken for granted.

the minor, must be absolutely confidential, in order to protect the safety of the minor who applies for international protection (D.L. n. 140/2005)”¹⁵⁸.

In order to provide a comprehensive legal and procedural framework, further words need to be spent to briefly introduce and describe role and functions of the Italian Committee for Foreign Minors. Actually, CMS is a central body in the Italian system of management and administration of policies concerning unaccompanied migrant minors. The Committee is an inter-institutional organ, which has been instituted by Article 33 of D.L. n. 286/1998¹⁵⁹. CMS has been recognized responsibilities “*in order to supervise the arrangements for stay of foreign minors temporarily admitted to the territory of the State and to coordinate the activities of the authorities concerned*”¹⁶⁰. Subsequently, D.P.C.M. n. 535/1999 has been enacted to define modalities and tasks governing CMS’s activities. The Committee is today composed of nine members, each of them representing the following Institutions and Organizations: the Ministry of Labour and Social Policies¹⁶¹, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Interior, the Union of Italian Provinces (UPI), the Italian Municipalities Association (ANCI), the United Nations High Commissioner for Refugees (UNHCR) and Fondazione Aiutiamoli a Vivere (a relevant association). According to the dictate of national legislation, the Committee exercises several functions. “The Committee for Foreign Minors is therefore in charge of overseeing: the residence conditions of minors, the cooperation with the involved administrations, the verification of the unaccompanied minor status, the implementation of the assisted return procedure and, finally, the census of unaccompanied minors on the territory”¹⁶². Concerning unaccompanied migrant minors above the age of fifteen years, CMS is in charge of some tasks and procedure which are particularly relevant for this analysis and which will be recalled later in this Chapter.

¹⁵⁸ European Migration Network Italy, 2009, p. 14.

¹⁵⁹ The Committee for Foreign Minors replaces the former Committee for the Protection of Minors, which was established by the Presidency of the Council of Ministers in 1994.

¹⁶⁰ D.L. n. 286/1998, Article 33.1.

¹⁶¹ The representative of the Ministry of Labour and Social Policies also holds the office of President of the Committee for Foreign Minors.

¹⁶² European Migration Network Italy, 2009, p. 11.

As emerges from the briefly described legislations, Italy does not provide an organic legislation on unaccompanied migrant minors. Consequently, policies and procedures result from a composite and fragmented set of Laws and Legislative Decrees. Moreover, unaccompanied migrant minors are covered both by legislations on migration and by legislation on children – which have, of course, different scopes and objectives. This approach, analysed from Human Rights perspective, seems to be in itself not fully consistent with the principle of legal certainty¹⁶³. Consequently, the Country should define an organic Law on migrating minors, which would contain specific disposition regarding unaccompanied ones, in order to strength both structure and functioning of the whole system of protection, assistance and integration.

IV.2 – Application of the Monitoring Instrument to Italy

On June 2012, the Monitoring Instrument proposed in Chapter III has been applied to Italy. Specifically, the Instrument has been proposed to the Italian Ministry of Labour and Social Policies, Directorate General of Immigration¹⁶⁴. The questionnaire has been presented to the Division's representatives: Dott.ssa Stefania Congia, Executive of

¹⁶³ Although not being expressly defined by any of the Human Rights normative instrument, legal certainty appears to be an *a priori* common condition, instrumental for the effectiveness of protection¹⁶³. UDHR, ECHR, and CFREU explicitly recall the centrality of the rule of Law principle. The UDHR preamble affirms that “it is essential [...] that Human Rights should be protected by the rule of Law”. Moreover, both ECHR's and CFREU's preambles consider it as one of the common heritage among the Governments of the European Countries; the actual basis, together with democracy, on which the EU is founded. Moreover, according to the principle of rule of Law, States are required to develop their policies through clear legislations that shall have, among others, characteristic of certainty for its addressees. These elements suggest an implicit obligation, for the States, to define policies on issues affecting Human Rights through normative instruments sufficiently clear to ensure legal certainty to the recipients of the Rights. Within the Italian national normative framework on unaccompanied migrant minors, this principle doesn't seem to be fully granted because the procedures are the result of a composite legislation, often confusing and overlapping.

¹⁶⁴ The Directorate General of Immigration is in charge of dealing with the phenomenon of immigration especially in two respects. On the one hand, it regulates the entry for work of non-EU citizens, annually programming of entry flows of immigrant workers; consequently, it is in charge of the management and monitoring of quotas allocated at local level, training, update of specific lists of foreign workers, bilateral cooperation with Countries of origin. On the other hand, this body is in charge of coordinating social integration policies, both through implementation of measures promoting integration of immigrant people in the Italian society (i.e. cultural mediation, language courses, civic education, etc.), and through participation in international dialogue tables. In addition, the Directorate also cooperates with the Committee for Foreign Minors, with special attention on issues related to unaccompanied migrant minors. The Committee is also in charge of specific procedures developed with regard to unaccompanied migrant minors in consequence of the North Africa crisis. For further information, see: <http://www.lavoro.gov.it/Lavoro/md/AreaSociale/Immigrazione/> (last consulted on 28/06/2012).

Division IV (in charge of policies of integration and protection of foreign minors)¹⁶⁵, and Dott. Stefano Scarpelli, Vice-President of the Committee for Foreign Minors. The Monitoring Instrument has been submitted together with a short, unofficial explanation on the different areas. Two were the intentions behind this approach. On the one hand, to analyse the Italian administration on unaccompanied migrant minors with specific attention to those aged above fifteen years. On the other hand, the Monitoring Instrument has been tested in its practical implementation.

In the same month, the ministerial body answered sending back the questionnaire, filled in almost all its parts.

Does your country provides for actions on the following areas?	YES through State's legislation	YES through regional or municipal legislation	YES through practical implementation in absence of normative framework*	NO	
Gender e sexuality					
policies of prevention and contrast of female sexual exploitation/prostitution	X				
implementation of suitable alternatives to illegal circuits			X		
targeted training of social workers			X		
targeted psychological assistance on sexual exploitation and pregnancy			X		
targeted gynaecological, health and social care			X		
targeted sexual education				X	
Integration Policies					
targeted cultural integration (access to language education; appropriated education and/or vocational training)	X				
intercultural education (option in/outside school to learn about the minor's culture and country of origin)			X		
teacher training for specific teaching methods and targeted educational programs		X			
targeted programs to enter the labour market		X			
granted opportunity to remain in the host country at the majority age (in case of the minor shows serious commitment to its educational career/vocational career/integration)	X				
targeted actions for interactive integration					
Evolving capacities					
account of the child's specific expectations/situations			X		
assessment of minor degree of maturity (consequence of migration experience)					
appropriate involvement of unaccompanied migrant minors in the decision making process	X				
targeted actions to promote/reinforce capacities and competencies	X				
Transversal Policies					
collecting data	X				
cooperation with national agencies	X				
cooperation among member states	X				
cooperation with third countries/country of origin	X				
	Value:	3	2	1	0

* i.e. developed by associations, organizations, private actors, other agencies, etc.

Evaluative table:	
0-9	no efficacy
10-24	insufficient efficacy
25-39	scarce efficacy
40-49	average efficacy
50-60	adequate efficacy

Annex 2

In the following four sub-Sections, all different areas of the questionnaire will be analysed with specific attention to both the answers provided by the ministerial body

¹⁶⁵ Public contacts at: [http://www.lavoro.gov.it/Lavoro/md/AreaSociale/Immigrazione/ custom/Uffici/](http://www.lavoro.gov.it/Lavoro/md/AreaSociale/Immigrazione/custom/Uffici/) (last consulted on 28/06/2012).

and a simple investigation of Italian policies. Finally, the last sub-Section will be dedicated to the assessment of the practical application of the Monitoring Instrument.

Before starting a brief analysis of each part of the questionnaire, it is interesting to notice the global score obtained by Italy. Indeed, the sum of scores attributed to each answer is 37 points. According to the proposed evaluative scale, this number shows scarce levels of efficacy of Italian national policies.

IV.2.a – Gender and Sexuality

In this sector of the questionnaire, Italy scores 7 points. Specifically, the highest level of effectiveness has been recognized to the implementation of policies of prevention and contrast of female sexual exploitation, while all other areas are not covered by central or local legislation and actions in these directions are left to associations, organizations, private actors, other agencies, etc.

With regard to (female) sexual exploitation and prostitution, Italy faces a phenomenon whose dimension is quite widespread. Specifically, data elaborated by the relevant associations reveals that, between 2000 and 2008, among the 54.559 persons victims of trafficking, 938 were minors¹⁶⁶. On this regard, UNHCR finds that “Italy is a destination and transit country for women, children, and men subjected to trafficking in persons, specifically forced prostitution and forced labour. Victims originated from North and East Africa, Eastern Europe, the Former Soviet Union, South America, Asia and the Middle East. Romanians and other children from Eastern Europe continued to be subjected to forced prostitution and forced begging in the country”¹⁶⁷. According to findings elaborated by Save the Children, most trafficking victims are girls, “especially Nigerian and Romanian¹⁶⁸, aged between 15 and 18 years. Many of them arrive by sea in Sicily and are subsequently located through the national territory, especially Turin, Milan, Naples and the Adriatic coast by their exploiter. Usually these girls come from poor socio-cultural back-grounds and, often, they have already suffered serious forms of

¹⁶⁶ Save the Children, 2009 (b), p. 2.

¹⁶⁷ UNHCR, 2010. See: <http://www.unhcr.org/refworld/country,,USDOS,,ITA,,4c1883e92d,0.html> (last consulted on 21/06/2012).

¹⁶⁸ But also Moldovan and Albanian.

exploitation, especially sexual [61.8% of the total¹⁶⁹], in the course of their journey through Libya from Nigeria (where many of them were detained)”¹⁷⁰. Moreover, “recent researches suggest that foreign minors represent about 7% of girls’ prostitution on the street, and in some Italian areas (in particular, Veneto, Emilia Romagna, Lazio and Piemonte) the estimated percentage is between 10-12%. Additionally, child prostitution takes place both in indoor places (particularly apartments and hotels) and on many Italian roads. Girls are moved repeatedly both within the same city and in other Italian regions and they are forced by their pimps to always declare the age of majority”¹⁷¹. To conclude, according to what has been analysed on this regard in Chapter II, the phenomenon mostly touches unaccompanied migrant minors above the age of 15, who are the 83% of the total¹⁷².

As it is rightly documented by the answer to the Monitoring Instrument, on this regard Italy provides a detailed legislation¹⁷³, which specifically addresses, among other subjects, unaccompanied migrating minors¹⁷⁴. According to the norms, in case of suspicion that the child is (or has been) victim of trafficking and/or exploitation, social service officers and other public officials are in charge to provide the information to the judicial authorities (Prosecutor's Office at the Juvenile Court and Public Prosecutor of the ordinary Courts) or to the police, in order to initiate investigations. Consequently, beside measures provided for general protection of unaccompanied migrant children, in case of minors victims of trafficking/exploitation, additional measures shall be taken to protect the child from its exploiters (i.e.: placement in a community with secret location,

¹⁶⁹ Associazione Nazionale Comuni Italiani, 2009, p. 119.

¹⁷⁰ Save the Children, 2009 (b), p.2.

¹⁷¹ Associazione Nazionale Comuni Italiani, 2009, p. 116. For specific information on unaccompanied migrant minors victims of trafficking, consult the same document, pp. 117 - 120.

¹⁷² Idem, 2009, p. 118.

¹⁷³ For a complete overview of the National legislation on trafficking, see: [http://www.pariopportunita.gov.it/index.php/normativa-nazionale/222-tratta-di-esseri-umani-\(last-consulted-on-21/06/2012\)](http://www.pariopportunita.gov.it/index.php/normativa-nazionale/222-tratta-di-esseri-umani-(last-consulted-on-21/06/2012)).

¹⁷⁴ On this regard it is interesting to underline that not always national laws’ requirements directly lead to effective protection. With regard to unaccompanied migrant girls located in care facilities, for example, Terre des Hommes’ project in 2011 showed that “girl migrants had to share common spaces with adult men, lacked of privacy and full protection, were under poor hygienic conditions, and had very limited access to health and psychosocial support. Many incidents of violence and sexual abuses were alleged”. For further information, see: <http://tdh.ch/en/news/girls-in-migration-and-what-about-their-children> (last consulted on 21/06/2012).

transfer to another city, etc.). Moreover, the responsible social educator, with the help of a mediator, should inform the child victim of trafficking/exploitation of his right to sue pimps/traffickers, supporting the minor through all phases of the process. If the child is in a situation of violence or serious exploitation and there are real dangers to its safety, he can be proposed to issue a permit for social protection pursuant to Art. 18 T.U. 286/98, with the child's placement under a special assistance program. However, currently the latter procedure has been rarely applied¹⁷⁵.

With regard to the other indicators of this area of the questionnaire, the competent Ministry answered pointing out Italian's negative intervention, with policies mostly developed by private actors and organizations. Despite the existence of some innovative projects developed by municipalities, aspects specifically related to gender and sexuality issues are organized by local subjects, operating independently from institutions. Also in this regard, however, it is quite difficult to find activities having exclusive regard to the analysed age group, as interventions are usually approaching the whole category of unaccompanied minors without distinctions.

With regard to services provided by organizations, private actors and associations it is important to underline the project, launched last year by an interdepartmental cooperation, of a new web-site collecting all services organized over the national territory¹⁷⁶. At the web-page of the inter-ministerial web-site, indeed, most of the services provided by the above mentioned actors are catalogued and can be consulted by public and private individuals¹⁷⁷.

To conclude, Italy does not provide any (official) form of targeted sexual education. This approach should be read in the broader Italian framework. The State, in fact, does not have a cultural (and educational) tradition of sexual education, which is not even included in schools' educative projects.

¹⁷⁵ For further information, see:

http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2006/luglio/gnespam-buoneprassi-minori.html#_ftnref108 (last consulted on 21/06/2012).

¹⁷⁶ <http://www.integrazionemigranti.gov.it/Pagine/default.asp> (last consulted on 21/06/2012).

¹⁷⁷ <http://www.integrazionemigranti.gov.it/servizi/minorisecondegenerazioni/Pagine/default.aspx> (last consulted on 21/06/2012).

IV.2.b – Integration Policies

The questionnaire's area related to integration policies is the one where the answers provided by the governmental body mostly show the heterogeneity of Italian approach to unaccompanied migrant minors above the age of fifteen. Two indicators of this area, indeed, are evaluated as providing the highest policies' efficacy; two of them are addressed through regional or municipal legislations; one is left to the mere practical implementation. Additionally, one answer has been left unanswered.

With regard to the indicator identified as "cultural integration", some considerations should be elaborated. Coherently with the answer provided by the Ministry's responsible, it is possible to affirm that Italian national legislation provides for such aspect of integration. However, targeted instruments of cultural integration are not specifically developed for minors above the age of fifteen. Nevertheless, national laws provide for modalities of cultural integration to be designed in consideration of the minors' specificities (of which age constitutes a prior element).

On this regard, the *Piano per l'Integrazione nella Sicurezza – Identità e Incontro* covers a peculiar importance. The Plan has been developed in 2010 by Italian governmental institutions, in order to set the Government's strategies on matters of migrant's integration¹⁷⁸. With regard to cultural integration of, among others, unaccompanied migrant minors, the document states that "*efforts should be focused to actions for the prevention of school dropout by immigrant children (at least before the age of the obligation), to ensure the effectiveness in access and continuation of education, and to offer training courses which qualify for inclusion in the work*

¹⁷⁸ The objective of this governmental document is to summarize the strategy that the Government wants to pursue with regard to integration policies for immigrants, combining reception and services aspects. The Plan identifies the main lines of action and the instruments to be adopted in order to promote an effective integration process, in compliance with both with prerogatives and responsibilities of the different institutional actors involved, and with the procedures foreseen by the existing legislation. For further information, see: <http://www.integrazionemigranti.gov.it/en/Pagine/National%20Plan%20for%20Integration.aspx> (last consulted on 21/06/2012).

*environment, primarily using the instrument of apprenticeship*¹⁷⁹. National legislations and school programs are developed in this direction.

With regard to the concept of intercultural education, Italy does not provide any legislative measure. Furthermore, it has to be noticed that the accent has been put, by national Government, on a quite opposite concept. Indeed, in the above mentioned *Piano per l'Integrazione* specifies the importance for children (and immigrants in general) to “*know and respect Italian Constitution and its values, which are the necessary conditions for integration*”¹⁸⁰. In the Italian Government’s view, therefore, knowledge of national laws and culture should be the framework within which inclusion should be achieved, “*for those individuals who come from traditions and ways of living different from ours*”¹⁸¹. However, despite the approach of the central Institution, private actors, associations and organizations develop project of intercultural education. On a specific web-page of the inter-ministerial web-site on integration it is possible to find a list of the different activities implemented on the national territory for unaccompanied migrant minors¹⁸².

With regard to both targeted teacher training and programs to enter the labour market, the auto-evaluation indicated the presence of local legislation, at municipality and/or regional level. With regard to the first indicator, it is important to recall again the *Piano per l'Integrazione*: this central document specifically provides that “*in school, [...] teachers must be supported and properly trained in order to deal with new multicultural environments and high complex contexts. It is therefore essential to promote proper training plans, both in presence and on-line, to improve specific teaching skills and management, in schools with high concentration of foreign*

¹⁷⁹ Ministero del Lavoro e delle Politiche Sociali, Ministero dell’Interno & Ministero dell’Istruzione, dell’Università e della Ricerca, 2010, p.20.

¹⁸⁰ Idem, 2010, p.12.

¹⁸¹ Idem, 2010, p.12.

¹⁸² See: <http://www.integrazionemigranti.gov.it/servizi/minorisecondegenerazioni/Pagine/Iniziativa-di-integrazione-culturale.aspx> (last consulted on 21/06/2012).

pupils”¹⁸³. However, the practical training of teachers has to be developed at local level, in conformity with minimum requirements designed by the national legislator.

Concerning targeted programs to enter the labour market, it has to be noted that these integration actions are usually conceived as segment of education and/or care; being the latter a local responsibility, the answer provided to the questionnaire appears correct. Usually, in fact, projects aimed at facilitating unaccompanied minors’ entering in the labour market are organized (both from an economical and structural perspective) by municipalities and regional offices. Nevertheless, it is important to underline the recent turnaround approach, by virtue of which Italian government is more involved in such aspects of migrating children’s integration. On this regard, the recently launched project according to which the Ministry of Labour and Social Policies can be recalled. It will finance targeted interventions for unaccompanied migrant minors close to turning eighteen. Specifically, this project has been conceived with the aim to “strengthen mechanisms of both social and work integration of unaccompanied children in transition to adulthood and allocate ‘individual skills’ of unaccompanied children in the age of transition to adulthood who, arrived in Italy as a child, will reach the age of majority in the 2011-2012 period, in order to incorporate them into circuits of training, employment and social integration”¹⁸⁴.

Moving to the subsequent indicator of the Monitoring Instrument, “granted opportunity to remain in the host Country at the majority age” when specific commitments are met, changes recently made to Article 32 of the TU immigration deserve close attention. Indeed, after the reform operated by Law n. 129/2011, Article 32 of D.Lgs. n. 286/1998 has been significantly modified in order to extend the possibility for unaccompanied migrant minors to remain in Italy after the age of majority. Article 32 traditionally regulates the treatment of a foreign minor when he/she turns eighteen. Originally, it represented the “conclusion” of the legislative system stated by Title IV of the D.Lgs n. 286/1998: “Right to family unity and protection of

¹⁸³ Ministero del Lavoro e delle Politiche Sociali, Ministero dell’Interno & Ministero dell’Istruzione, dell’Università e della Ricerca, 2010, p.11.

¹⁸⁴ For further information see: <http://www.integrazionemigranti.gov.it/Attualita/ILPunto/Pagine/Minori-stranieri-non-accompagnati.aspx> (last consulted on 22/06/2012).

minors”. Generally speaking, this provision affirms that “the residence permit for custody may be converted into a residence permit for work or study when the minor comes of age, but only if the following two conditions are fulfilled: 1) he has been in Italy since at least three years and 2) he has been part of a project of social and civic integration for at least a 2 years”¹⁸⁵. Before the modifications, therefore, each unaccompanied child who arrived in Italy too late to fulfil such requirements¹⁸⁶, despite his involvement into educational or vocational career and integration process, was declared irregular and removed from national territory at the moment he turned eighteen. Following Law n. 129/2011, for unaccompanied migrant minors¹⁸⁷ who have been housed in a community¹⁸⁸ and who, at the time of becoming eighteen, have not completed the two years of social and civil integration¹⁸⁹, a special procedure starts. For these minors a resident permit for work or study may be released after positive opinion of the Committee for Foreign Minors¹⁹⁰.

To conclude this Section, some words should be dedicated to the last indicator: “targeted actions for interactive integration”. This question has not been answered by the Ministerial responsible¹⁹¹. Nevertheless, it is possible to extend the analysis elaborated with regard to the “intercultural education” indicator to this one. Specifically, higher level and mechanism of integration are not developed through central or local normative but are implemented, with the unavoidable differences arising from the lacking of a legislative framework, by organizations, agencies and other private actors.

IV.2.c – Evolving Capacities

With regard to this area, the auto-evaluation provided by Italian administrative body is quite controversial: on the one hand, very low efficacy of policy has been recognized to

¹⁸⁵ European Migration Network Italy, 2009, p. 25.

¹⁸⁶ Or who, in consequence of procedural delays, was not promptly involved into project of civil and social integration.

¹⁸⁷ According to the Italian meaning of the term.

¹⁸⁸ According to the dictate of Article 2, Law 184/1983. For further information, see Chapter IV.1.

¹⁸⁹ Statistically, most unaccompanied migrant minors present in Italy do not fulfil these two requirements.

¹⁹⁰ For a complete analysis of the new legislation, consult: Consoli, Giovannetti & Zorzella, 2011. For the details of the procedure, see:

http://www.lavoro.gov.it/Lavoro/md/AreaSociale/Immigrazione/minori_stranieri/Minori_stranieri_non_accompagnati.htm (last consulted on 22/06/2012).

¹⁹¹ Consequently, this indicator has been evaluated as 0.

both “account of the child’s specific expectations and situation” and “assessment of the child’s degree of maturity”; on the other hand, the highest efficacy (with intervention through national legislation) has been recognized to both “appropriate involvement of unaccompanied migrant minors in the decision making” and “targeted actions to promote/reinforce capacities and competencies” indicators.

Concerning the first indicator, the analysis of Italian procedure reveals that actions are left to a merely eventual implementation, which does not find any definition in national or local legislation¹⁹². Moving to the second indicator, it is interesting to notice that the consulted Ministerial responsible did not provide an answer¹⁹³. Nevertheless, these two procedures are, under the Italian system, strictly related to the activity of intercultural mediation and psychological support. Today these aspects do not find a punctual definition at central level: they are eventually managed by Regions and Municipalities, associations, organizations or private actors. In the absence of a central, defining the standards of professional intercultural mediator and the involvement of psychological support, the Italian scene is highly heterogeneous and fragmented. The inter-ministerial website, however, provides an overview of both regional frameworks and private actors providing these services¹⁹⁴.

With regard to the second groups of indicators, in its auto-evaluation the responsible Italian body found a high efficacy of national policies, which are ensured through national legislation. On this regard, however, a certain degree of ineffectiveness and mistake of the Monitoring Instrument’s application is registered. It is true, in fact, that national legislation provides for the right to a child to be heard and involved in the

¹⁹² Coherently with the information developed in this Section, a score between 1 and 2 points (depending on different regional realities) should have been provided.

¹⁹³ In evaluating this indicator according to the scale provided with the Monitoring Instrument taking into account the considerations developed in this Section, a score between 1 and 2 points (depending on different regional realities) should have been provided. Nevertheless, it should be underlined that in the global evaluation of Italy’s legislation efficacy under the Monitoring Instrument mechanism, this indicator has been evaluated as 0, because no answer has been provided.

¹⁹⁴ For further information, see: <http://www.integrazionemigranti.gov.it/mediazione/Pagine/default.aspx> (last consulted on 22/06/2012) and <http://www.integrazionemigranti.gov.it/servizi/minorisecondegenerazioni/Pagine/Mediazione%20Interculturale.aspx> (last consulted on 22/06/2012).

questions affecting him¹⁹⁵. Nevertheless, the concept of evolving capacity of unaccompanied minors is not directly approached by national (or local) legislator. Moreover, organizations and associations constantly require Italian Government to develop procedures which would strength minors' participation and involvement¹⁹⁶. Consequently, also with regard to these two indicators, to assess the mere practical implementation through associations, organisations and private actors' eventual intervention appears more appropriated.

Generally speaking, the concept of evolving capacities is not really taken into account by Italian national policies on unaccompanied migrant minors reception and protection. This consideration reflects the quite recent approach to integration of immigrants, which is slowly flanking policies on migrants. In this contest, highly developed forms of approach to minors are difficult to be applied. Nevertheless, considering the international normative framework on this regard and the constant increasing of Italy's attention to unaccompanied children's necessities, in the future these policies will probably start to be implemented. Effectively, this should be a priority in planning prospective interventions.

IV.2.d – Transversal Policies

Taking into account the Monitoring Instrument's area that considers transversal policies, the auto-evaluation conducted on Italian policies reveals the highest level of effectiveness, both absolute and in comparison with the other areas. Effectively, the analysis of each indicator confirms the obtained score. The whole Italian legislation on unaccompanied migrant minors, indeed, is strongly based on data collection and cooperation among different Institutions and States.

On the activity of data collection, information has been provided in the previous Paragraphs of this Chapter. The Committee for Foreign Minors¹⁹⁷ *“is responsible for the*

¹⁹⁵ With regard to unaccompanied migrant minors, a direct reference can be found in Article 6 of D.P.C.M. n. 535/1999, which states the right to the child to be heard with regard to reception procedures involving him. Moreover, the procedures of assisted repatriation are developed on a voluntary basis, where the will of the child holds a central importance.

¹⁹⁶ Save the Children Italy, 2011, p.27.

¹⁹⁷ For further information, see Chapter IV.1.

census of unaccompanied migrant minors present on national territory”¹⁹⁸. Consequently, the Committee has a specific office in charge of daily collect and update information. As emerges from the Committee’s Report, periodically revised, the attention focus primarily over the following elements: age, gender, Country of origin, Citizenship, placement, displacement and traceability. However, the operative office is extremely active and the information effectively collected is even more than those published in the Report¹⁹⁹.

With regard to the three levels of cooperation (with national agencies, European Member States, third Countries/Country of origin), specific obligations arise from the dictate of Article 33.2.b of the D. Lgs. n. 286/1998, which states that the Committee for Foreign Minors carries out “*tasks of promoting and connecting with local administrations, social services and local Institutions*”. Furthermore, Article 2.2.b. of the Law 535/1999 generally provides that, in developing its functions, the Committee for Foreign Minors “*cooperates and is connected with the concerned administrations*”, thus extending the area of cooperation to all levels. The same Law, at Article 7.3, prescribes cooperation among all administrations involved in the assisted voluntary return of the child. In addition, as mentioned in Chapter IV.1, a strong cooperation among all actors, both Institutional and non-institutional, characterizes the phase of family tracing. To conclude, it is particularly interesting to recall the several projects implemented by Italian Government with Regions and Municipalities, Communitarian and international Institutions, national and international NGOs and associations, often involved in entry, care and reception procedures²⁰⁰.

¹⁹⁸ D.P.C.M. n. 535/1999, Article 2.2.i.

¹⁹⁹ The collecting information activity operated by the Committee on Foreign Minors is, however, quite debated. Specifically, Organizations argument that collected data are incomplete, as they do not comprise unaccompanied migrant minors who are European citizens or seeking international protection or are “in transit” (passing through Italy to reach another Member State).

²⁰⁰ For further information, see:

http://www.lavoro.gov.it/Lavoro/md/AreaSociale/Immigrazione/minori_stranieri/Minori_stranieri_non_a_ccompagnati.htm (last consulted on 22/06/2012) and

<http://www.integrazionemigranti.gov.it/Pagine/default.aspx> (last consulted on 22/06/ 2012).

IV.2.e – Assessment of the Monitoring Instrument

The application of the Monitoring Instrument presented in Chapter III not only permits an evaluation of Italian national policies on unaccompanied migrant minors above the age of fifteen years, but it also can lead to an assessment of the proposed mechanism in its practical implementation. On this second regard, some considerations can be developed.

Generally speaking, a positive evaluation can be given to the Monitoring Instrument's application. Indeed, the results Italy achieved through the questionnaire's answers are almost the same that can be gathered through a punctual analysis of each aspect of national policies. Coherently with the expectations illustrated in Chapter III, therefore, the Monitoring Instrument provides both an overview of the general effectiveness of Italian guarantees and a specific evaluation with regard to each of the four areas. This approach, as wished, offers the possibility to the State to individuate areas and sectors where national policies are deficient, in order to have a direction for further interventions of legislator and other competent organs.

In addition, a positive feedback can be provided to the auto-evaluative approach. The competent ministerial body that filled the questionnaire, in fact, correctly approached the mechanism. Despite lacking of the necessary time to assess if the Monitoring Instrument's results will be taken into account by the Italian legislator, the first phase (with honest and effective answers) has been concluded with a coherent evaluation of existing policies and legislations.

Nevertheless, the practical implementation of the Monitoring Instrument also shows some weaknesses of the mechanism, on which basis the latter should be ameliorated. Firstly, in order to strength the evaluation over each single area, a rating scale could be developed. It would make it easier, for the evaluative State, to estimate the effectiveness of national policies and identify deficiencies. Considerations arise also from the fact that two of the questionnaire's answers have been left unanswered. In order to avoid imperfections, two types of interventions should be made: on the one hand, indicators' wording could be redefined and simplified; on the other hand, a simple and clarifying "instruction manual" could be elaborated and enclosed to the Monitoring

Instrument. Indeed, a better comprehension of both formulation and functioning of the mechanism would definitely strength the latter's efficacy.

Moving from these bases, three future developments of the Monitoring Instrument can be imagined. Firstly, the mechanism could be extended to each area affecting unaccompanied migrant minors' protection, with regard to the specific age group. The analysis proposed by this thesis, in fact, only covers some aspects characterizing adolescent migrating minors. Secondly, the Monitoring Instrument could be applied to other European States, in order to both reinforce unaccompanied migrant minors' protection and facilitate the exchange of good practices and virtuous policies. Thirdly, a comprehensive mechanism could be realized with regard to the whole category of unaccompanied migrant minors, identifying different areas and indicators for each sensible age-group (in consideration of specific needs and specificities)²⁰¹.

IV.3 – Final Considerations

This chapter offers an interesting overview of the effective protection guaranteed by States to unaccompanied migrant minors above the age of fifteen. To conclude the analysis made in this Chapter, two considerations can be made.

Firstly, the situation of unaccompanied migrant minors' protection in Italy has been briefly approached and assessed. What emerges from data and information is a fragmented scenario. On the one hand, Italy covers certain areas through the most efficacy instruments of protection: legislative or regional/municipal legislations. In these cases, the European State manifests both an effective fulfilment of Human Rights' obligations and a deep knowledge of the phenomenon and its characteristics. On the other hand, simultaneously, some areas concerning unaccompanied migrant minors above the age of fifteen are completely (or almost completely) not covered, eventually managed by private actors and organisations/associations. Consequently, by a close analysis, different conclusions can be reached with regard to different areas: Italy covers with an average efficacy legislations issues related to adolescent unaccompanied

²⁰¹ These objectives will probably be achieved through further studies and researches, eventually in the framework of a PhD program.

migrant minors' integration in the Country, and with a highly adequate approach those aspects qualified as "transversal policies" (collecting data and cooperation with other relevant actors). At the same time, however, the efficacy of policies on "gender and sexuality" and "evolving capacities" areas is extremely poor, sometimes non-existent. The result of this approach is that, analysed as a whole, Italy's policies result of a scarce efficacy.

Secondly, to approach national policies on unaccompanied migrant minors above the age of fifteen through an auto-evaluative Monitoring Instrument has been experimented and evaluated. Despite the unavoidable weaknesses related to the first implementation of the Instrument, a general positive evaluation of this approach has been observed. To address national legislations through a results-oriented mechanism leaves the State the opportunity to define policies consistent both with supranational obligations and local realities and resources. Moreover, to individuate specific indicators for each segment of the problem supports States not only in evaluating existing legislations but also to define future interventions, efficiently organizing the national normative agenda. This approach could positively be extended to the whole category of unaccompanied minors and, in theory, it could be developed to address other aspects of migration European Countries are increasingly facing today.

CONCLUSIONS

Migration is one of the most problematic and significant challenges characterizing the contemporary era. This phenomenon is today influenced by several innovative aspects (among which globalization, reduction of time and space barriers and global crisis), making it particularly complex and multifaceted. In this framework, to face the continuous increase of children's presence is undoubtedly one of the most urgent commitments for host States. With regard to European destination Countries, innovative approaches are required – in the areas of citizenship, social participation and integration - in dealing with migration's issues. Concerning minors, the phenomenon of migrating children (especially unaccompanied and second generations) is one of the main aspects which deserves a virtuous administration.

To deal with migrants and migrating children, the supranational (both at International and Communitarian level) Human Rights normative framework offers an interesting perspective. The latter, indeed, provides States with general obligations regarding individuals' (and minors') rights and guarantees, without defining practical and procedural interventions. Consequently, within scopes and objectives defined by Human Rights, each State can develop personal policies, in consideration of the different realities, the national available resources and the local culture.

Nevertheless, especially with regard to children's rights, high level of protection shall be granted to migrating minors. Starting from this assumption, this Thesis focused on the modalities to strength national interventions' effectiveness. What emerged is that, in order to ensure efficacious approaches to migration, Nations need to identify the specificities characterizing each reality (and group) of the immigrant population. Successively, targeted policies and legislations should be implemented.

On this basis, the presented analysis researched and classified peculiar characteristics and needs of unaccompanied migrant minors above the age of fifteen. Specifically, three areas have been recognized as sensitive: gender and sexuality; integration policies; evolving capacities. Moreover, with the aim to provide States with a practical mechanism, a specific Monitoring Instrument has been designed. It would

support Countries both in evaluating existing procedures and in defining future areas of intervention, covering eventual *legislative vacuums*.

Finally, the analysis conducted over Italy's policies on unaccompanied migrant minors above fifteen years, and the coincident application of the Monitoring Instrument, provided this Thesis with indubitably important practical considerations. As a consequence, two aspects mainly emerged. Firstly, it appears clear that, when peculiar needs and specificities are not punctually addressed, the whole effectiveness of national intervention is compromised. Secondly, the auto-evaluative methods, which permit to combine obligations of results with national differences, can lead to positive results.

To conclude, effective approaches to migration can be reached through virtuous national's interventions. The correct identification and consequent reaction to the phenomenon's specificities would inevitably lead to a global (at least European) better management, with constructive impacts on both domestic and supranational scenarios. In this context, unaccompanied migrant minors represent, at the same time, one of the biggest challenges and an important resource for host States.

To achieve better results Human Rights can effectively play a central role directing National policies toward common results and guaranteeing minimum, binding, grounds of protection.

Recommendations to Italy

The analysis conducted on Italian policies, through the application of the Monitoring Instrument and detailed researches, permits to make Recommendations to the State, with regard to unaccompanied migrant minors' protection. The following Recommendations are aimed at supporting Country's future interventions and improve national policies' efficacy. They are resulting from a joint reading of all the collected information.

Two typologies of Recommendations, specific and general, can be proposed. With regard to specific proposals, the following actions are suggested:

- Identification of national operating rules, homogeneously implemented among the national territory, for the identification of victims of exploitations, sexual violence, abuses;
- Develop of a national referral system for unaccompanied migrant minors victims of exploitation, sexual violence, abuses;
- Implementation of suitable alternatives to illegal circuits, through targeted projects, educational and professional activities, financial remuneration and/or support. Organization at least at regional/municipal level, eventually with central co-ordination;
- Definition of professional trainings for social workers involved in care's procedures involving unaccompanied minors victims of exploitation, sexual violence, abuses. Acquisition of behavioural and supportive techniques to approach adolescent children. Organization at least at regional/municipal level, eventually with central co-ordination;
- Targeted psychological and gynaecological assistance as standardized procedure for all unaccompanied migrant minors above the age of fifteen and/or victims of exploitations, sexual violence, and abuses. Peculiar attention and support for pregnant adolescents;
- Targeted sexual education as standardized procedure for all unaccompanied migrant minors above the age of fifteen, with constant availability for consultation and support in critical cases;
- Intercultural approach to integration, through the development of peculiar projects for unaccompanied migrant minors above the age of fifteen. Focus on the positive common aspects, strengthening cultural' belonging feelings and familiarization with the host Country's values. Organization at least at regional/municipal level, eventually with central co-ordination;
- Individuation of professional trainings for teachers involved in adolescent unaccompanied migrant minors' educational programs. Definition of specific academic courses at the national level (having regard to Universities' autonomy);

- Reinforcement of national programs and legislations to support unaccompanied migrant minors entering the labour market, with equal guarantees and targeted protection;
- Elaboration and research at every level on the “evolving capacities” approach;
- Standardization of procedures to identify unaccompanied migrant minors’ specific expectations;
- Standardization of procedures to identify unaccompanied migrant minors’ level of maturity, through targeted approaches for adolescent children. Organization at least at regional/municipal level, eventually with central co-ordination;
- Standardization of actions to reinforce and promote the child’s capacities to be involved in the decisional process, with targeted psychological support. Organization at least at regional/municipal level, eventually with central co-ordination.

The second group of Recommendations concerns general aspects, not specifically related to the age group of unaccompanied migrant minors between fifteen and eighteen years. However, interventions in these directions would definitely improve separated children’s rights and guarantees:

- Economic investment, both at central and local level, for policies involving unaccompanied migrant minors;
- Elaboration of a common, binding procedure for the age’s assessment of unaccompanied migrant minors;
- Constant reinforcement of co-operation with all involved subjects, both Institutional and private;
- Development of monitoring procedures to assess practical implementation of national norms.

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Annex 1

Does your country provides for actions on the following areas?	YES through State's legislation	YES through regional or municipal legislation	YES through practical implementation in absence of normative framework*	NO
Gender e sexuality				
policies of prevention and contrast of female sexual exploitation/prostitution				
implementation of suitable alternatives to illegal circuits				
targeted training of social workers				
targeted psychological assistance on sexual exploitation and pregnancy				
targeted gynaecological, health and social care				
targeted sexual education				
Integration Policies				
targeted cultural integration (access to language education; appropriated education and/or vocational training)				
intercultural education (option in/outside school to learn about the minor's culture and country of origin)				
teacher training for specific teaching methods and targeted educational programs				
targeted programs to enter the labour market				
granted opportunity to remain in the host country at the majority age (in case of the minor shows serious commitment to its educational career/vocational career/integration)				
targeted actions for interactive integration				
Evolving capacities				
account of the child's specific expectations/situations				
assessment of minor degree of maturity (consequence of migration experience)				
appropriate involvement of unaccompanied migrant minors in the decision making process				
targeted actions to promote/reinforce capacities and competencies				
Transversal Policies				
collecting data				
cooperation with national agencies				
cooperation among member states				
cooperation with third countries/country of origin				

Value:

0

1

2

3

Evaluative table:	
0-9	no efficacy
10-24	insufficient efficacy
25-39	scarce efficacy
40-49	average efficacy
50-60	adequate efficacy

* i.e. developed by associations, organizations, private actors, other agencies, etc.

Annex 2

Does your country provides for actions on the following areas?	YES through State's legislation	YES through regional or municipal legislation	YES through practical implementation in absence of normative framework*	NO
Gender e sexuality				
policies of prevention and contrast of female sexual exploitation/prostitution	X		X	
implementation of suitable alternatives to illegal circuits			X	
targeted training of social workers			X	
targeted psychological assistance on sexual exploitation and pregnancy			X	
targeted gynaecological, health and social care			X	
targeted sexual education				X
Integration Policies				
targeted cultural integration (access to language education; appropriated education and/or vocational training)	X			
intercultural education (option in/outside school to learn about the minor's culture and country of origin)			X	
teacher training for specific teaching methods and targeted educational programs		X		
targeted programs to enter the labour market		X		
granted opportunity to remain in the host country at the majority age (in case of the minor shows serious commitment to its educational career/vocational career/integration)	X			
targeted actions for interactive integration				
Evolving capacities				
account of the child's specific expectations/situations			X	
assessment of minor degree of maturity (consequence of migration experience)				
appropriate involvement of unaccompanied migrant minors in the decision making process	X			
targeted actions to promote/reinforce capacities and competencies	X			
Transversal Policies				
collecting data	X			
cooperation with national agencies	X			
cooperation among member states	X			
cooperation with third countries/country of origin	X			

Value:

0

1

2

3

Evaluative table:	
0-9	no efficacy
10-24	insufficient efficacy
25-39	scarce efficacy
40-49	average efficacy
50-60	adequate efficacy

* i.e. developed by associations, organizations, private actors, other agencies, etc.

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