



European Asylum Support Office

EASO

Practical Guide on age assessment

Second edition

EASO Practical Guides Series

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practical guide on age assessment

Second edition

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The *EASO practical guide on age assessment* publication builds upon the information and guidance on the age assessment process and the overview of the age assessment methods already analysed in the *EASO age assessment practice in Europe* (2013). It offers practical guidance, key recommendations and tools on the implementation of the best interests of the child when assessing the age of a person from a multidisciplinary and holistic approach. It also brings up-to-date information on the methods conducted by EU+ states and on new methods still not in use as possible or future alternatives.

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Abbreviations

ADCS	Association of Directors of Children’s Services Ltd is the national leadership association in England for statutory directors of children’s services and their senior management teams
AGFAD	German Association of Forensic Medicine
ALARA	used in radiation safety, it stands for ‘as low as reasonably achievable’
AMIF	Asylum and Migration Integration Fund
APD recast	Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. It has also been mentioned as the ‘asylum procedures directive’ recast
APR	proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU
AT	Austria
ATD	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. It has also been cited as the ‘anti-trafficking directive’
BE	Belgium
BG	Bulgaria
BIA	best interests assessment
BIC	best interests of the child
BID	best interests determination
CEAS	Common European Asylum System
CFR	Charter of Fundamental Rights of the European Union
COI	country of origin information
CRC	Convention on the Rights of the Child
CT/CAT	computed tomography/computed axial tomography
CY	Cyprus
DE	Germany
DK	Denmark
Dublin III regulation recast	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country national or a stateless person (recast)
EASO	European Asylum Support Office
EE	Estonia
EMN	European Migration Network
ES	Spain

EU+ states:	EU Member States plus Norway and Switzerland
EU	European Union
Eurodac	European Asylum Dactyloscopy Database
Eurodac regulation recast	Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)
FRA	European Union Agency for Fundamental Human Rights
FI	Finland
FR	France
1951 Geneva Convention	United Nations Convention Relating to the Status of Refugees 1951 (and the Protocol Relating to the Status of Refugees 1967)
HU	Hungary
ICRC	International Committee of the Red Cross
IE	Ireland
Implementing Regulation No 118/2014	Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
IOM	International Organisation for Migration (United Nations Migration Agency)
IP	international protection
IT	Italy
JRC	Joint Research Centre, the European Commission’s science and knowledge service which employs scientists to carry out research in order to provide independent scientific advice and support to European Union policy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MRI	magnetic resonance imaging
MS	EU Member State(s)
MT	Malta
NGO	non-governmental organisation
NIDOS	NIDOS Foundation (guardianship institute for unaccompanied minor applicants for international protection in the Netherlands)
NL	Netherlands

NO	Norway
OHCHR	Office of the High Commissioner on Human Rights
PL	Poland
PT	Portugal
QD recast	Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted (recast). It has also been cited as the 'qualification directive' (recast)
RCD recast	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast). It has also been cited as the 'reception conditions directive' recast
RO	Romania
SCEP	separated children in Europe programme
SE	Sweden
SIS	a large-scale information system that supports external border control and law enforcement cooperation in the Schengen area
SI	Slovenia
SK	Slovakia
SLTD	a database that contains records on stolen, lost or revoked travel documents such as passports, identity cards, UN laissez-passer or visa stamps
THB	trafficking in human beings
UAM	unaccompanied minor(s)
UK	United Kingdom of Great Britain and Northern Ireland
UNHCR	United Nations High Commissioner for Refugees
Unicef	United Nations Children's Fund
VIS	Visa Information System

Executive summary

Age assessment remains a complex process with possible far-reaching consequences for applicants undergoing the assessment. Age assessment methods and processes differ across Member States and reliable multidisciplinary and rights-compliant age assessment processes are not always guaranteed. In view of these challenges, the communication from the Commission to the European Parliament and the Council, 'The protection of children in migration' (COM(2017) 211 of 12 April 2017), called for the European Asylum Support Office (EASO) to update its guidance on age assessment in 2017.

The focus of this publication is to provide guidance on the consideration of the best interests of the child (BIC) when assessing the need for the age examination but also when devising and undertaking an age assessment using a holistic and multidisciplinary approach, with particular attention to the needs and circumstances of the person.

To support the authorities on the implementation of the principle of the BIC, this publication:

- analyses the impact of age assessment on other rights of the applicant and the motivation for the assessment;
- offers guidance on the application of the necessary principles and safeguards in the assessment process;
- describes how to implement the assessment process using a holistic and multidisciplinary approach;
- provides a visual model of the potential process highlighting the gradual use of methods to prevent unnecessary examinations;
- explores new methods used to assess an applicant's age, the latest developments of the methods already in use and the impact of each method on the safeguards and rights of the applicant;
- provides key recommendations to address practical challenges that might appear prior to, after and at different stages during the process;
- contains a set of tools and reference documents to complement the information provided in this practical guide:
 - a glossary with key terms,
 - international, European and national legal framework and policy-guidance documents relevant to the topic,
 - practical tools for ensuring the BIC (a form and a checklist), and
 - an updated overview of the methods and procedural safeguards in use in the EU+ territory.

A number of challenges faced during the undertaking of the age assessment process, such as the (in)sufficient motivation for an age assessment, the limitations of the methods in use concerning intrusiveness and accuracy, fragmented estimations based only on the physical appearance, the primary use of medical methods (in some cases only ionising ones), repetitive examinations being conducted on the same applicant in different Member States (MS) or a low implementation of key safeguards in the process (i.e. the lack of guardian/representative or effective remedy) have been identified and are addressed in this publication.

In response to these challenges, EASO has devised key recommendations, which will be discussed in depth in this publication. These can be summarised as follows.

- The BIC should be observed not only when a child is identified as such but also when there are doubts as to whether the applicant may be a child.
- Age assessment should not be a routine practice. The necessity of the assessment should be duly justified based on substantiated doubts on the stated age.
- The implementation of the principle of the BIC requires a child-centred age assessment which should place the child at the centre and be adapted to the specific needs of the applicant (gender, range of disputed age, cultural background, etc.).

- Benefit of the doubt must be given as soon as doubts on the claimed age appear, during the age assessment and until conclusive results are provided. The applicant should be considered and treated as a child until he or she is found to be an adult.
- The child, or the presumed child, must be appointed a guardian/representative who ensures that the child can participate in the assessment, has been informed about the age assessment process in a child-friendly, gender-sensitive and age-appropriate manner in a language that the child can understand and does, in fact, fully understand the assessment process. This information is essential to allow the child to express views, wishes and opinions and make an informed decision to participate in the process.
- The age assessment process must be conducted using a holistic and multidisciplinary approach which ensures that all the necessary safeguards and principles explored are in place and the rights of the applicant are protected.
- Since no single method currently available can determine the exact age of a person, a combination of methods assessing not only the physical development but also the maturity and the psychological development of the applicant can reduce the range of age in question.
- No method involving nudity or the examination, observation or measurement of genitalia or intimate parts should be used for age assessment purposes.

Introduction

Why was this second edition developed?

As mentioned in the EU action plan on unaccompanied minors (2010-2014), and due to the concerns on the reliability and intrusiveness of methodologies in place to assess the age of the applicants, EASO was entrusted with developing a publication which compiles best practices on age assessment. A first edition was published in December 2013. Similar concerns about the challenges in the age assessment process were once again raised by national authorities during the third EASO Annual Conference on Children held in December 2015 in Malta. In practice, age assessment, and in particular some of the methods, has rapidly evolved since 2013. It is thus considered to be an opportune time for further reflection and analysis of the latest developments. In line with the conclusions of the conference and the Commission communication on the protection of children in migration ⁽¹⁾, EASO has developed this new edition including updated information and enhanced recommendations on the age assessment process. For this purpose, EASO further mapped the age assessment methodologies and procedural safeguards used in the EU+ territory in 2016. The key findings of this research can be found throughout the publication in boxes entitled 'Key findings from EU+ states' practice', and examples from practice have been added where relevant and in Annex 4.

How does this second edition relate to other EASO support tools?

EASO's mission is to support EU Member States and associated countries (Liechtenstein, Norway and Switzerland) on the implementation of the Common European Asylum System (CEAS). This support is delivered, in part, through common training, a common level of quality and common country of origin information (COI). As with all EASO support tools, this publication is based on the common standards of the CEAS. Furthermore; this publication should be seen as a complement to the other EASO tools that address child-sensitive asylum processes, in particular the *EASO practical guide on family tracing* ⁽²⁾ and the EASO training module on interviewing children ⁽³⁾.

What is the content of this publication?

This second edition contains a set of reference and guidance materials on age assessment as well as a mapping of the current state of play in the EU+ states.

In a nutshell, the edition is structured around five interlinked pillars.

- The first chapter, **Circumstances of age assessment**, is an introduction to the topic, addressing the preconditions, motivation and objectives of the age assessment process.
- The second chapter, **Best interests of the child and procedural safeguards**, addresses how the principle of the BIC, as enshrined in the United Nations Convention on the Rights of the Child (CRC) and in the EU asylum *acquis*, can be operationalised and the procedural safeguards implemented in the age assessment process.
- The third chapter, **The age assessment process: implementing a multidisciplinary and holistic approach**, analyses how the process should be conducted using a multidisciplinary and holistic approach and according to the guidance contained in this publication. It also includes a flow chart to visualise the main steps to be followed when age assessment needs to be undertaken.

⁽¹⁾ Communication from the Commission to the European Parliament and the Council — The protection of children in migration — COM(2017) 211, 12 April 2017, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf

⁽²⁾ Available at EASO's website: <https://www.easo.europa.eu/training-quality/vulnerable-groups>

⁽³⁾ Further information available at EASO's website: https://www.easo.europa.eu/sites/default/files/EASO_TRAINING_BROCHURE_EN-2016.pdf

- The fourth chapter, **Overview of the age assessment methods**, covers the latest developments in methods already explored in the first edition as well as new methods addressing their potential (positive and negative) impact on the safeguards. Particular attention is given to methods that were not in use in 2013 or that have evolved substantially since then.
- The fifth chapter, **Final recommendations**, compiles key recommendations that have been formulated to enhance an efficient age assessment process while guaranteeing children's rights.

This publication is completed by a series of **annexes**.

- **Annex 1: Glossary**
This annex is aimed at facilitating the identification and/or developing a common understanding of the most relevant terms used in the age assessment process.
- **Annex 2: Best interests of the child and age assessment: practical tools**
This annex consists of a best interests assessment (BIA) form and a BIC checklist to assess whether the particular age assessment process guarantees that the necessary procedural safeguards that ensure the adequate protection of the rights of the individual child are in place.
- **Annex 3: Legal framework and policy guidance**
This annex is intended to serve as a reference point for identifying the relevant instruments and provisions at international, European and national level. In addition, it includes soft-law guidance instruments and relevant case-law. It also encompasses relevant policy-guidance references on this topic.
- **Annex 4: An overview of EU+ states' practices on age assessment**
This annex includes the methodology and procedural safeguards used by the EU+ states when conducting the process.
- **Annex 5: Bibliography**
A compilation of the sources consulted to develop or inspire the content of this publication.

What is the scope of this second edition?

This publication provides further guidance on the core aspects of the age assessment process such as the holistic and multidisciplinary approach, the implementation of the principle of the BIC and an update of the information collected for the first edition of the publication. While this publication addresses age assessment for the specific purpose of international protection procedures, it may also serve as a useful reference in other contexts where age assessment is required (migrant children, minimum age of criminal responsibility, etc.).

As significant aspects, such as the applicable methodologies, evolve rapidly, this guide is not meant to exhaust the topic of age assessment. Therefore, depending on the needs of the target group, additional editions of this guide may be required.

How was this second edition developed?

This publication was developed by EASO and reviewed by the European Commission, EU agencies, experts from EU+ states and international and non-governmental organisations (NGOs). Valuable input was further provided during two ad hoc working group meetings held in September 2016. The diverse composition of the working groups guaranteed a comprehensive and multidisciplinary contribution from experts. These included social workers, forensic anthropologists and radiology researchers, as well as policy officers and reception officers. There were also asylum case officers with expertise on children from EU+ states' representatives (BE, IE, NL, LT, NO), the European Union Agency for Fundamental Rights (FRA) and the United Nations High Commissioner for Refugees (UNHCR), as well as from relevant international organisations and NGOs with expertise in the field, such as the International Organisation for Migration (IOM), the Nidos Foundation (NIDOS), the UK Red Cross and the separated children in Europe programme (SCEP) within

Defence for Children International. This publication is the product of combined expertise, reflecting the common standards and the shared objective to achieve safe and efficient age assessment processes within high-quality international protection procedures.

How should this guide be used?

For the purpose of this guide, some of the terms that are commonly used in the content of this publication (age assessment, biological age, chronological age, child, guardian, EU+ states) with their specific meanings are defined below for better comprehension. The glossary (Annex 1 to the publication) contains further information on these terms and additional terminology identified as useful for the age assessment stakeholders.

Age assessment is the process by which authorities seek to estimate the chronological age or range of age of a person in order to establish whether an individual is a child or an adult.

Biological age is defined by an individual's present position with respect to his or her potential life span, meaning that an individual may be younger or older than his or her chronological age.

Chronological age is measured in years, months and days from the moment when the person was born.

Child and **minor** are considered synonyms (any person below the age of 18) and both terms are used in this publication. EASO's preferred term is 'child'; however, the term 'minor' is used when it is explicitly referenced by a legal provision. For the purpose of this publication focusing on asylum-seeking children, the term used to refer to the person whose age is not established is the **applicant**.

As stated above, the expression **unaccompanied child** is applied as a synonym of **unaccompanied minor** and is defined as a child/minor who arrives in the territory of the EU+ states unaccompanied by an adult responsible for him or her, whether by law or by the practice of the state concerned, and for as long as he or she is not effectively taken into the care of such a person/adult. It includes a child/minor who is left unaccompanied after he or she has entered the EU+ territory.

There is no general consensus on the definition of **guardian** and, in practice, a guardian is often assimilated to the figure of the **representative** of the child or social worker. However, for the purpose of this guide, a **guardian** is considered to be an independent person appointed by a national authority who safeguards the child's best interests and general well-being. In the context of the reform of the CEAS⁽⁴⁾, the European Commission has proposed to replace the reference to the 'representative' in the current EU asylum legal instruments to 'guardian'. As the CEAS reform was still under discussion at the time of this publication, the reference to **guardian/representative** is used throughout the text.

The **EU asylum acquis** consists of the following set of EU legal instruments: the 'reception conditions directive' recast, the 'asylum procedures directive' (APD) recast, the 'qualification directive' recast, the 'temporary protection directive', the 'Dublin regulation III' and the 'Eurodac regulation' recast⁽⁵⁾. A compilation of international, European and national provisions and legal instruments related to age assessment can be found in Annex 3 'Legal framework and policy guidance' of this publication.

For the purpose of this guide, the EU Member States plus Norway and Switzerland are referred to as **EU+ states**.

⁽⁴⁾ Proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (COM(2016) 467 final, 2016/0224 (COD)), available at <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-467-EN-F1-1.PDF>. At the time of writing, it cannot be known whether the Commission's proposal will result in a new regulation or what its precise terms will be. The reader should, therefore, simply be aware that at some point in the future, there is the possibility that the APD (recast) may be repealed and replaced by a regulation with some amended provisions.

⁽⁵⁾ The legal texts and their translations are available at:
 'reception conditions directive' recast, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0033>;
 'asylum procedures directive' recast at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0032>;
 'qualification directive' recast at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0095>;
 'Dublin regulation III' at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604>;
 'Eurodac regulation' at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R0603>.

Chapter 1 Circumstances of age assessment

Age is an essential element of a child's identity. The EU *acquis* ⁽⁶⁾ as well as the CRC (Article 1) define childhood by reference to age:

A child/minor is any person below 18 years of age.

Two main consequences derive from this definition. The first one is that the convention applies to every person under 18 years of age. Secondly, as established in the EU *acquis*, any international protection applicant under 18 years of age is entitled to child-sensitive procedural safeguards and special reception conditions.

Despite continuously changing, age is an innate characteristic of **one's identity**. As part of the personal status of a person it determines the relationship between the state and the person. As such, changes in age may trigger specific rights and obligations, for example being considered an adult when someone turns 18. However, the age of 18 is not always the determining factor for acquiring new rights and obligations or full capacity in some aspects such as military service, the emancipation age and minimum age of criminal responsibility, the age of consent for marriage or the age for employment or sexual relations. Depending on national legislation, these thresholds may be reached at an earlier chronological age.

When known, the age of a person rules the relation between the person and the state, and consequently determines Articles 7 and 8 of the CRC establish the following state parties' age-related key obligations:

- register the child after birth;
- respect the right of the child to preserve his or her identity; and therefore
- re-establish in a speedy manner his or her identity.

According to these provisions, all children should be registered at birth and provided with documental evidence of their identity. However, statistics from the United Nations ⁽⁷⁾ indicate that over the period 2003-2007, less than 10 % of African countries ⁽⁸⁾ reported the total number of live births, in contrast to the European countries' rate (90 %). Low birth registration rates in countries of origin is one of the reasons why international protection applicants may arrive in the EU **without documents** or with documents that are considered to be unreliable. The rate of birth registration is not uniform across the main countries of origin of international protection applicants; for example, in Somalia only 3 % of children under 5 years of age were registered at birth, while in Afghanistan this number rises to 37 % ⁽⁹⁾ (these percentages relate to the current birth rate). According to the UN statistics division, that number drops to under 6-10 % for children who were born 14-18 years ago (ages of the unaccompanied children arriving in Europe). Furthermore, other factors, such as a rural origin or belonging to a minority or particular social group (castes, tribe, etc.), may hinder access to birth registration. The lack of awareness of its importance or the lack of knowledge on how to register the birth also deepens the disparity of birth registration within the same country. The low birth registration rates result in children having difficulties to prove their identity and age through documentary evidence, and as a consequence may end up unprotected and deprived of the rights they are entitled to. In addition to the lack of registration, the issuance of birth certificates may not be possible in countries experiencing war or armed conflict or where the authorities are unwilling to provide them. The absence of documents that prove that the child is under 18 years of age can have a direct effect on their recognition as child right holders. Consequently, children may end up being treated as adults on matters such as, among others, army service, marriage and access to the labour market and to justice.

As chronological age does not play an important role in the acquisition of an adult status in all cultures, it is important to take the cultural factor into consideration. In some cultures, children are treated as adults as soon as they experience certain physical changes or become part of a separate family (for example through

⁽⁶⁾ See Article 2(d) RCD, Article 2(l) APD, Article 2(k) QD, Article 2(i) Dublin III regulation and Article 2(6) ATD.

⁽⁷⁾ http://unstats.un.org/unsd/demographic/crvs/vs_availability.htm

⁽⁸⁾ Ibid., based on complete registration systems.

⁽⁹⁾ http://data.unicef.org/wp-content/uploads/2015/12/Birth_registration_May-2016.xlsx

the practice of child marriage). For these reasons, it is common that they may not know their chronological age and find it difficult to understand its importance in Western cultures. Since the chronological age may not be an identifying feature for their position in their community or relationship to others (in some regions children are always registered as having been born on the first of January of the year they were born in, irrespective of if they were born in any other month), this **cultural difference** may result in somewhat vague statements regarding dates of birth or age.

In the context of international protection, the age of the applicant is a key indicator of special **protection needs** ⁽¹⁰⁾ (children, elderly). Belonging to certain age groups triggers the application of special/additional procedural guarantees during international protection procedures as well as special reception conditions (such as the right to be placed in suitable and safe accommodation, the right to education and specific healthcare, the limitation of administrative detention for migration purposes in exceptional cases and the obligation to look first for viable alternatives to detention). In the case of children, or while there are doubts about the applicant's age, the BIC must be given primary consideration throughout the procedure. Furthermore, age is also significantly relevant for child-specific types of claims (forced/early marriage, forced recruitment, female genital mutilation, child trafficking, family and domestic violence, forced labour, prostitution and child pornography) ⁽¹¹⁾.

Beyond the context of international protection, the age of a person has implications when involving the authorities in other procedures, such as giving consent to marriage, reporting underage sexual relationships, accepting or refusing healthcare treatments, access to the labour market, ensuring access to other rights (right to education, etc.) and implications for criminal responsibility (minimum age of criminal responsibility, etc.).

Consequently, when the age is unknown and there are **substantiated doubts** concerning the age, authorities may need to assess the age of the person to determine whether the person is an adult or a child. In cases where the applicant is obviously a child or where in absence of contradicting evidence the applicant's physical appearance, demeanour and psychological maturity undoubtedly indicate that the applicant is significantly over 18 years old, age assessment may not be necessary. However, if there is contradicting evidence beyond the physical appearance, for example if the person looks significantly over 18 years of age, but has documentation that indicates that he or she is a child, an age assessment could still be required. In fact, the necessity of an age assessment implies the existence of doubt about the age and therefore the possibility of the applicant being a child.

Doubts may arise not only when the applicant is claiming to be a child but also when he or she claims to be an adult. Children on the move may pretend to be adults in order to **avoid the protective measures** of the authorities. This may be done for different reasons; for example, they may wish to continue migrating to the intended destination and so want to avoid supervised accommodation with, in some cases, limited freedom of movement or where they would be separated from accompanying adults. Often, children may claim to be adults to be allowed to work, to marry or because they consider themselves to be adults responsible for the well-being of the family left behind. However, in other cases, children could just be following instructions given by smugglers or traffickers. In such cases, smugglers or traffickers try to keep children off the radar so that they remain unprotected, making them easy prey for later exploitation. Awareness of this phenomenon can facilitate early identification ⁽¹²⁾ of a victim, or a potential victim, of trafficking in human beings (THB) and break the chain of exploitation.

In conclusion, **age assessment** is the process by which authorities seek to estimate the chronological age or range of age of a person in order to establish whether an individual is a child or an adult.

The correct identification of an individual as a child or as an adult is crucial to ensure that children's rights are protected and guaranteed as well as to prevent adults from being placed amongst children in order to take advantage of additional rights or safeguards (such as access to education, appointment of a guardian/representative) that are not afforded to them.

⁽¹⁰⁾ See, for instance, the non-exhaustive list of vulnerable applicants provided by Article 21 RCD recast.

⁽¹¹⁾ UNHCR, *Guidelines on international protection: child asylum claims under Articles 1(A)2 and 1(F) of the 1951 convention and/or 1967 protocol relating to the status of refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html>.

⁽¹²⁾ EASO has developed an online tool to assist national authorities on the timely identification of persons with special procedural and/or reception needs (IPSN), available at <https://ipsn.easo.europa.eu/>.

The age assessment from a fundamental rights perspective

A number of fundamental rights enshrined by the CRC and the Charter of Fundamental Rights of the European Union (CFR) ⁽¹³⁾ are of particular relevance in the age assessment process.

The best interests of the child (Article 3 CRC and Article 24 CFR)

The BIC must be primarily considered in all actions concerning children. They are therefore to be applicable from the moment that it is considered that the applicant may be below 18 years of age, throughout the assessment of the age if such assessment is necessary and until conclusive results indicate that the applicant is an adult.

Right to non-discrimination (Article 2 CRC and Article 21 CFR)

Every person should be treated with objectivity and be individually considered. It is crucial to avoid preconceived ideas about certain nationalities, ethnicities, etc. when assessing age.

Right to identity (Articles 1, 7 and 8 CRC)

Age is as much a part of a person's identity as their name, nationality, citizenship and family status are. It determines the rights and obligations of a person as well as the state's obligations towards the person (e.g. to provide protection, education, healthcare). One of these obligations is to reinstate the identity of someone who has been unlawfully deprived of it, effectively obliging the state to provide proof of it and to guarantee the recognition and respect of these rights by others. An incorrect age assessment may cause permanent damage if it impedes access to one's rights and the possibility to exercise them, as well as the recognition of these rights by others. An incorrectly conducted age assessment can result in children being placed in vulnerable situations. This could mean that children end up interacting with or being placed among adults or adults ending up incorrectly placed with children, a scenario which is particularly concerning.

Right to express their views freely and right to be heard (Articles 12 and 14 CRC and Articles 24 and 41 CFR)

This is a fundamental right with far-reaching effects. It encompasses the child's right to express his or her own views freely and the right to have his or her views taken into account and given due weight in accordance with their age and maturity. In cases where the applicant's age is in doubt, special caution must be taken to prevent subjective or arbitrary considerations (for example, the age at which a child can form his or her own views) when taking the views of the child into account according to their level of maturity. Special consideration should also be given when dealing with persons with disabilities and other special needs (e.g. illiteracy).

Strictly connected to the right to express their views and the right to effective remedy is the right to be heard, before any individual measure which would affect him or her adversely is taken in administrative or judicial proceedings.

Right to information

Information is key in enabling someone to understand the age assessment process as well as the rights and obligations that the process entails. Furthermore, when consent is required, the person should give consent based on accurate and comprehensive information and be able to provide it freely without any kind of pressure or condition.

⁽¹³⁾ The CFR is available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

Respect of dignity and right to integrity (Articles 3 and 37 CRC and Articles 1, 3 and 5 CFR)

The age assessment process must respect the applicant's dignity as well as his or her physical integrity. As age assessment examinations requiring the exhibition of intimate parts or nudity are highly intrusive and have no medical purpose, these must be avoided. The exhibition of physical parts is especially traumatic and difficult to understand for children, adolescents and applicants with different cultural backgrounds. These examinations are particularly distressing and possibly re-traumatising for children who may have been exposed to abuse or other risky situations during their migration experience or have had experiences of persecution or serious harm.

Respect for private life and the protection of personal data (Article 16 CRC and Articles 7 and 8 CFR)

This right protects the private life of children against arbitrary interference by public authorities and private organisations, such as the media. This protection covers four distinct areas: private life, family life, home and correspondence. Interference by authorities into personal life needs to be justified, limited to the maximum extent and ruled by a precise set of norms. Under EU law, personal data can only be gathered legally under strict conditions, for a legitimate purpose, obtained with the consent of the person or of his or her representative, or legally justified. Otherwise, this interference becomes arbitrary or unlawful. Persons or organisations collecting and managing personal information must ensure protection from misuse and must respect the rights of the data owners guaranteed by EU law. Children and their guardians/representatives should be informed about the data that is going to be collected under the respective national legal framework. In the international protection context, caution must be taken when collecting data to prevent any breach of information that could endanger the applicant or his or her family.

Right to an effective remedy (Articles 12 and 47 CFR)

This right implies that the outcomes of the process can be challenged and that the information and assistance needed to exercise this right is available to children. Financial costs incurred from challenging the age assessment decision shall not be borne by the applicant; otherwise the right to effective remedy would not be effectively exercised.

Most of these fundamental rights are reflected as principles (the BIC) and procedural safeguards by international and European legislation, in particular in the EU asylum *acquis*, as shown in the next chapter.

Chapter 2 The best interests of the child and procedural safeguards

The best interests of the child

The principle of the BIC is deeply rooted in the European human rights and asylum legislation and the international legal framework ⁽¹⁴⁾.

'In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.' (Article 24 CFR)

The BIC, as an overarching principle, demands continuous consideration from the moment the child is found until a durable solution is selected for the child.

In the context of international protection any indication that the applicant could be a child should immediately trigger the consideration of the BIC in all actions affecting him or her and therefore also throughout the asylum procedure. In this regard, host EU+ states are responsible for observing the BIC not only in the asylum procedures but also in all other processes and decisions affecting children, such as in the age assessment process.

As stated by the UN Committee on the Rights of the Child ⁽¹⁵⁾, the BIC is a threefold concept.

(a) A substantive right: the right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general.

(b) A fundamental, interpretative legal principle: if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen.

(c) A rule of procedure: whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned.

Assessing and determining the BIC requires procedural guarantees. Furthermore, the justification of a decision must show that the BIC have been explicitly taken into account. In this regard, authorities shall explain how the right has been respected in the decision, i.e. what has been considered to be in the child's best interests; what criteria it has been based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

Consequently and in compliance with the UN Committee on the Rights of the Child's general comment, the decision to undertake age assessment and the methods selected in order to assess age should also be subject to primary consideration of the BIC.

⁽¹⁴⁾ Article 3 CRC, Article 24 CFR; EU asylum *acquis*: Article 23 RCD recast, Article 11 RCD recast, Article 25.6 APD recast, Article 20.5 QD and Article 6 Dublin III regulation recast.

⁽¹⁵⁾ General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, para. 1), available at: http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf.

Assessing the best interests of the child for the purpose of the age assessment

A BIA verifies that the age assessment process serves the child's best interests, that the necessary procedural safeguards are in place, that the rights of the individual child are protected and that the results are expected to dispel the doubts on the age of the applicant. The BIA should consider the specific circumstances of the child as well as ensure that the BIC are given primary consideration when deciding whether to have his or her age assessed and how. For this reason, the age assessment process must be child-centred, taking into consideration the specific circumstances and needs of the applicant.

In light of this, the BIA should be conducted prior to any decision affecting the child being taken, therefore before deciding to conduct the age assessment process.

In case further actions are needed, the BIA will require a follow-up to ensure that the best interests are considered. The decision on undertaking an age assessment should consider the outcome of the BIA interview and all the information in the child's file. If the age assessment is not deemed necessary and useful considering the expected results, **it should not be undertaken**.

Furthermore, the following factors are of particular importance when considering the BIC for the specific purpose of age assessment in the context of international protection.

- **Security and safety considerations** ⁽¹⁶⁾: upon arrival or at a later stage, children sometimes claim to be adults in order to avoid the accommodation for children. Such accommodation has more protective measures such as limitations on the freedom of movement and allocated staff to take care of them. This may be due to a number of different reasons, for example the wish to remain undetected in order to continue moving to the intended destination. On other occasions, this alleged adulthood may be part of the background story that they have been instructed to tell the authorities or other actors when asked about their age. The sources of these background stories can be quite diverse. They could be instructed by relatives or accompanying adults who want to prevent separation, or by smugglers; however, it could also come from a member of the trafficking network who wants to keep control over and have easy access to the child during his or her stay in the territory. Therefore it is very important to keep in mind that a doubtful claim of adulthood may be an indicator that the applicant is a potential victim of THB, and authorities should act accordingly (signposting and referring to relevant national services, including possible assessment as a victim of THB).
- **Child's well-being** ⁽¹⁷⁾: if the age assessment is justified, the methods used must be the least intrusive for the child, the most accurate to assess the range of age, transparent and defined in accordance with validated standards, as well as be auditable and reviewable. In order to ensure that the expectations of the results of the methods are realistic, the margin of error must be identified and documented. The doubts and concerns of the child must be attended to and any reasons for a refusal to undergo the assessment must be explored and alternatives provided, if available. Requests of the child or of his or her guardian/representative must be attended to to the maximum extent possible in order to preserve the well-being of the child and to reduce the distress of the examinations (limiting the number of people in the examination or interview room, with the presence of the guardian/representative if the child so requires, etc.).
- **Child's background** ⁽¹⁸⁾: it is important to adapt the process to the child's cultural background (preferred gender of the examiner and interpreter) as well as to their experiences (the flight and the migration to Europe that the child has gone through could cause or exacerbate their vulnerability).
- **Specific circumstances**: authorities shall weigh the applicant's specific circumstances (range of disputed age, the gender of the applicant, etc.) and needs, the potential positive and negative effects, the views of the applicant, and if the particular methods in use are appropriate for the case.

⁽¹⁶⁾ Article 23(2) RCD, Article 6 and recital 13 Dublin III regulation and recital 18 QD.

⁽¹⁷⁾ As stated in Article 23(2) RCD, Article 6 Dublin III regulation and recitals 18 QD, 33 APD, 13 Dublin III and 20 APR.

⁽¹⁸⁾ Article 23(2) RCD and recitals 33 APD, 13 Dublin III and 18 QD.

As a reflection of the above, both international and European legal frameworks identify the following standards and safeguards necessary for age assessment.

The benefit of the doubt shall be applied as broadly as possible in the case of unaccompanied children, who are less likely to have documentary evidence.

Immediate access to a qualified, independent **representative and/or guardian**, who acts in the child's best interests, safeguards the general well-being and exercises the legal capacity.

The right to receive age-appropriate **information** in a language that he or she understands.

The right to participate and to have his or her **views heard** and considered according to his or her age and maturity.

Informed consent and the **right to refuse** medical examinations.

Confidentiality, data protection and safety considerations.

Child-friendly procedures conducted by **qualified professionals** who are aware of the cultural and ethnic particularities.

Least intrusive method, least intrusive process (gradual implementation), gender- and culturally appropriate.

Accuracy and margin of error to be applied in the applicant's favour.

Right to **effective remedy** as may be applicable.

When the process and the available resources do not guarantee the cited safeguards, as might occur in situations of a large influx or disembarkation, the age assessment might be conducted at a later stage or in two stages (with a preliminary screening upon arrival and a fully fledged age assessment once the conditions allow it). In this scenario, benefit of the doubt is fully applicable and the claimed age must be accepted until the conditions ensure that a safe and efficient age assessment can be conducted ⁽¹⁹⁾.

It should be noted that while the guidance and tools provided in this publication only focus on the age assessment process, the BIA is to be continued until a durable solution is found for the child. Furthermore, the BIA does not intend to replace a best interests determination (BID), which is required when durable solutions for the child are under consideration.

Applying the principle of the benefit of the doubt

The benefit of the doubt is a key principle and safeguard in the field of age assessment since none of the current methods of age assessment are able to determine a specific age with certainty.

Owing to the importance of this principle, benefit of the doubt repeatedly appears as a key procedural safeguard in matters related to children, and also in the age assessment process in the EU asylum *acquis* (Article 25(5) APD recast). Furthermore, the anti-trafficking directive (ATD) ⁽²⁰⁾ clearly states that benefit of the doubt should be applied when the age is uncertain, as follows.

⁽¹⁹⁾ Further guidance and practical recommendations can be found in Chapter 4 and Annex 2 (the BIC tools).

⁽²⁰⁾ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>.

‘Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection.’ (Article 13.2 ATD)

The issue becomes more complicated, since doubts about the age of an applicant are often a consequence of a lack of documentary evidence. This is particularly common in the case of children. However, the age assessment process might not dispel all doubts (results are often about 1 or 2 years below or above 18 years old) due to the limitations of the current methods.

Age assessment should not be a routine practice. The need for age assessment should be **duly justified** based on the **substantiated doubts** on the stated age, resorted to only in cases where there is an absence of evidence and/or in cases where several elements of evidence gathered contradict the applicant’s claimed age. If the available evidence does not contradict the age or it confirms the claimed age, then it should be accepted.

In cases where there is a lack of documentary evidence (such as passports, ID documents, residence cards or travel documents such as those issued by the UNHCR, other countries’ certificates or religious or civil certificates, probing the civil status — marriage, births, family booklet of the applicant or any family member — with any reference to the age of the applicant), authorities may be uncertain or have **simple doubts** about the age of the person.

Simple doubts

In case of a lack of valid documentation, if the claimed age (statements of the applicant) is supported or confirmed by at least one of the following elements of evidence gathered by the authorities, then the claimed age can be accepted without the need for age assessment.

- Information from other databases.
- Statements from other family members, relatives or the child’s guardian.
- First estimations of physical appearance.

The elements may be weighted differently according to the reliability of the specific element in comparison to the others.

In other cases, when documentation is missing and the claimed age is not supported or is contradicted by several elements of evidence gathered by the authorities, doubts are considered to be **substantiated**. Where harmful consequences may result from an incorrect consideration of the person as an adult or child, the initiation of age assessment should be deemed necessary provided it is in the BIC.

Substantiated doubts

In case of a lack of valid documentation, when the claimed age (statements of the applicant) is not supported or is contradicted by several elements of evidence gathered by the authorities, then the claimed age cannot be accepted and there will be a need for an age assessment.

- Information from other databases.
- Statements from other family members, relatives or the child’s guardian.
- First estimations of physical appearance (to be considered only in conjunction with the previous elements, not only on its own).

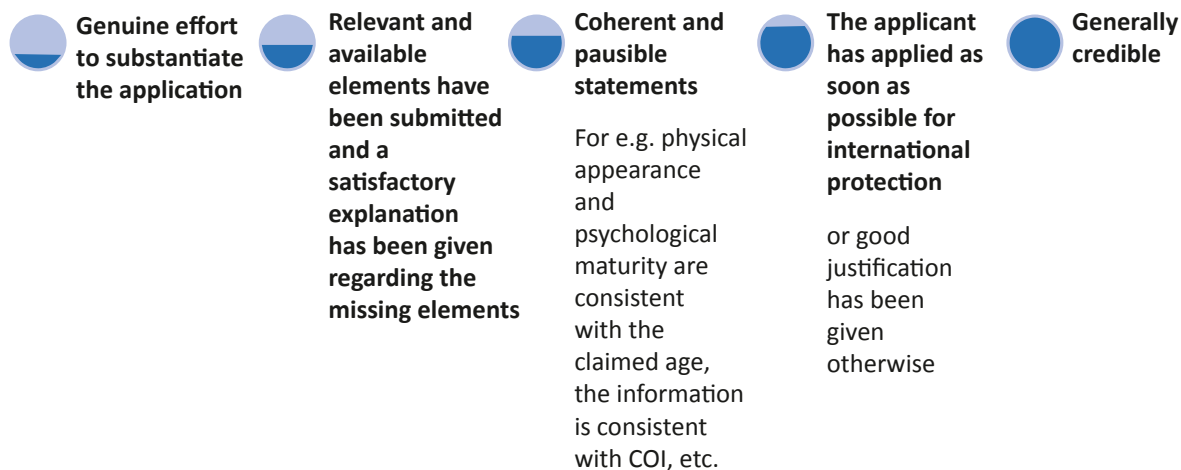
The elements may be weighted differently according to the reliability of the specific element in comparison to the others.

After the analysis of the previous elements, authorities may have substantiated doubts on the claimed age, thus an age assessment process might be needed to estimate the age of the applicant.

The age of the applicant as a material fact

In some particular cases, such as in the case of child-specific grounds for international protection (forced marriage, child soldiers, etc.), the age of the applicant constitutes a material fact ⁽²¹⁾ and is thus relevant to the examination of the application for international protection. In these cases, even if the applicant's statements on age are not supported by documentary or other evidence, the statements will be found credible and accepted without the need for further (age) assessment if the following conditions are met (as established in Article 4.5 QD).

Required conditions to find the applicant's statements credible even if not supported by evidence



This is a particularly important provision for unaccompanied children who may be less likely to have documentary evidence, and especially so in cases of applicants for international protection.

The information should be assessed by asylum or migration officials and should take into account the individual and contextual situation of the applicant. In the case of children or presumed children, and especially when unaccompanied, the level of expectations regarding available evidence and consistency in explanations should be lower.

The benefit of the doubt throughout the age assessment process

Due to the inaccuracy and potential intrusiveness of the current methodologies in use, the systematic application of benefit of the doubt throughout the whole age assessment process is crucial. It is necessary to acknowledge and establish the margin of error of the current methods within the process, and its influence on the results. These shortcomings should not be detrimental to the applicant's rights or statements; on the contrary, a proper implementation of benefit of the doubt should lead authorities to interpret inconclusive results in the applicant's favour, *in dubio pro refugio* or *in dubio pro minore*.

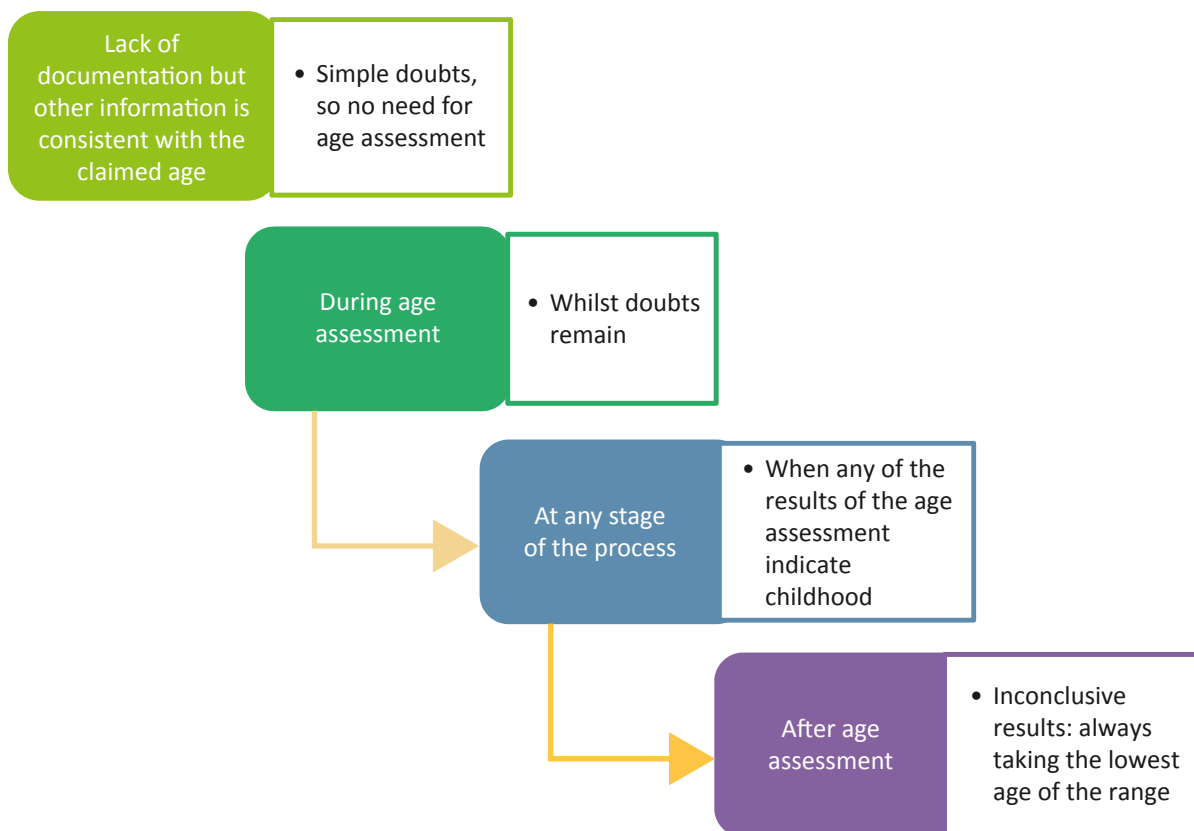
'Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.' (Article 25.5 APD)

⁽²¹⁾ As defined in the *EASO practical guide: evidence assessment* module, **material facts** are (alleged) facts that are linked to one or more of the requisites of the definition of a refugee or person eligible for subsidiary protection.

An ultimate benefit of the application of this principle to the identification phase for children is that this principle provides an immediate answer to any doubts and does not require a costly or lengthy process to achieve it. Additionally, it might and should be applied before and at any stage of the assessment where any doubts are raised by the experts involved in the process (the experts conducting the age assessment or when interpreting the results). This is especially relevant in situations of high influx where authorities have to make rapid decisions and resources are overstretched. Nevertheless, while facing the possibility of dealing with a child, he or she must not be considered as an adult and must therefore not be placed in adult accommodation or in detention facilities, either before or during the assessment.

The **applicant shall be considered and treated as a child** throughout these steps:

Practical implementation of the principle of the benefit of the doubt



The benefit of the doubt is therefore applicable in the following cases:

When the claimed age (statements of the applicant) is not supported by documentation but is consistent with other elements of evidence gathered by the authorities, benefit of the doubt directly applies, meaning that there would not be any need for age assessment.

- In cases where age assessment is undertaken, the individual should be afforded benefit of the doubt and treated as a child for the **duration of the process and for as long as any doubt remains**.
- If any of the methods applied **during age assessment** obtain a result indicating childhood, the assessment shall stop there and the **lowest age of the range** is to be taken as valid.
- Finally, if **after the process** has ended the results are still **inconclusive**, age assessment shall consider the **lowest age of the range as valid** ⁽²²⁾.

⁽²²⁾ See Article 25.5 APD recast and the UN committee's General Comment No 6.

Key findings from EU+ states' practice

The applicant is considered a child during age assessment in 17 EU+ states.

One Member State applies a margin of error of 2 years in the applicant's favour once the results are received.

Two EU+ states do not apply benefit of the doubt.

Further information can be found in Annex 4 to this publication.

Guardian/representative

As a key safeguard for unaccompanied children, the presumed child should be **appointed an independent and qualified guardian/representative as soon as possible** (see Article 25(1) APD).

A representative is a person or an organisation appointed by competent bodies in order to assist and represent an unaccompanied child in procedures. The representative ensures the BIC and exercises legal capacity for the child where necessary ⁽²³⁾. The representative should be appointed as soon as possible and before the commencement of any age assessment examination. In addition, the representative must be **independent** in order to avoid any conflict of interests, thus ensuring that he or she acts in the BIC as established in Articles 24(1) and 25(1)(a) APD recast as well as in Article 24 RCD recast. Where, for practical reasons, a permanent guardian cannot be assigned swiftly to a child, provisions should be made for the appointment of a person who temporarily carries out the guardian's tasks. In such cases, temporary guardians must have the same conditions (qualifications and independency) as non-temporary guardians. The representative should be **informed and consulted** about all the aspects of the age assessment process and should be able to accompany the child during the examinations, if the child so wishes. When age assessment is considered to be in the child's best interests, yet the child does not agree to it, the guardian/representative could potentially still **give consent** to the assessment. However, this needs to be well communicated between the child and their representative in order not to jeopardise the relationship of trust between them.

The guardian/representative should also be present in the BIA interview, if possible. The child's legal counsel, if available, should also be contacted and given the opportunity to attend the BIA interview ⁽²⁴⁾.

The process should continue with the presence of the guardian/representative, unless the child requests otherwise. Either way, the guardian/representative should closely follow the process in order to be able to advise the applicant when needed.

Key findings from EU+ states' practice

The presence of an independent person to support the applicant during the examinations is allowed in 23 EU+ states. In 12 of them, this role is exercised by the guardian or representative.

One EU+ state only allows this independent person for Dublin cases.

One EU+ state allows the presence of a supportive person during forensic examination.

One EU+ state does not allow it.

Further information can be found in Annex 4 to this publication.

⁽²³⁾ Article 2(n) APD.

⁽²⁴⁾ For that purpose, the BIA checklist included in Annex 2 can be of use.

Additional guidance regarding the role of the guardian in the age assessment process may be found in the FRA *Guardianship for children deprived of parental care* handbook ⁽²⁵⁾, which contains the following.

Possible actions by the guardian in relation to age assessment:

- check that there is **legitimate reason** for the age assessment and request that children who are clearly underage not be subjected to such assessment;
- ensure that the child receives all **relevant information** about the age assessment procedure, including clear information about its purpose and the process and possible consequences — the information should be provided in a child-friendly manner and in a language the child understands;
- ensure that the age assessment is conducted with the **informed consent** of the child and of their guardian;
- check that independent professionals with **appropriate expertise** who are familiar with the child's ethnic and cultural background undertake the age assessment and conduct it in a safe, child- and gender-sensitive manner with due respect for the child's dignity;
- if doubt remains about the child's age after the age assessment is completed, insist that a person be considered a **child**;
- ensure that the **outcome** of the procedure is explained to the child in a child-friendly manner and in a language he or she understands.
- request that the **results** of the assessment procedure be shared with the guardian and include these in the child's file;
- review with the child the **possibility of an appeal** against the age assessment decision, in accordance with national legislation;
- with the child's agreement, **be present** during the age assessment procedure.

Examples from practice

DK — In cases of unaccompanied children, delays in the appointment of the guardian may derive from age disputes. This can occur when it is necessary to complete age assessment procedures before a guardian is appointed. To overcome this delay, the Danish Red Cross is the designated organisation to appoint an observer, called 'bisidder'.

UK — The Scottish Guardianship Service (set up on a non-statutory basis) works with children and young people who arrive in Scotland unaccompanied and separated from their families. It supports and works with young people under 18 years of age who are seeking asylum or have been trafficked from outside the EU. It also works with anyone who is being treated as a child under 18 but whose age is disputed and is undergoing age assessment. Children and young people are allocated a guardian to help them understand, participate in and navigate the complex immigration, legal and welfare processes.

Right to information

Prior to the examination of the application for international protection, the child must receive all the **relevant information in a child-friendly manner** and in a language which he or she is able to understand. The child's understanding of the information must be ensured before proceeding with the assessment. Such information should be provided free of charge and the questions of the applicant or the guardian/representative should be attended to. It is crucial to ensure the applicant understands the process, the objective and the consequences (e.g. he or she can explain it with his or her own words). Some applicants might not dare to ask questions due to their age, cultural background or psychological state. The use of child-friendly materials or materials adjusted to the specific needs of the person may be of assistance in helping the applicant to understand the process; however, in practice, the skills and empathic and

⁽²⁵⁾ The handbook is available at http://fra.europa.eu/sites/default/files/fra-2014-guardianship-children_en_0.pdf.

supportive attitude of the person providing the information are of utmost importance for a successful outcome. Information must be provided systematically during the process and evidence of this provision of information should be documented (when it was provided, by whom, etc.). The information should cover at least the following content:

- there are doubts regarding the age and the reasons for these doubts;
- the possibility that the age may be estimated by an age assessment which may include a medical examination if the applicant provides consent;
- information on the method and on the process (what the methods being used are, why these specific methods are preferred, the accuracy and intrusiveness of the method, the impact that the specific method may have, etc.);
- doubts and concerns must be addressed, the systematic provision of information and a good understanding of the process and its purposes are essential to ease the consent gathering;
- the rights and obligations attached to the process (consequences must not be too detrimental otherwise they would bias the consent of the applicant);
- the right to refusal to undergo medical examination and its consequences;
- the possibility to challenge the results of the age assessment;
- the next steps to follow.

Key findings from EU+ states' practice

The majority of the respondents (15 EU+ states) provide information on all of the methods used in the age assessment process, while nine EU+ states provide information only when applying medical methods.

22 EU+ states provide the information to the applicant in a language that they understand or are supposed to understand.

One EU+ state only informs about the results when the applicant is assessed to be older than the claim.

One EU+ state ensures that the formal decision is explained by social workers.

Further information can be found in Annex 4 to this publication.

Right to express their views and to be heard

As stated in the CRC (Article 12) and analysed in the UN committee's General Comment No 12, the right to be heard applies to every child capable of forming his or her own views. The provision of information and support is decisive in contributing to the development of the child's capacity to form their own views.

After the information has been provided and understood by the applicant, his or her views should be gathered and taken into consideration on all matters affecting him or her, according to his or her level of maturity. This right requires a systematic application throughout the procedure and at least in the following moments.

- Views should be gathered whenever the authorities have **doubts** regarding the statements or the evidence provided by the applicant. A simple attempt to exchange views and explain in a constructive manner the reasons why the claimed age is not accepted or why the information is not enough may help the applicant to understand the process and increase their willingness to cooperate.
- In cases where there are possible **inconsistencies** in the age of the applicant, he or she must be given the opportunity and time to explain them either orally or in writing.
- Sometimes the applicant will be able to **substantiate the claimed age** through the provision of additional documentation, proof or credible explanations. In such cases these explanations and conditions would render the age assessment unnecessary.

- In cases where the applicant **refuses to undergo** a medical examination, the reasons must be explored and therefore the applicant should also be heard. Sometimes this reluctance can be overcome with more information or by adjusting the process to his or her needs, such as by selecting an alternative method.
- As the consequences of the identification as an adult or as a child are far-reaching, the applicant should be given the opportunity to **challenge the results** in a prompt and accessible way if once finalised the results from the age assessment differ from the claimed age.
- The continuous involvement and participation in the process help to reduce feelings of uncertainty and distress and to build trust between the applicant and the authorities of the host EU+ states. Children being interviewed are often distressed about the possibility of being perceived as 'liars'. Moreover, they may be in a post-traumatic situation. The presence of the representative is key to ensuring that the views of the applicant are **heard and taken into account** according to his or her level of maturity, and the child will therefore have been assisted in making an informed decision to undergo the examinations through the specific method in use.

Since encouraging the child to be forthcoming with the disclosure of information on his or her age is crucial in establishing the need to undertake age assessment, the officials interacting directly with the child should be trained in the use of **child-friendly interviewing techniques**. Likewise, they should have the necessary background information and expertise (including on the child-specific context) regarding the country of origin of the child ⁽²⁶⁾ required to properly assess the information on the age provided by the child. Where possible, the interpreter should also be familiar with interviewing children.

Informed consent and right of refusal

Informed consent refers to a free, voluntary and informed decision. According to Article 25(5) APD recast, applicants and/or their representatives must provide consent for the medical examination. Even though consent is not a legal requirement, seeking consent to the age assessment is always encouraged when using non-medical methods. It can be obtained through the systematic and effective provision of information and a good understanding of the process and of its purposes.

Informed consent should be obtained from the applicant and/or their representative prior to undertaking the age assessment and after all the relevant information has been given to allow the applicant to make an **informed decision**. In particular, the potential impact of the medical examination, the right of refusal and the consequences of refusal on the part of the applicant to undergo medical examination should be explained and well understood.

As mentioned before, the applicant has the right to refuse to undergo any medical examinations. In some cases, reluctance to undergo them may be overcome by providing more information or by adjusting the process to his or her needs, sometimes by selecting an alternative method. The fact that an applicant has refused to undergo such an examination should not prevent the determining authority from taking a decision on the application for international protection (Article 25.5 APD). Furthermore, the application for international protection should not be rejected solely on the basis of the refusal to undergo medical examinations. No automatic assumptions or consequences should result from such a refusal. Furthermore, in cases of refusal, the applicant should not be automatically considered an adult, but the reasons should be explored, his or her situation should be assessed on a case-by-case basis and the consequences of refusal should not be so disproportionately adverse as to bias the applicant towards consent. If the applicant decides not to undertake age assessment without any justification for the refusal, the assessment must continue when possible with the elements at the authorities' disposal.

⁽²⁶⁾ EASO gathers and develops country of origin information available on their website: <https://www.easo.europa.eu/information-analysis/country-origin-information/country-reports>.

Key findings from EU+ states' practice

- 11 EU+ states obtain the informed consent of the applicant regardless of the age assessment method.
- 12 EU+ states only seek consent of the applicant if medical methods will be used.
- Four EU+ states do not request consent for any method (two of them do not request consent since they do not use medical methods either).
- On the other hand, six EU+ states request consent from the representative in all cases.
- Seven EU+ states would request the consent of the representative only if medical examinations were to be used.
- One EU+ state requests consent from the representative if the applicant appears to be under 14 years of age.
- Five EU+ states do not require consent from the representative in any case.
- 15 EU+ states give the applicant the possibility to refuse the age assessment regardless of the method.
- Seven EU+ states give this possibility, but it is limited to medical examinations.
- Three EU+ states do not recognise this possibility.
- Concerning the consequences of a refusal to undergo a medical age assessment:
 - 15 EU+ states would not automatically consider the applicant an adult;
 - six EU+ states would consider the applicant an adult if there was no justification for the refusal, or any additional indication that the applicant is a child;
 - six EU+ states would automatically consider the applicant an adult if she or he refuses to undergo age assessment.
- When deciding on the application for international protection, seven EU+ states would not take the refusal into account while 14 EU+ states will take the refusal into account.
- One EU+ state clarified that they will take the refusal into account only if the minority is relevant to the substance of the claim (child-specific grounds for persecution or serious harm).

Further information can be found in Annex 4 to this publication.

Confidentiality principle and data protection for safety considerations

Confidentiality refers to the treatment of information. When information is provided in confidence and is, therefore, confidential, it can only be shared with the consent of the subject of the information, or to authorised parties if allowed for in national law. The shared information is limited in scope only to the information necessary for these parties in order to carry out their functions. If not allowed for in the law, the holder of the information will need the owner's consent to share the information with another party. Before sensitive information is disclosed, the consent of the child to share the information must be sought in an age-appropriate manner. All those involved in the age assessment process should understand and be bound by the requirements of data protection. Further to this, informed consent should be obtained from the individual before their information is further shared. Information must also only be gathered and used for the purposes of age assessment.

The principle of confidentiality is intrinsically linked with safety considerations. Safety and confidentiality guarantees must be put in place as important safeguards in the age assessment process. This is especially so when referring to unaccompanied children who may be in need of international protection.

This consideration takes on additional weight when seeking information in the country of origin of a child who is an applicant for international protection.

If the applicant does not have documentation to prove the age, and the statements are not considered sufficient to prove it, authorities should try to be proactive in seeking this information through other means. The variety of means that could be employed is broad, such as any national or EU+ states' databases, family members that could have additional documentation or embassies of other countries.

Nevertheless, as underlined in the UN Committee on the Rights of the Child's General Comment No 6 ⁽²⁷⁾, in conducting the age assessment no reference should be made to the status of the child as an asylum-seeker or refugee (para. 80). The safety of the family members of the child remaining in the country of origin may be endangered if the principle of confidentiality is not observed; the child may become a refugee *sur place* (para. 23), meaning that if the child is asking for international protection, the disclosure of this information to the authorities of the country of origin might imply that the applicant can be persecuted or could suffer serious harm upon return.

The adverse consequences of a breach of the principle of confidentiality with regard to information collected within the international protection procedure, including information collected for age assessment purposes, may seriously affect not only the particular child and his or her family, but also the integrity of the asylum system.

Qualified professionals experienced with children

All those who work with and for children should receive appropriate initial and ongoing training concerning the rights and needs of children. Within their field of expertise they should demonstrate proficiency when using it for the specific purpose of age assessment or be trained to do it.

The least intrusive method

As acknowledged in the APD recast, age assessment should be conducted through the least invasive examination relative to the required level of certainty. It should be performed in full respect of the individual's dignity.

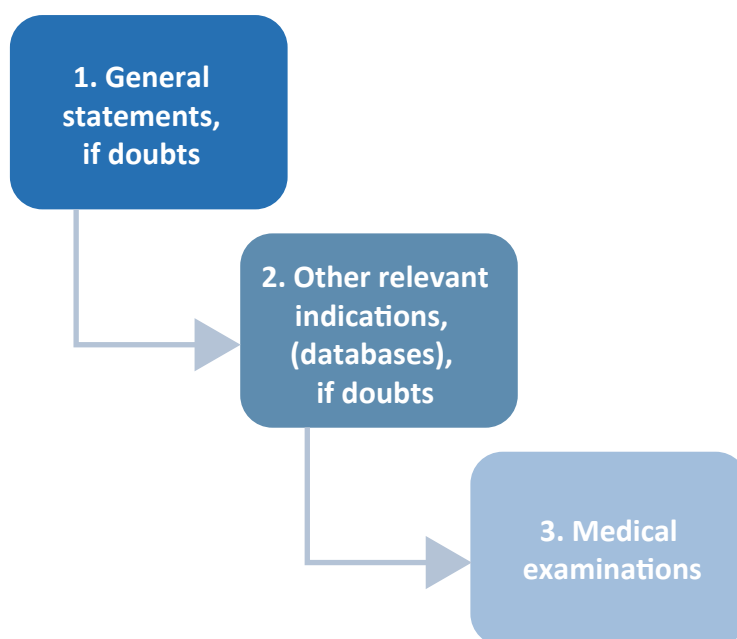
The term **invasive** is commonly used in medical procedures to indicate the introduction of instruments or other objects into the body or body cavities. This also includes the cutting of tissues. This term can be used as a synonym of intrusiveness, but both terms can be seen as being interchangeable in this context. As the negative effects of the age assessment methods do not always imply the mentioned physical effects but the intrusion of one's privacy, the preferred term is **intrusiveness** owing to its broader **spectrum**.

The level of intrusiveness may be considered to depend on the impact of the method on one's privacy (thorough interview), which is different from the impact on one's physical health (e.g. ionisation) or on one's psychological health (e.g. recalling traumatising events). These individual considerations make it very difficult to reach a consensus on which methods are more intrusive than others and therefore to objectively score them as such. For this reason, intrusiveness should be assessed on a case-by-case basis, depending on the circumstances of the specific applicant. For example, for some applicants with past traumatic experiences, a wrist X-ray may not be perceived as being psychologically intrusive, while an interview with a strong psychological element, such as recollecting past events, could be distressful for them. In other cases, the use of a particular coil to undertake a magnetic resonance imaging (MRI) can be claustrophobic and therefore inappropriate for some applicants.

For this reason, the selection of the least intrusive method and an age assessment process that caters for the needs of the specific applicant remains a challenge for the authorities. However, Article 25(5) APD recast provides useful guidance on this specific point.

'Member States may use medical examinations to determine the age of unaccompanied minors [...], where following general statements or other relevant indications, Member States have doubts concerning the applicant's age.' (Article 25.5 APD recast)

⁽²⁷⁾ UN Committee on the Rights of the Child, *General Comment No 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin*.



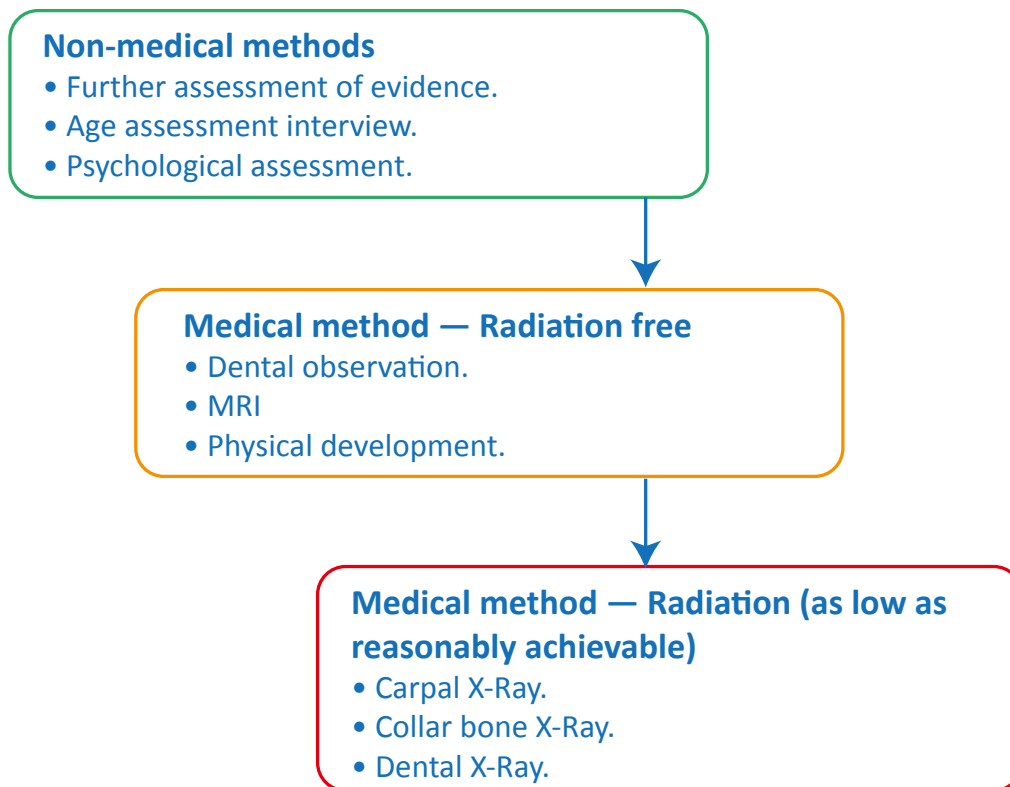
As a result, authorities must first examine any existing evidence, including statements and relevant indications, before deciding whether it is necessary to undertake further assessment.

Therefore, authorities are compelled to take a proactive approach to **gathering and analysing all the existing evidence** at their disposal. This includes not only the person's documents but also information from other family members who may have information and proof of age of the person (e.g. an older sibling with documentation proving his or her age), other databases, etc. This information should be gathered under the condition that the applicant or his or her family are not put at risk. When gathering this kind of information, authorities are not conducting an age assessment; it is instead considered to be a regular analysis of evidence by the asylum or migration authorities as part of their work.

When the available documentation or evidence does not directly provide information on the age, a deeper analysis or investigation is required, after which a **further analysis of evidence** is needed. This exercise would be considered an age assessment method different from the regular information-gathering one referred to in the previous paragraph. This method, together with others, is explored in more detail in Chapter 4, where the advantages and limitations of each individual method are analysed.

Some of the medical methods used for age assessment purposes involve the use of radiation (carpal, collar-bone, pelvic or dental X-rays). The use of these methods carries the risk of potentially harmful effects that radiation may have on the health of the applicant. For this reason, less intrusive methods (non-medical) should be used first and, if it appears necessary to resort to medical methods, radiation-free methods must be prioritised over ones that involve the use of radiation. The following image provides a visual guide to how methods should be prioritised.

Prioritisation of age assessment methods




The use of methods involving radiation should be deemed necessary only as a last resort. If these methods need to be used, all the cautions and measures required to prevent the risk of suffering any possible negative effects must be adopted. The dose of radiation exposure for the applicant varies in practice depending on the area of exposure, the equipment and national legislation. In this regard, the application of the as-low-as-reasonably achievable (ALARA) principle is crucial. ALARA is a radiation safety principle based on the minimisation of radiation doses and the limitation of the release of radioactive materials into the environment by employing all 'reasonable methods'. ALARA is not only a sound radiation safety principle, but it is also a regulatory requirement for all radiation protection programmes. Time, distance and shielding are the three major factors that are used to keep radiation doses ALARA:

1. Time: limiting the time of radiation exposure will reduce the radiation dose.
2. Distance: increasing the distance between the examinee and the radiation source will reduce exposure by the square of the distance. Doubling the distance between the body and the radiation source will divide the radiation exposure by a factor of four.
3. Shielding: there are various types of shielding used in the reduction of radiation exposure, including lead aprons, mobile lead shields, lead glasses and lead barriers; when working in high-radiation areas it is important to use shielding whenever possible.

Another important consideration that needs to be taken into account on the issue of intrusiveness relates not only to the method chosen but on how the examinations are being conducted.

- Examinations should never be forced or culturally inappropriate; professionals should be qualified and trained in gender- and culturally sensitive issues.
- Internal guidelines on how to conduct the examination should reflect the necessary measures to guarantee the preferred gender of the examiner and interpreter, if needed, or to reduce the number of examiners present to two persons in order to make the scenario less intimidating for the applicant.

- The premises where the method/practices are performed shall have the appropriate conditions to ensure maximum privacy, with respect to the principle of confidentiality and the rights of the child, including child safeguarding.
- Examinations involving nudity, observation or anthropometric measurements of genitalia or intimate parts should be precluded since they are highly intrusive; this is particularly so for persons with a different background and for persons who may have suffered episodes of abuse.

 For this reason, no method requiring nudity or the observation or examination of genitalia as the sexual maturity observation should be applied for the purpose of age assessment.

Example from practice

FR — According to the law of 14 March 2016 on the protection of the child, the use of X-rays is now restricted and the sexual maturity observation is explicitly prohibited as a method to assess the age of persons declaring to be under 18.

UK — Immigration officials at the border are permitted to make an initial assessment when an unaccompanied young person is first encountered based on the individual's own statement, any documents available and the immigration official's physical appearance and demeanour assessment in person. This is not binding as it can be disputed or challenged by the individual. In addition, the immigration official may request further clarification of the view formed of the individual's age. In both these situations, if there is a challenge from the individual or a concern by the immigration official that the individual is under 18, then the principle of benefit of the doubt is applied and the individual is treated as a child. This means that they will be transferred to the children's services department of a local authority which will then be asked to conduct an age assessment. The means by which the local authority does this are not set out in legislation, but the practice has developed of using two social workers to assess the individual and to come to a determination based on that assessment. They will use their training and experience of working with young people to come to a conclusion.

CY — The relevant procedure uses a holistic approach and includes medical and non-medical examinations.

Non-medical examinations:

1. documents submitted by the applicant;
2. note from the district welfare services' office;
3. age assessment interviews conducted by the asylum service.

If the asylum service, having exhausted all non-medical examinations (1-3), still continues to question the applicant's age, it may use medical examinations for determining the applicant's age as provided in Article 10(1)(G) of the national refugee laws.

All medical examinations are conducted in the presence of an interpreter and of the minor's guardian.

Accuracy and margin of error

The term accuracy is defined as the **'quality or state of being correct or precise'**. This is a fundamental issue regarding the age assessment process. As yet, there is no age assessment method that can provide accurate results on the chronological age of the person. The current methods can only offer an estimate of the age, thus the expressions 'age assessment' or 'age estimation' should be preferred over 'age determination'. As all methods have a margin of error, this aspect should always be documented, especially in the case of inconclusive results. As not all methods can estimate all the ranges of ages, the selection of the method should depend on the range of ages in question (some are more accurate in certain age segments than others). The gender of the applicant being subjected to the assessment is another factor that should be taken into consideration since the method may have a different margin of error depending on the gender of the examinee ⁽²⁸⁾.

⁽²⁸⁾ Tscholl, P.M, Junge, A., Dvorak, J. and Zubler, V., 'MRI of the wrist is not recommended for age determination in female football players of U-16/U-17 competitions', *Scand J Med Sci Sports*, 2015, doi:10.1111/sms.12461.

In accordance with the guidelines proposed by Ritz-Timme et al. ⁽²⁹⁾, for an age assessment method to be considered acceptable, it must fulfil the following requirements:

1. the method must be transparent and provable and presented to the scientific community as a rule by publication in peer-reviewed journals;
2. clear information concerning the accuracy of the method for age assessment should be available;
3. the method needs to be sufficiently accurate to solve any underlying questions and fulfil the specific demands of the specific case;
4. in cases of age assessment in living individuals, principles of medical ethics and legal regulations have to be considered, especially if medical intervention is involved.

According to Schmeling et al. 2011 ⁽³⁰⁾, to be considered **accurate**, any reference material used must fulfil certain requirements (Solari, A. C. and Ambramovitch, K., 'The accuracy and precision of third molar development as an indicator of chronological age in Hispanics', *Journal of Forensic Sciences*, (2002), Vol. 47, No 3, pp. 531-535):

- adequate sample size,
- verified ages of test persons,
- uniform age distribution,
- separation by gender,
- details of date of examination,
- clear definition of characteristics studied,
- exact description of methodology,
- details on reference population relative to genetic-geographic origin,
- socioeconomic status,
- state of health,
- details of group size, mean or median value and a measure of variation for each characteristics studied.

The assessment's margin of error should be documented and included in the report in a reader-friendly manner. This is to ensure a correct interpretation of the results and understanding by other professionals who have no medical expertise, such as law enforcement officials, judges, prosecutors, guardians/representatives or asylum and migration officials.

DE — If conclusive results are not obtained after the first examination, benefit of the doubt should still be given and other age assessment methods gradually used as part of the process. In this way, the decision would be based on a wider range of evidence, rendering it reliable. The federal states (*Länder*) are responsible for the age determination of unaccompanied children which takes place at the time of their being 'taken into care' (*Inobhutnahme*) as soon as they get into contact with a German authority. Their respective decision is also the basis for the asylum procedure.

In the preamble to the law changing the social code in 2015, reference is made to the recommendations of the Working Group of the Federal Youth Welfare Services (*Bundesarbeitsgemeinschaft landesjugendämter*; http://www.bagljae.de/downloads/118_handlungsempfehlungen-umf_2014.pdf).

Thus Section 42 of the social code provides the basis for the age determination process, which introduces a gradual procedure. The Working Group of the Federal Youth Welfare Services advises to consult

⁽²⁹⁾ Ritz-Timme, S., Cattaneo, C., Collins, M.J. et al., 'Age estimation: the state of the art in relation to the specific demands of forensic practice', *Int J Legal Med*, 2000, 113(3), pp. 129-136.

⁽³⁰⁾ Schmeling, A., Garamendi, P. M., Prieto, J. L. and Landa, M. I., 'Forensic age estimation in unaccompanied minors and young living adults', *Forensic medicine — From old problems to new challenges*, Vieira, D. N. (ed.), InTech, (2001), available at <https://www.intechopen.com/books/forensic-medicine-from-old-problems-to-new-challenges/forensic-age-estimation-in-unaccompanied-minors-and-young-living-adult>

the recommendations of the Group on Forensic Age Diagnostic (*Arbeitsgemeinschaft für Forensische Altersdiagnostik*, AGFAD; http://campus.uni-muenster.de/fileadmin/einrichtung/agfad/empfehlungen/empfehlungen_ausserhalb_strafverfahren.pdf) for the age determination process.

NO — A new method for reading stage results of X-ray images of hands and wisdom teeth has been developed by the Forensic Department at Oslo University Hospital. It consists of a statistic model combining data from two radiological methods: Demirjian's staging of the third molar and Greulich and Pyle's atlas of the hand and wrist. In total, this includes over 14 000 individuals (both genders). The statistical model is based on fitting a transition model on several datasets combined/pooled (for each gender) and Bayes Theorem is used to obtain the distributions of the chronological ages given the stages. The results are presented as 95 % and 75 % prediction intervals and as a percentage of cases under the age of 18 and under the age of 16. Due to large biological variations that go beyond what is contained in the reference material, the results cannot be totally conclusive. However, clear results could be given relatively high weight in the overall assessment. Oslo University Hospital has recently published a comprehensive manual for this method of age assessment (called BioAlder).

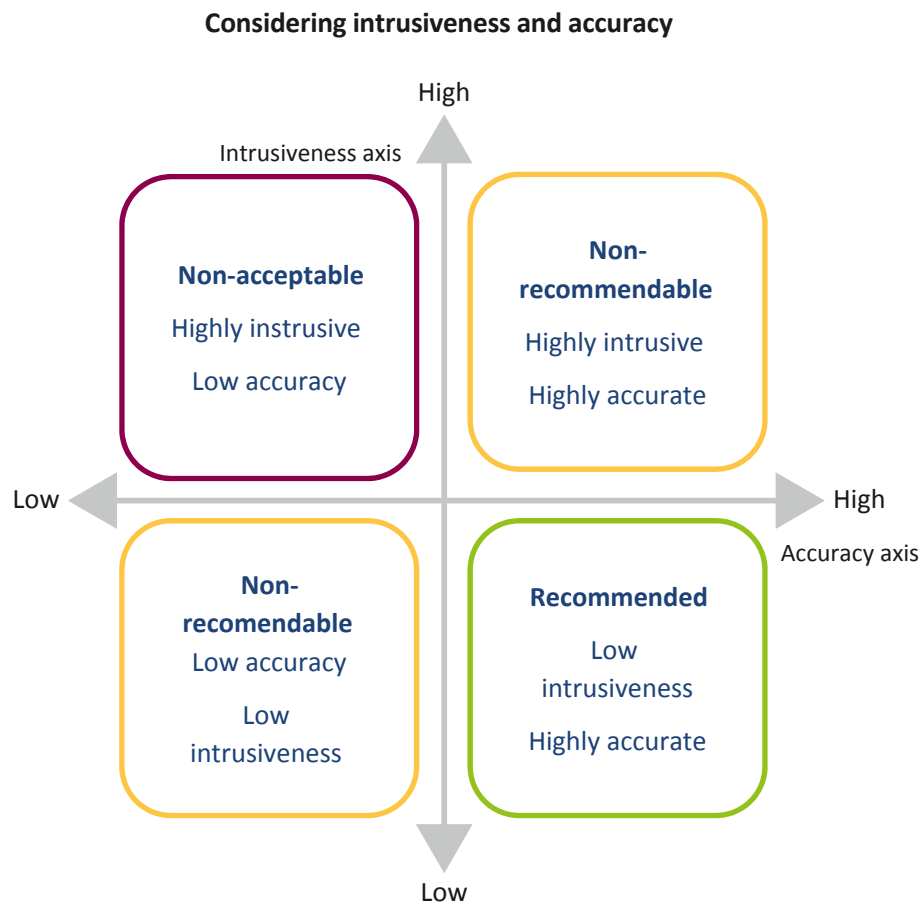
Key findings from EU+ states' practice

In the case of inconclusive results of the age assessment process, 16 EU+ states apply benefit of doubt, while six EU+ states do not apply it and will consider only the available evidence or information.

Further information can be found in Annex 4 to this publication.

Combining intrusiveness and accuracy

Methods should be selected after taking into consideration their intrusiveness and accuracy. Methods that are less intrusive and more accurate should be given first preference, while methods that are less intrusive but also less accurate should be chosen last. The assessment should be stopped at the point where a method becomes highly intrusive, regardless of its potential accuracy. While nudity or the exhibition of genitalia is extremely stressful for all persons, it is even more traumatic for children who may have been subjected to abuse as part of persecution in their country of origin or during their migration. The high level of intrusiveness and the increased risk of traumatising as a result of using these methods render these examinations unacceptable for age assessment purposes.



Right to effective remedy

In the event of a negative decision (discordant with the claimed age), the authorities should explain the reasons for the decision and inform the applicant about how it can be challenged. As the childhood/adulthood of the applicant may influence how the international protection procedure is conducted (prioritisation, safeguards, etc.), a decision on the age assessment should be issued separately from and prior to the decision on international protection. If there is no separate right to appeal against the result of the age assessment decision itself, the opportunity to challenge the outcome through judicial review or as part of the consideration of the overall protection claim should be available. The individual should have access to a representative or to legal support to assist him or her in the process. When issuing the separate decision, the information on how to challenge it should be provided free of charge and according to the level of understanding of the applicant. The applicant should have the opportunity to have his or her views heard at this point.

Key findings from EU+ states' practice

Concerning the legal remedies available to the applicant against a decision on age assessment:

- eight EU+ states offer the possibility to challenge the age assessment decision separately;
- nine EU+ states offer the possibility to challenge the age assessment decision as part of the IP decision or at the same time;
- two EU+ states do not offer legal remedies to the applicant against age assessment results.

Further information can be found in Annex 4 to this publication.

Chapter 3 The age assessment process: implementing a multidisciplinary and holistic approach

Implementing a holistic and multidisciplinary approach to the age assessment process

A holistic approach takes into consideration the whole of something or the total system, instead of just its parts. Unlike a simple age assessment in which the estimation of the chronological age is the main objective, an age assessment process based on a ‘holistic’ approach does not focus exclusively on age but takes a broader spectrum of factors into consideration. Using this approach, the needs of children and young people in the migration context are also taken into consideration when assessing the chronological age. Therefore, a holistic age assessment leaves room for flexibility and the individualisation of the age assessment process, allowing the assessment process to be based on the specific circumstances and the needs of the applicant (for example, whether to undertake the age assessment or not, influencing the selection of the methods, the examiners, etc.).

As a result, a holistically designed age assessment reinforces the operationalisation of the BIC throughout the process. The systematic and continuous observation of the BIC should be reflected in all the actions that affect them. Therefore, every age assessment process should primarily consider how to implement the principle for the proper and prioritised identification of the child (in particular in cases of unaccompanied children). Some measures need to be adopted to have the full picture of the child’s needs, for example:

- those in contact with the child (including teachers, caretakers, guardians/representatives, health professionals, reception authorities, asylum and migration authorities and law enforcement) should take a proactive approach to gather all the information necessary to identify aspects of concern or interest (such as history of abuse or traumatic experiences) — throughout the process children should be heard not just on the topic of their age but also on their needs and concerns;
- in order to minimise the number of interviews and avoid repetitive questions, this information should be made available to other relevant actors (guardians/representatives, health professionals, reception authorities, asylum and migration authorities and law enforcement) throughout the process, when possible and respecting data protection rules;
- additionally, those professionals shall have the opportunity to express their opinion based on their expertise and experience and to exchange their views when necessary;
- the process to be in place should be elaborated in consultation with all relevant stakeholders — on this point, the holistic approach will connect with the multidisciplinary approach as follows.

A multidisciplinary approach combines or involves several academic disciplines or professional specialisations in an approach to a topic or problem.

A multidisciplinary approach for the purpose of age assessment would imply the exploration of different aspects or factors such as physical, psychological, developmental, environmental and cultural ones⁽³¹⁾. Likewise, an age assessment process based solely on medical methods cannot be considered multidisciplinary. As there is no single method that can tell the age of a person with certainty, multiple factors must be assessed through the use of different methods. This ensures that the decision is based on a wider range of evidence, therefore improving the reliability of the assessment. In this regard, a multidisciplinary assessment requires that professionals who are appropriately qualified in age estimation in their respective field of expertise are involved throughout the process, during the examinations and

⁽³¹⁾ See, for instance, separated children in Europe programme, *Statement of good practice*, (2009), available at <http://www.scepnetwork.org/p/1/69>

when taking the decision after the results from the different examinations have been issued. Depending on the method, this may include social workers, doctors, radiologists, (child) psychologists, paediatricians or other suitably skilled individuals with expertise in the field of child development and age estimation. In order to coordinate the input from the different experts, a coordination mechanism should be in place during the practical implementation of a multidisciplinary approach.

As with all matters concerning the examination of the application for international protection and in accordance with Article 4 QD recast, all available evidence should be taken into consideration. The decision on which professionals should be part of the assessment should be taken with the aim of increasing the overall accuracy of the assessment as much as possible while maintaining the least possible intrusive effect on the applicant.

In deciding which methods to select when undertaking age assessment, the BIC should be a primary consideration. The APD recast specifies that if, following general statements or other relevant indications, Member States have doubts concerning the applicant's age, they may use medical examinations within the framework of the examination of an application for international protection to determine the age of unaccompanied children. As psychological development and the maturity of the applicant are essential aspects to be explored during the process, a psychosocial assessment should be selected before other methods.

If after a multidisciplinary assessment a Member State is still in doubt concerning the applicant's age, they should assume that the applicant is a child.

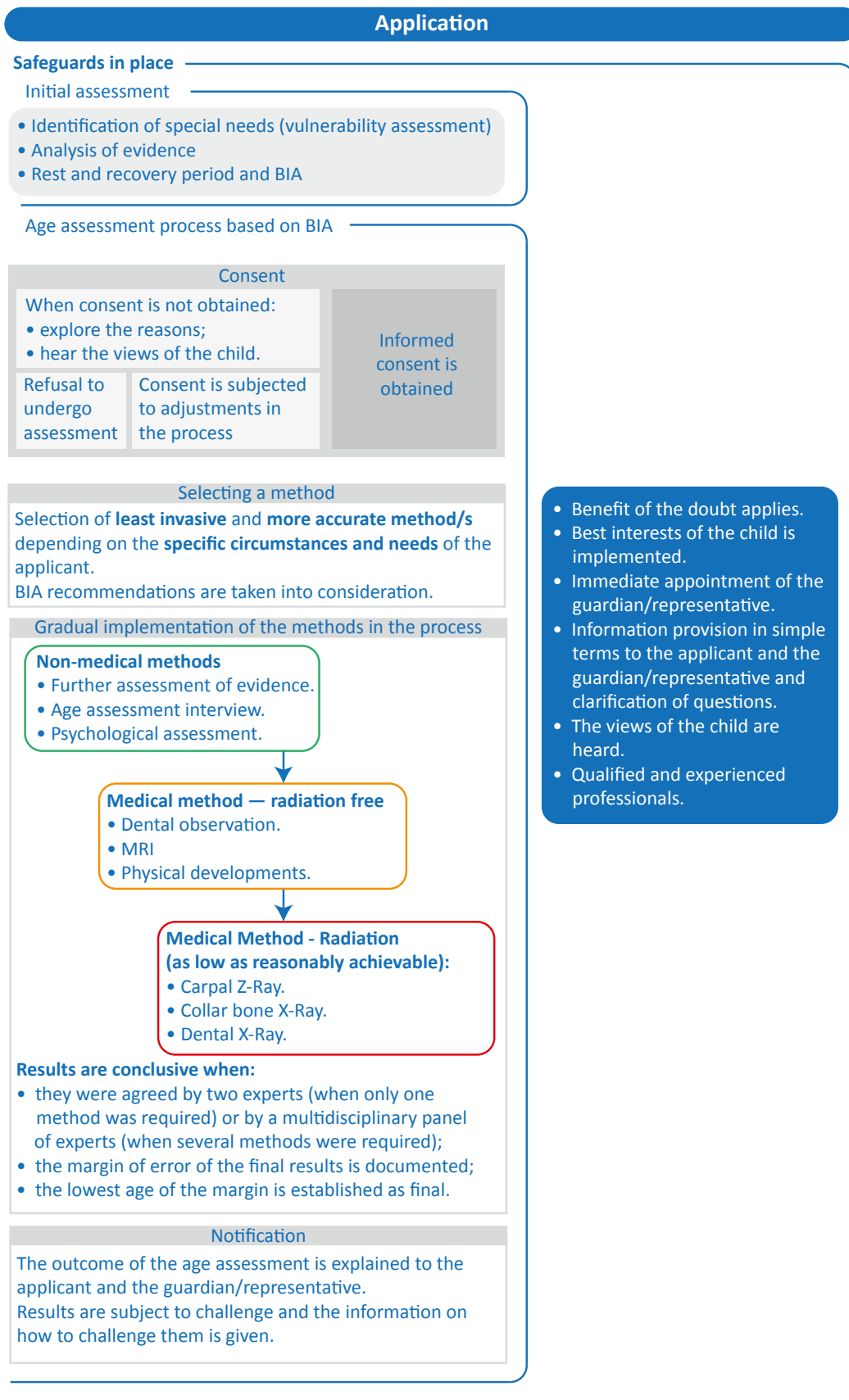
According to the IOM ⁽³²⁾, there are currently three main approaches to the assessment of age:

- the first, which can best be described as **non-medical**, incorporates an evaluation of existing documentation, a visual assessment based on physical appearance and interviews that provide a narrative about an individual's life and circumstances;
- the second is essentially **medical** and includes physical examination and imaging of bones and/or teeth by radiography;
- the third seeks to integrate the data from both non-medical and medical approaches, recognising that **multidisciplinary collaboration** is a prerequisite to ensure good outcomes for vulnerable children and young people.

⁽³²⁾ EASO Working Group on Age Assessment, September 2016.

Flow chart of the age assessment process

The process, as described in the previous section, together with the necessary steps and safeguards required to ensure an effective and safe age assessment, is visually represented in the following flow chart.



Guidance on the age assessment process

When considering whether age assessment is necessary or not

Certain preconditions and safeguards should be in place prior to deciding on the process or before conducting any age assessment.

- The applicant has made an application for **international protection** and personal details such as the identity, age and family links are recorded.
- The applicant's claimed age (as an adult or as a child) is **not supported** by documents and any other evidence to probe the claimed age has not been provided.
- The applicant's claimed age is **doubted**.
- The applicant could be provisionally **fingerprinted** if the questioned range of age is clearly above the age stipulated for that purpose in EU and/or national law and included in the EU asylum fingerprint database (Eurodac) ⁽³³⁾.
- In applying **benefit of the doubt**, the applicant shall be considered to be below 18 years and, if unaccompanied, a **guardian/representative** shall be immediately appointed.
- The **BIC** shall be observed from this point onwards until conclusive results point out that the applicant is an adult.

The age of a person is a factor that may render him or her vulnerable (child, elderly) or may further stress other pre-existing vulnerabilities (derived from gender, family circumstances, sexual orientation, gender identity, disability, serious illness or having been subjected to torture or other serious forms of violence). Considering that these vulnerabilities may adversely affect the applicant's ability to present and substantiate their application for international protection, the EU asylum *acquis* upholds additional safeguards to provide fair asylum procedures to applicants with special needs. To ensure that applicants with special needs can fully present and substantiate their application, an early **identification mechanism** and, when required, a later vulnerability assessment must be in place. However, authorities must remain vigilant to quickly identify signs of vulnerability that may appear at later stages of the procedure and react accordingly. This mechanism must be available throughout the procedure to ensure that later identification is possible and therefore adequate support is provided without undue delay.

The specific needs of the vulnerable applicant should play a key role when deciding what methods should be used, how the assessment should be conducted and whether it would have negative effects on this specific applicant. Some of the information collected when assessing the special needs may be used when assessing the age. By doing so, delays and the duplication of procedures on the same person are avoided. When conducted, following a holistic and multidisciplinary approach, the age assessment might also help to identify other needs and vulnerabilities that were not detected in previous vulnerability assessments.

At this stage, if the claimed age cannot be verified, and after ensuring that an investigation will not endanger the applicant or his or her family, officials should proactively seek information from other sources. During this preliminary step, known as **analysis of evidence**, all the evidence at the disposal of the authorities (documents, statements of the applicant and his or her family members about his or her age and identity, statements of the guardian, information present in other databases, and first estimations based on physical appearance) is taken into account. When dealing with asylum-seeking children, especially unaccompanied children, officials are expected to adopt a particularly proactive and empathetic attitude.

Based on the results from the aforementioned analysis, the responsible authorities would be able to distinguish between cases where the claimed age is in doubt and those where it is not.

The application of **benefit of the doubt** should be triggered as soon as there are any doubts on the claimed age. Therefore, the applicant should be considered a child until conclusive results are obtained through further examinations.

⁽³³⁾ Currently the Eurodac regulation provides for fingerprinting of all persons above 14 years old; in the proposal for a recast the proposed ages is lowered to 6 years old.

Since the applicant is considered to be a child, the **guardian/representative** should be immediately appointed in order to ensure the principle of the BIC is observed in all of the decisions affecting the child. This includes determining the necessity of an age assessment.

Although the main objective of an age assessment is to assess the level of maturity of the applicant and needs to take all factors relevant to the assessment into consideration, the well-being of the child must also be taken into consideration. For this reason, it is important to ensure a **rest and recovery period** between the first analysis of evidence, which may be conducted upon arrival, and a fully fledged age assessment. Thus, a two-stage age assessment process is deemed to be the most appropriate channel to conduct an efficient and safe age assessment. This is especially so in the context of high influx, where the need to have an efficient identification and registration process is paramount.

A rest and recovery period can facilitate the building of trust between the child and their guardian/representative. It also allows for the child to begin to feel safe and to share the information necessary to assess his or her needs. During this period, a **BIA** ⁽³⁴⁾ should be conducted to ensure that the particular age assessment process considered is compatible with the individual circumstances of the applicant and that the expected outcome is beneficial to the process and not harmful to the child.

The process should ensure that the child's **views are systematically heard** through his or her own account or relayed through their guardian/representative. This right requires a systematic application, not just throughout the procedure but also at the earliest stage before the decision to undertake the assessment is made.

- Views should be gathered whenever the authorities have **doubts** regarding the statements or other evidence provided by the applicant. A simple attempt at exchanging views and explaining in a constructive manner the reasons why the claimed age is not accepted or why the information is not enough to confirm the statements may help the applicant to understand the process and to be willing to cooperate.
- In case of possible **inconsistencies** regarding his or her age, the applicant must be given the opportunity and time to explain them either orally or in writing.
- Sometimes the applicant will provide additional documentation or other evidence or credible explanations and be able to substantiate the claimed age. Therefore, these **explanations and additional elements** would make the age assessment unnecessary.

After assessing all of the evidence, concluding that the doubts on the applicant's age have been substantiated, hearing the views of the applicant and completing the BIA form, the decision whether or not to initiate the age assessment process can be taken.

When conducting age assessment

If **age assessment is deemed to be necessary and is recommended by the BIA**, the age assessment process shall be initiated without undue delay. Authorities need to ensure that the applicant and the guardian/representative have been provided with relevant **information** that has been expressed in simple terms and that the information has been understood. Any questions that the applicant and/or their guardian/representative may have must be answered and any clarifications needed should be provided.

Following this, the applicant and/or their guardian/representative will be better equipped to give **informed consent** to the process. In cases where the applicant cannot give consent due to a justified impediment, the guardian/representative's informed consent will be sufficient. If there are reservations about the process, they must be clarified at any stage. The **refusal to undergo** the assessment should not imply an automatic consideration of age of majority. In such cases, the applicant should be **heard** again and the reasons should be fully explored. Reluctance may be overcome by providing the applicant and/or their guardian/representative with more information or by adjusting the process to his or her needs, such as by selecting an alternative method.

At any rate, a refusal to undergo age assessment cannot be the sole reason for rejecting an application (Article 25(5) APD).

⁽³⁴⁾ See, for instance, separated children in Europe programme, *Position paper on age assessment in the context of separated children in Europe*, (2012), available at <http://www.scepenetwork.org/images/16/163.pdf>

Once **informed consent** is obtained, the process, with all the necessary safeguards, should be made available and, if needed, further adapted to the child's special needs or circumstances in line with national practice and in compliance with the EU legal *acquis*.

The selection of methods should be as individualised as possible, and the least intrusive and most accurate method should be given preference. When deciding which method is the **least intrusive** option, consideration should be given not only to the physical impact on the applicant but also to the psychological effect on the applicant (see Article 25(5), second paragraph, APD). Environmental and cultural factors also need to be taken into account.

Examinations should be implemented gradually, and first preference should be given to non-medical methods. If these do not yield conclusive results, medical methods which do not require the use of radiation can be utilised. The use of medical methods which do require the use of radiation should be the very last option and, as discussed above, should be the one that requires the use of the lowest dose of radiation possible. The results from tests assessing the psychological maturity should be given at least the same weight as the results from those assessing physical development. This approach ensures that once conclusive results are obtained from one method, any additional unnecessary examinations are avoided.

Examinations should never be forced or culturally inappropriate and professionals should be **qualified**, trained in gender-sensitive and culturally sensitive issues and knowledgeable about protocols and/or guidelines provided in this regard ⁽³⁵⁾. Examinations involving nudity or the examination, observation and/or measurements of genitalia or intimate parts must be precluded since they are highly intrusive.

If any of the methods applied during the age assessment offers a result that indicates that a person is less than 18 years of age, the assessment should be stopped. In such cases, if the claimed age is within the range provided it should be taken as valid; however, if it is not, the **lowest age of the margin** should be taken as valid instead.

- When several examinations are required due to subsequent and inconclusive results, the final results should be analysed by a **panel of experts**. These experts should have different fields of expertise and common knowledge or experience of working with children. A panel of experts with a multidisciplinary background should bring together social workers, forensic practitioners, child protection specialists and case workers with child-specific expertise.
- When this is not possible or in cases where only a single method is used, at least **two experts** should carry out the assessment. It should be guaranteed that the views of both qualified experts have been provided and both have agreed on a decision. If both experts cannot agree on a final decision, it could be recommended to escalate the case and have the decision taken by an experienced and qualified supervisor.

If an agreement cannot be reached, the age assessment should be considered to be inconclusive and benefit of the doubt should be applied. In such cases the applicant should be considered a child.

A **decision** should be motivated, issued in writing and explained orally. The experts' professional qualifications, experience and relevant training should be mentioned in it as well as the margin of error of the methods used. The applicant should be informed of the possibility to challenge the decision and, if applicable, to be provided with legal assistance to do so.

As the consequences of being identified as an adult or a child are far-reaching, the applicant should be given the opportunity to **challenge the results** in a prompt and accessible manner. Possible venues through which an applicant can challenge the results of assessment are through appeals or judicial reviews.

Furthermore, the process should factor in the possibility that new information can be provided once the assessment has been concluded; therefore, a later **revision** of the assessed age must be possible.

In the case of incorrect age estimation, immediate action should be taken to rectify the information in a streamlined and effective manner and all amendments should be replicated in the necessary databases.

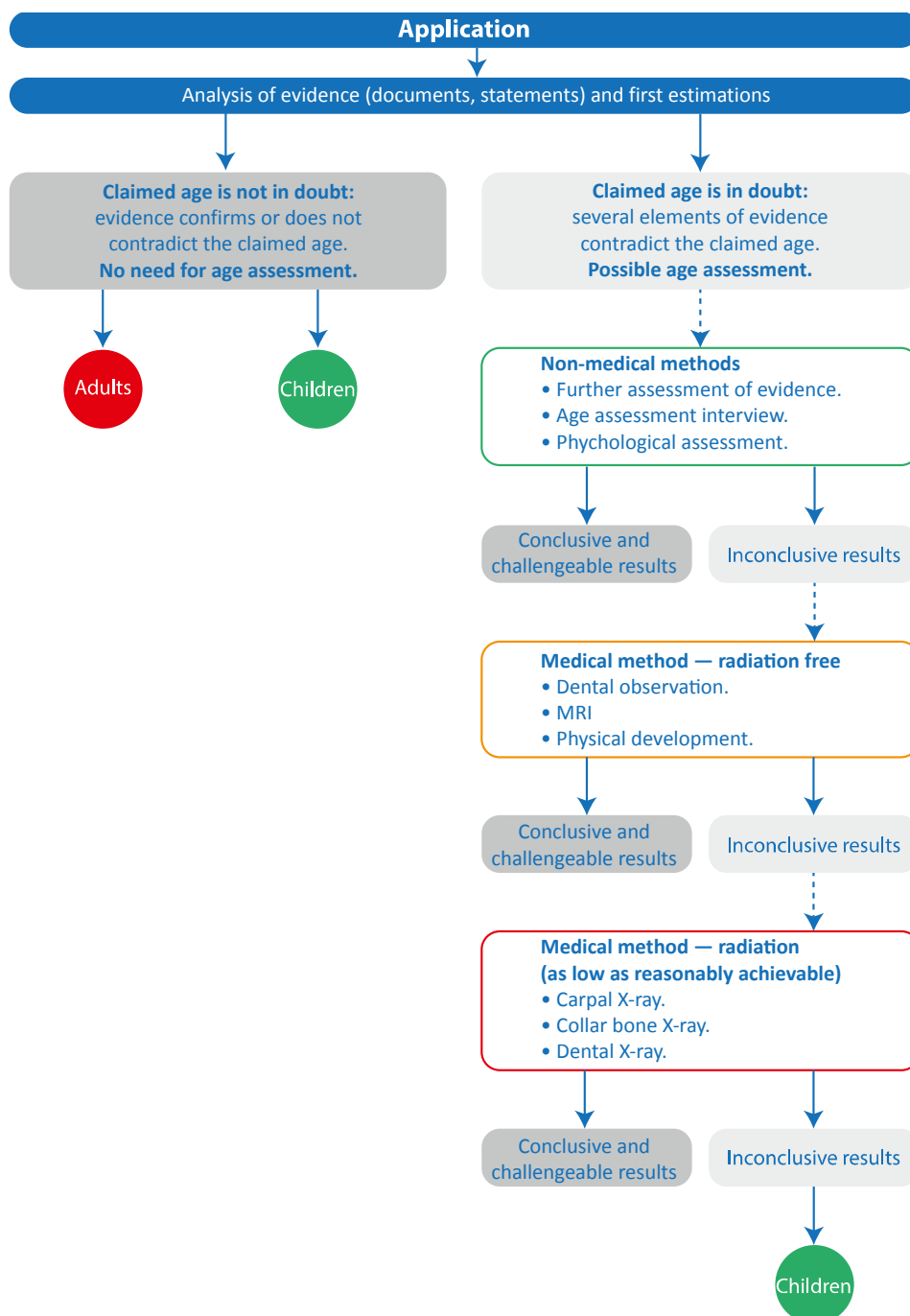
⁽³⁵⁾ See, for instance, separated children in Europe programme, *Position paper on age assessment in the context of separated children in Europe*, (2012), available at <http://www.scepnetwork.org/images/16/163.pdf> or <http://www.scepnetwork.org/p/1/76/position-papers>

Chapter 4 Overview of the age assessment methods

The methods currently in use are classified as medical and non-medical depending on whether they require the involvement of a physician. Under medical methods, a distinction between radiation-free methods and methods involving radiation has been made.

This classification and the gradual use of the methods to prevent unnecessary examinations are reflected in the following flow chart. No reference is made to the safeguards and rights of the process since they were analysed in both the previous chapter and in the age assessment process flow chart.

Flow chart of the methods



Guidance on the gradual implementation of methods

As soon as the wish to apply for international protection is expressed by the applicants, they become entitled to certain rights (to remain in the territory, to basic material reception conditions and to have his or her special needs identified or assessed). In case of a possible child, the identification of special procedural needs and the provision of special reception conditions are a priority due to their inherent vulnerability. In accordance with Article 25(5) APD (recast), all evidence obtained may help to establish the child's age and/or eliminate or alleviate the need to undertake additional age assessments; therefore, it should be the starting point before deciding whether there is a need for age assessment or not.

Analysis of available evidence and first estimations

As stated in Article 24 of the International Covenant on Civil and Political Rights and in Article 7 of the CRC:

‘Every child shall be registered immediately after birth and has the right to acquire a nationality.’

A birth certificate is the document that bears witness to the person's birth, the date, the place, the sex and the parents. The primary purpose of civil registration is to create a legal document that can be used to establish and protect the rights of the individual.

As mentioned earlier, some countries do not systematically register the vital events of their citizens or residents (births, marriages and deaths) and some of them do it very rarely or late. Therefore, such registration may not meet the standards of public records for the authorities in EU+ states (preventing double registration of the same event, gaps or inconsistencies in the records, etc.). Furthermore, due to events that occurred in their country of origin or the circumstances of their flight (armed conflicts or persecution and/or discrimination from the national authorities, etc.), these legal documents may not be available to persons in need of international protection and therefore they will not be able to provide valid proof or reliable certificates of their identity.

Taking into consideration the abovementioned circumstances and the efforts of the applicant to submit all the information at his or her disposal, authorities should accept the following documents, among others, as supporting evidence:

- passports,
- ID documents,
- residence cards,
- travel documents such as the ones provided by the UNHCR,
- other countries' certificates (religious or civil) probing the civil status (marriage, births, family booklet) of the applicant or any family member with any reference to the age of the applicant.

Other than these documents, sources of useful information such as common databases (for example the Schengen Information System ⁽³⁶⁾, Eurodac or Interpol's Stolen and Lost Travel Documents ⁽³⁷⁾) could contain information on the applicant's age.

Likewise, statements or documents available in the file of the applicant's family members or relatives can be used to clarify and/or confirm the claimed age without the need for further assessment. In order to prevent endangering the child or family, special caution must be taken when collecting this kind of data. This is particularly so in the international protection context.

⁽³⁶⁾ SIS: a large-scale information system that supports external border control and law enforcement cooperation in the Schengen area.

⁽³⁷⁾ SLTD: a database that contains records on stolen, lost or revoked travel documents such as passports, identity cards, UN laissez-passer or visa stamps.

When performed by staff experienced in working with children, some first estimations based on physical appearance can be used to reinforce the initial analysis. When used in conjunction with other available information, these can then be used to support the results of a preliminary screening.

However, since the estimation is based purely on physical characteristics and can therefore easily lead to arbitrary, subjective and inaccurate results, extreme caution must be taken when giving weight to such considerations. For this reason, the observation of physical appearances cannot be considered as a method of age assessment in and of itself, nor can it be used in isolation since it cannot provide any specific chronological age with certainty.

Physical appearance may serve to separate or distinguish the obvious cases (persons with undoubted characteristics of adults or children), but it should not be used for cases of late teens or young adults. In those cases, benefit of the doubt (confirming the claimed age or referring to a proper age assessment) shall apply until there are conclusive results.

The IOM and other experts warn that the life experiences of children may have influenced their development. This would mean that they may be behind in certain aspects and more developed in others. Research in the field shows that post-traumatic stress disorder may lead to premature biological ageing of between 5 years and 10 years of age ⁽³⁸⁾.

As limitations in current methods may lead to an incorrect age assessment or estimation, a revision mechanism must be in place to correct an age that has been inserted incorrectly into the system. Once an age assessment has been identified as incorrect, appropriate actions should be taken immediately (change of accommodation, appointment of a guardian if the applicant is found to be a child, etc.).

DE — Applicable guidelines:

1. check of personal documents, search for additional information;
2. interview (two qualified and experienced staff members), overall impression of development including qualified visual inspection;
3. in case of doubt, medical examination — method with the lowest impact on the child's health.

NO — In all cases where an unaccompanied child has not presented a valid ID document with high notoriety, there is a need to conduct a further investigation of the applicant's identity including, among others, age assessment. The basis of this age assessment is the information obtained about the applicant's age during the asylum process, i.e.:

- the applicant's own information about his or her age;
- ID documents;
- ID information from other Member States (if the applicant has been identified in other countries);
- verification of the applicants ID in his or her country of origin;
- statement or comment on the applicant's age from other actors such as a legal guardian, lawyer, social service or health workers;
- statement or comment on the applicant's age by the immigration police (who conducts the registration of applicants) and a case owner who conducts the asylum interview;
- medical age examination;
- medical age assessment.

In cases where a medical age examination is conducted, the medical age assessment shall be assessed in relation to other information in the case. The policy guidance provides guidelines on how to weigh the various elements discussed above.

⁽³⁸⁾ Ladwig, K-H., Brockhaus, A.C., Baumert, J. et al., 'Post-traumatic stress disorder and not depression is associated with shorter leukocyte telomere length: findings from 3 000 participants in the population-based KORA F4 study', Ouellette, M.M. (ed.), *PLOS ONE*, 2013, 8(7), e64762. doi:10.1371/journal.pone.0064762.

Key findings from EU+ states' practice

27 EU+ states take the documents provided into consideration as evidence of the applicant's age.

In addition to the documents, some first estimations based on physical appearance are done in 19 EU+ states.

Claimed age is in doubt: potential need for age assessment

When there is substantiated doubt about the claimed age of the applicant (the claimed age is doubted, the available evidence does not support it or contradicts it), the need for age assessment may arise. In such cases, the authorities need to select the method or methods to use for that purpose.

An overall review of the methods currently in use, together with a brief description of the process involved, follows in the next section. The methods are divided into 'medical' and 'non-medical' depending on whether a clinician is involved or not. Medical methods are also classified depending on whether they imply the use of radiation or not.

The UN Committee on the Rights of the Child's General Comment No 6 states that the identification of a child as unaccompanied or separated includes age assessment, which should take into account physical appearance, but also psychological maturity.

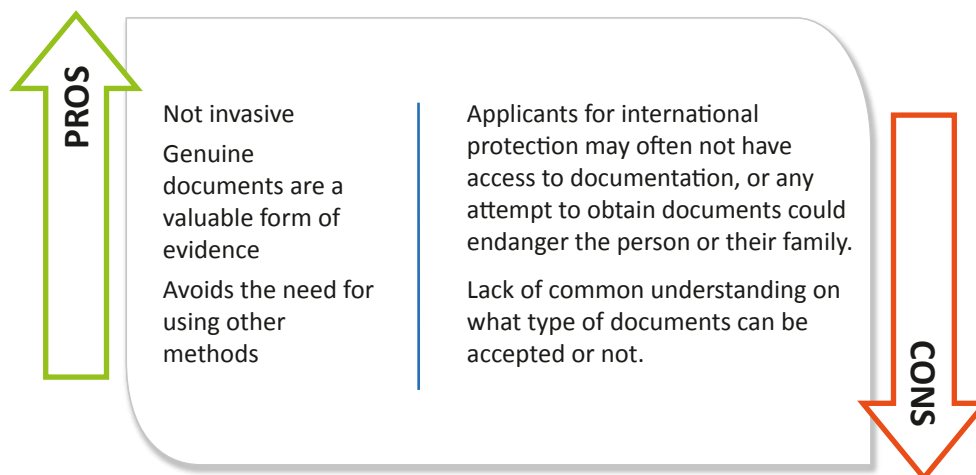
A. Non-medical methods**Key findings from EU+ states' practice**

Three EU+ states only use non-medical methods to assess the age of applicants.

Further information can be found in Annex 4 to this publication.

1. Further assessment of evidence

When the initially collected documents or the available information do not include any reference to age, a further assessment of other documents by the asylum or migration officials may be necessary. Some documentation, even without containing the age, can provide some information on the estimative age of the applicant, i.e. school records, family vaccination cards or other medical records. For example, one could know that some vaccinations are received by an infant at a certain age or margin of age and that the card was issued at a specific time, so as a result the owner's age can be approximately estimated.



2. Age assessment interview

This method involves collecting and analysing the account given by the individual whose age is being disputed.

The main differences between psychosocial assessment methods are the background and specific expertise of the person conducting the assessment as well as the areas of exploration. Whereas the psychological assessment would be conducted by experts in child psychology or child development, the age assessment interview would be mainly conducted by officials serving with the asylum or migration authorities and experienced in interviewing children in the asylum procedure.

During the age assessment interview, the interviewer attempts to reconstruct a chronological sequence of life events where the age of the person can be deducted or estimated. A local calendar of events⁽³⁹⁾ (a customised calendar which provides dates of significance events for a specific geographic area) combined with 'before and after questions'⁽⁴⁰⁾ (aimed at identifying two known events, one having occurred before and one having occurred after the child's date of birth — these questions are also known as 'sandwich questions') can be useful tools to assist the officials, the applicant or the family members to approximate the child's birthdate.

- In order to gather the views in a child-friendly manner and encourage the child to provide information, officials directly dealing with the child should be trained in the use of **child-friendly interview techniques**⁽⁴¹⁾. Where possible the interpreter should also be familiar with interviewing children.
- Providing the applicant with adequate information before the interview starts is essential to guarantee the participation of the person, to develop a collaborative attitude and to build trust between the actors involved. The interviewer needs to provide relevant information in simple terms (the purpose of the interview, the role of the persons involved and present, and the reasons why the claimed age is in doubt), must ensure that the applicant understands both the information and the interpreter and must make sure that the needs of the applicant have been met to the maximum extent possible (gender of the interviewer and of the interpreter, the necessary arrangements for the interview, etc.). It is equally important that the applicant is given the opportunity to clarify any inconsistencies during the interview.
- When deciding to undertake the age assessment process it should be guaranteed that the burden of proof is shifted to the authorities in the case of children. Children are not able to explain things in the same way that adults can and this limitation is particularly evident when speaking with children who have a different cultural background and where age may not be as relevant as in Western cultures (for example, different calendars are used in different cultures). Furthermore, they may consider themselves to be adults or might be considered to be adults in their communities.
- The interviewer must be familiar with country of origin information in order to be able to detect relevant issues during the discussion⁽⁴²⁾.
- Ultimately, if the conclusion of the assessment is adverse to the applicant, the reasons must be clearly explained through the use of an interpreter and in the presence of the child's representative/guardian/lawyer. The applicant should be informed both orally and in writing of the possibility and procedure to challenge the decision.

Key findings from EU+ states' practice

17 EU+ states conduct an age assessment interview to assess the age of the applicants.

Further information can be found in Annex 4 to this publication.

⁽³⁹⁾ More information can be found in the Food and Agriculture Organisation's *Guidelines for estimating the month and year of birth of young children* (2008).

⁽⁴⁰⁾ More information can be found in the Food and Agriculture Organisation's *Guidelines for estimating the month and year of birth of young children* (2008).

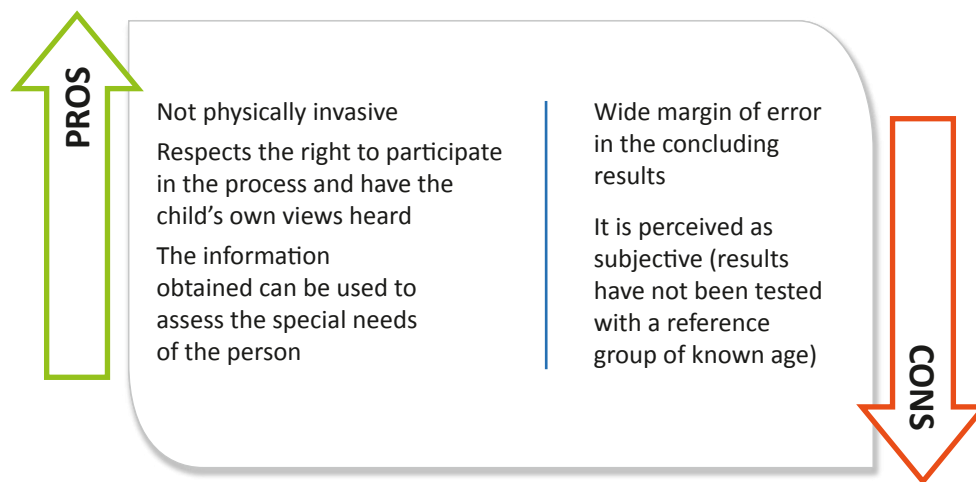
⁽⁴¹⁾ More information about the EASO 'Interviewing children' training module is available at <https://www.easo.europa.eu/training-quality/training>.

⁽⁴²⁾ EASO gathers and develops country of origin information available on the EASO website, <https://www.easo.europa.eu/information-analysis/country-origin-information/country-reports>, and on the restricted EASO COI Portal.

Examples from practice

IE — If a person claims to be aged under 18 years of age but appears to be older at the International Protection Office, an experienced staff member (with the assistance of an interpreter if required) will conduct an informal interview to try and form a reasonable opinion on whether the person is a minor and in need of referral to TUSLA, a child and family agency. The interview includes questions on details of early childhood, education and the ages of other family members. If there is any uncertainty following the interview, benefit of the doubt is given in favour of the applicant and the referral to TUSLA takes place.

MT — The first step is an interview within 10 working days with the age assessment panel. If the age remains in dispute then other professionals are involved, including a referral to a radiology department for hand and wrist X-rays. The current procedure involves a multidisciplinary effort which includes police authorities, professionals from the caring professions and medical professionals. The interview, one of the main tools used for such an assessment, can be considered to be holistic in that it aims to capture as complete a systemic profile of the alleged minor as possible. The subsequent results of the methods selected by the age assessment team are considered collectively.



3. Psychosocial assessment

The aim of this method is to assess mental rather than physical maturation. Assessment techniques make use of cognitive and behavioural appraisal and psychological assessment of the applicant to assess his or her age. Therefore, the assessor needs to have specific expertise in psychology or in the developmental stages of children and young adults.

The basis of this method is a semi-structured interview in which an experienced and trained assessor (usually a social worker or a psychologist) explores areas of the person's life story. During the interview or interviews, the assessor would assess the psychological maturity of the person in conjunction with a behavioural appraisal. The results may also reflect some estimations based on physical appearance.

In order to be effective, trust between the examinee and the assessor is essential. For this reason, the assessment should be undertaken over a period of time and should involve other professionals in contact with the assessed person, such as reception staff or teachers. Some relevant indications in this regard were provided in the benchmark case-law from the UK High Court of Justice, the Merton judgment⁽⁴³⁾. This judgment gives 'guidance as to the requirements of a lawful assessment by a local authority of the age of a young asylum-seeker claiming to be under the age of 18 years'. Following the Merton judgment, all (local) authorities are required to ensure their assessments are full and comprehensive and that the process for assessing age is clear, transparent and fair.

⁽⁴³⁾ *B v. London Borough of Merton* (2003) EWHC 1689 (admin), in which judgment was handed down by Justice Stanley Burnton in the High Court on 14 July 2003.

A Merton-compliant assessment will normally include a face-to-face meeting with the young person, setting out the general background of the applicant and adhering to standards of fairness ⁽⁴⁴⁾. A relevant consideration would be the following.

It is important to be mindful of the ‘coaching’ that the asylum-seeker may have had prior to the interview, on how to behave and what to say. Having clarified the role of the social services, it is important to engage with the person and establish as much rapport as the circumstances allow. This process is sometimes known as ‘joining’.

Some important aspects to be observed when conducting the assessment are highlighted in relevant case-law:

- when possible, two assessors should be involved in the process;
- information on the role of the assessor/s and the interpreter should be provided according to the educational and maturity level of the person;
- attention should also be paid to the level of tiredness, trauma, bewilderment and anxiety of the assessed person;
- the ethnicity, culture and customs of the person being assessed must be observed throughout the assessment — the country of origin information may be of help in this regard to flag relevant topics for discussion;
- when undertaking the assessment, the assessor should ask open-ended and non-leading questions;
- the assessor could use different tools to ease the account of the person (drawings, expressive tools).

When conducting the interview, the following features might provide useful information to make an age estimation:

- the applicant’s physical appearance and demeanour, observations of groups dynamics (activities with peers);
- manner of interaction with the assessor;
- social history and family composition;
- developmental considerations (i.e. information about the types of activities that the person was involved in before arriving in Europe);
- education, level of independence and self-care;
- health and medical assessment;
- life experiences and traumatic events that may have had an impact on the ageing process.

This information should be considered in conjunction with the information obtained from the analysis of other evidence and then used to draw the conclusion from the assessment. The conclusion of the assessment must be provided in writing and the aforementioned aspects should be included in the report, with additional considerations or information to follow up. It is of the utmost importance to ensure the youth welfare expertise and experience of the assessor/s.

When the conclusion of the assessment is adverse to the applicant, the reasons must be clearly explained through the use of an interpreter and in the presence of the child’s representative/guardian/lawyer. The applicant should be informed both orally and in writing of the possibility and procedure to challenge the decision

⁽⁴⁴⁾ The Merton compliant is often used to describe whether an age assessment is case-law compliant. There is no prescribed way in which local authorities are obliged to carry out age assessments; the courts, however, provided guidance to local authorities in a case involving the Merton Council (*B v. London Borough of Merton* (2003) EW HC 1689 (admin)). All local authority age assessments must be compliant with the case-law of Merton and following case-law since this judgment.

UK — Guidelines on how to conduct in line with the general rulings. Those who are assessing age must:

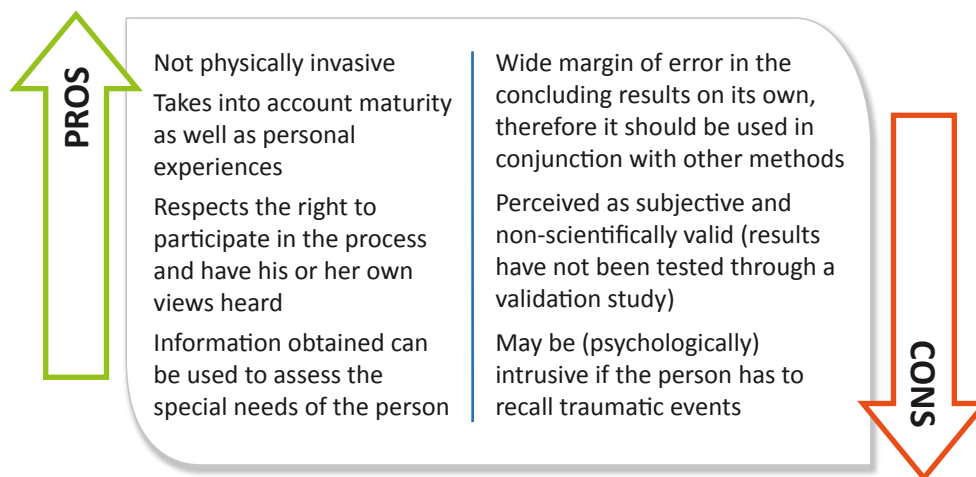
1. explain to the claimant the purpose of the interview, as specified in Merton, paragraph 55;
2. seek to elicit the general background of the claimant, including the claimant’s family circumstances and history and educational background and the claimant’s activities during the previous few years — ethnic and cultural information may also be important — as specified in Merton, paragraph 37;
3. make an assessment of and ask questions to test the claimant’s credibility if there is reason to doubt the claimant’s statement as to their age, as specified in Merton, paragraph 37;
4. give the claimant the opportunity to explain any inconsistencies in their account or anything which is likely to result in adverse credibility findings — this is best done as soon as possible, when matters are ‘fresh in the mind’, as specified in:
 - Merton, paragraph 55,
 - *R (FZ) v London Borough of Croydon* (2011) EWCA Civ 59, paragraph 20,
 - *R (NA) v London Borough of Croydon* (2009) EWHC 2357 (admin), paragraph 52;
5. remember that cases vary and the level of inquiry required in one case may not be necessary in another, as specified in Merton, paragraph 50.

The Association of Directors of Children’s Services (ADCS) in the UK has endorsed the following guidance for social workers when carrying out age assessments.

http://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf

http://adcs.org.uk/assets/documentation/information_sharing_proforma_april_2015.doc

A shortened form is available at <http://www.makeitlooknice.co.uk/adcs/age-assessment-guidance/index.html>



Key findings from EU+ states’ practice

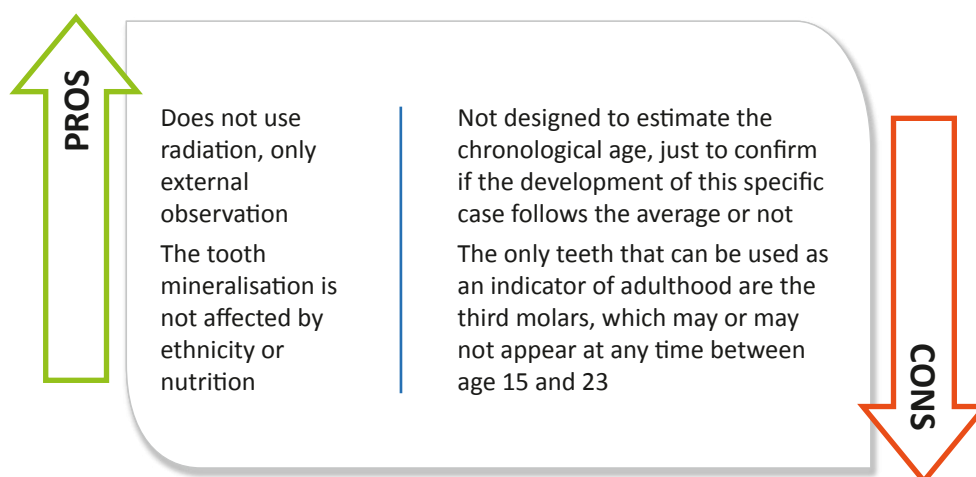
11 EU+ states may use social workers’ expertise to assess the age of the applicant. Likewise, the results showed that six EU+ states conduct psychological interviews to assess the age as reflected in the previous publication (one uses this method for victims of THB).

Further information can be found in Annex 4 to this publication.

B. Medical methods (radiation-free)

1. Dental observation

This method involves visual inspection in order to determine the maturity of teeth and does not involve the use of an X-ray. A trained dentist compares the applicant's teeth development to a set of developmental stages as laid out in established eruption charts or reference values and establishes a range of possible ages. Studies tend to cover either the development of children's teeth for the age span of 3-16 years or the development of the wisdom teeth in the age group 15-23 years ⁽⁴⁵⁾.



Key findings from EU+ states' practice

16 EU+ states use dental observation as an age assessment method.

Further information can be found in Annex 4 to this publication.

2. Magnetic resonance imaging

MRI, or MR, combines the use of a powerful magnet with an advanced computer system and radio waves to produce accurate detailed pictures of organs and tissues, bones and other internal body structures. Unlike X-rays or CT/CAT scans (computed tomography, also called computed axial tomography), MRI machines are radiation free.

The strength of an MRI magnet is called 'field strength' and is measured in units called 'Tesla' or 'T.' There are two types of scanners: 1 T. and 1.5 T. scanners (usually widely available at a lower cost) and 3 T. scanners (more expensive thus less available). Higher field strength means the scanner has a stronger magnet and the ability to produce more detailed images in a shorter period of time. Depending on a number of factors, such as the type of images to be obtained (cross-sections or 'slices' of the body), the type of technology used (high field versus open or open upright MRI), the intended outcome of the MRI and if the patient moves, an MRI scan can typically last from between less than 10 minutes to 1 hour.

According to George et al. ⁽⁴⁶⁾, the degree of bone fusion appears to be at a more advanced stage in images from X-rays than in MRI images. Consequently, the results from an MRI would give a slightly lower

⁽⁴⁵⁾ For more information: Unicef, *Age assessment practices: a literature review and annotated bibliography*, available at http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf; SCEP, *Position paper on age assessment in the context of separated children in Europe* (2012), available at <http://www.scepnetwork.org/images/16/163.pdf>; Norwegian Computing Centre, *Age estimation in youths and young adults* (2012), available at http://publications.nr.no/1355995517/Age_estimation_methods-Eikvil.pdf; Baccetti, T., Franchi, L. and McNamara, J.A. (Jr), 'The cervical vertebral maturation (CVM) method for the assessment of optimal treatment timing in Dentofacial orthopaedics', *ScienceDirect*, (2005), Vol. 11, Issue 3, pp. 119-129; Cameriere, R., Ferrante, L. and Cingolani, M., 'Age estimation in children by measurement of open apices in teeth', *PubMed*, (2005), Vol. 120, Issue 1, pp. 49-52.

⁽⁴⁶⁾ George, J., Nagendran, J. and Azmi, K., 'Comparison study of growth plate fusion using MRI versus plain radiographs as used in age determination for exclusion of overaged football players', *Br J Sports Med*, (2012), Vol. 46, Issue 4, pp. 273-278, doi:10.1136/bjism.2010.074948.

age estimation than the results from a plain radiograph. This outcome is acceptable as it would not be detrimental to the applicant.

A pre-screening procedure needs to be followed. MRI scans may not be suitable for all patients, such as applicants with cardiac pacemakers, tattoos and metal implants or in need of other special precautions due to its magnetic field.

As applicants have to stay still on a hard table for a long period of time and the machine produces loud knocking sounds, patients with claustrophobia and children typically get anxious when undergoing the procedure in a traditional bore scanner. This problem may be solved through the use of open MRI scanners.

Hand/wrist: the traditional approach is based on age assessment from X-ray images; however, experiments using alternative image modalities such as the MRI of the wrist have been carried out (for example in the age estimation of football players in age-related tournaments). A system of six grades for fusion was designed (Dvorak, 2007) ⁽⁴⁷⁾. In another study on football players performed by the Fédération Internationale de Football Association, MRI and X-ray wrist images acquired from the same person on the same day were investigated for comparison ⁽⁴⁸⁾.

Recent studies have confirmed the value of this examination and show a strong correlation between MRI stages and the chronological age; however, combining the use of MRIs with other techniques to increase the accuracy of the results is also recommended ⁽⁴⁹⁾.

As the gender of the person being subjected to the assessment may have an effect on the method's margin of error ⁽⁵⁰⁾, the gender of the applicant is a factor that needs to be taken into consideration when selecting the method.

Recent developments address the use of automatic bone age determination. These determinations are based on medical computer vision and machine learning. These developments have made the classification of the images into the stages easier and have reduced the *inter-observer* and *intra-observer* discrepancy (defined in Annex 1, Glossary).

Knee: based on the fusion of growth plate in maturation of the knee.

The MRI staging system was developed for the knee (Dedout, 2012) ⁽⁵¹⁾. Its reliability and validity for age assessment has been evaluated in the age group 10-30 years and is based on a five-stage system. The report indicates a high correlation with age and good *inter-observer* and *intra-observer* discrepancy, but further studies are needed to verify the approach.

Example from practice

SE — Sweden is currently using the MRI of the knee joints, together with X-rays of the wisdom teeth, for the age assessment procedure for unaccompanied children. The medical age assessment is conducted by the Swedish National Board of Forensic Medicine and involves two different examinations. The first one is a panoramic X-ray of a wisdom tooth and the second one is an MRI of the knee. Both examinations are aimed at the 18-year limit. The images will be analysed by two independent dentists or radiologists and these should mutually agree on the degree of maturity in the growth zone in order for the analysis to provide a satisfactory basis for the medical examiner's final age assessment. This is an integrated protection mechanism and expression of the principle of benefit of the doubt.

⁽⁴⁷⁾ Dvorak, J. and George, J., 'Age determination by magnetic resonance imaging of the wrist in adolescent male football players', *British Journal of Sports Medicine*, (2007), Vol. 41, No 1, pp. 45-52.

⁽⁴⁸⁾ Ibid.

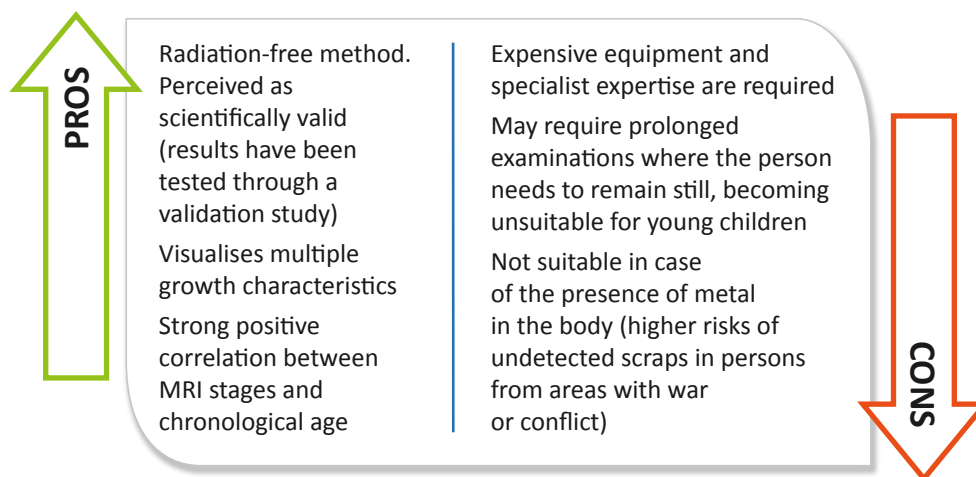
⁽⁴⁹⁾ Serin, J., Rérolle, C., Pucheux, J., Dedout, F., Telmon, N., Savall, F., and Saint-Martin, P., 'Contribution of magnetic resonance imaging of the wrist and hand to forensic age assessment', *International Journal of Legal Medicine*, (2016).

⁽⁵⁰⁾ Tscholl, P.M, Junge, A., Dvorak, J. and Zubler, V., 'MRI of the wrist is not recommended for age determination in female football players of U-16/U-17 competitions', *Scand J Med Sci Sports*, (2015), doi:10.1111/sms.12461.

⁽⁵¹⁾ Dedout, F. and Auriol, 'Age assessment by magnetic resonance imaging of the knee: a preliminary study', *Forensic Science International*, (2012), pp. 217-232.

Assessing that an applicant's age is over 18 also requires that the tooth root has reached the final level of maturity, although this level of development rather occurs 1-2 years after the 18-year limit. The same level of maturity in the growth zone (1-2 years after the 18-year limit) is studied when it comes to the MRI of the knee. These are additional safeguards to better respond to the need to maintain benefit of the doubt when this is called for.

Clavicle: experiments have been carried out using a four-stage grading system for the clavicle. These have shown that age estimation is feasible but MRI-specific reference studies are needed. Recent research has shown a positive correlation between MRI stages and chronological age ⁽⁵²⁾. However, the observation would require more experienced observers than in other methods, since it may be difficult to distinguish the initial stages from the latest stages of ossification.



3. Ultrasound

A medical ultrasound (also known as diagnostic sonography or ultrasonography) is a diagnostic imaging technique based on the use of ultrasound to see internal body structures such as tendons, muscles, joints, vessels and internal organs.

An ultrasound is sound waves with frequencies which are higher than those audible to humans (> 20 000 Hz). Ultrasonic images, also known as *sonograms*, are made by sending pulses of ultrasound into tissue using a probe. The sound echoes off the tissue, with different tissues reflecting varying degrees of sound. These echoes are recorded and displayed as an image to the operator. This radiation-free method has been tested for age estimation on the hand and wrist ⁽⁵³⁾, the clavicle ⁽⁵⁴⁾ and the iliac crest ⁽⁵⁵⁾.

The studies concluded that assessment by ultrasound **should not yet be considered a valid replacement for bone age assessment** since the growth stages are not always visualised.

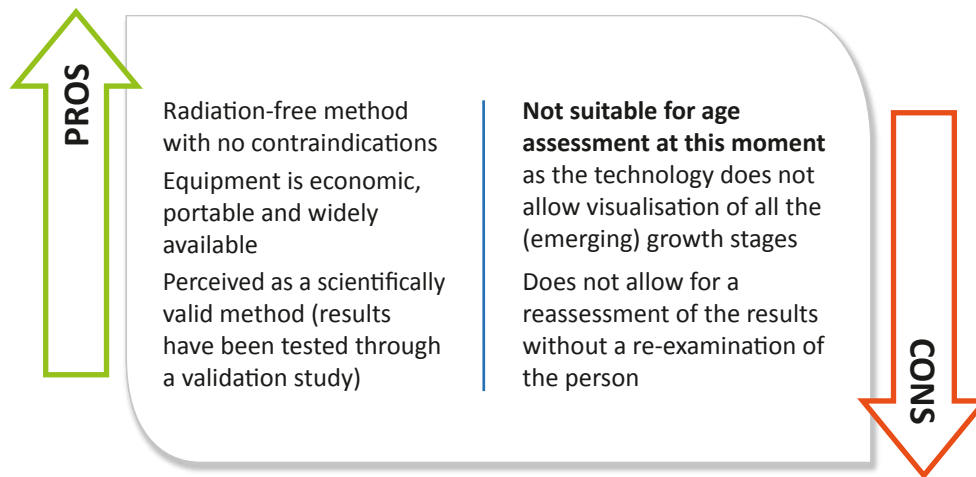
⁽⁵²⁾ 1. Hillewig, E., Degroote, J., Van der Paelt, T., Visscher, A., Vandemaele, P., Lutin, B., D'Hooghe, L., Vandriessche, V., Piette, M. and Verstraete, K., 'Magnetic resonance imaging of the sternal extremity of the clavicle in forensic age estimation: towards more sound age estimates', *Int J Legal Med.*, (2013), Vol. 127, Issue 3, pp. 677-689, doi:10.1007/s00414-012-0798-z.

2. Hillewig, E., De Tobel, J., Cuhe, O., Vandemaele, P., Piette, M. and Verstraete, K., 'Magnetic resonance imaging of the medial extremity of the clavicle in forensic bone age determination: a new four-minute approach', *Eur Radiol.*, (2011), Vol. 21, Issue 4, pp. 757-767, doi:10.1007/s00330-010-1978-1.

⁽⁵³⁾ Mentzel, H.J., Vilsner, C., Eulenstein, M., Schwartz, T., Vogt, S., Böttcher, J., Yaniv, I., Tsoref, L., Kauf, E. and Kaiser, W.A., 'Assessment of skeletal age at the wrist in children with a new ultrasound device', *Pediatr Radiol.*, (2005), Vol. 35, Issue 4, pp. 429-433; Khan, K.M., Miller, B.S., Hoggard, E., Somani, A. and Sarafoglou, K., 'Application of ultrasound for bone age estimation in clinical practice', *J Pediatr.*, (2009), Vol. 152, Issue 2, pp. 243-247, doi:10.1016/j.jpeds.2008.08.018.

⁽⁵⁴⁾ Quirnbach, F., Ramsthaler, F. and Verhoff, M.A., 'Evaluation of the ossification of the medial clavicular epiphysis with a digital ultrasonic system to determine the age threshold of 21 years', *Int J Legal Med.*, (2009), Vol. 123, Issue 3, pp. 241-245, doi: 10.1007/s00414-009-0335-x.; Schulz, R., Zwiesigk, P., Schiborr, M., Schmidt, S. and Schmeling, A., 'Ultrasound studies on the time course of clavicular ossification', *Int J Legal Med.*, (2008), Vol. 122, Issue 2, pp. 163-167, doi: 10.1007/s00414-007-0220-4.

⁽⁵⁵⁾ Schmidt, S., Schmeling, A., Zwiesigk, P., Pfeiffer, H. and Schulz, R. 'Sonographic evaluation of apophyseal ossification of the iliac crest in forensic age diagnostics in living individuals', *Int J Legal Med.*, (2011), Vol. 125, Issue 2, pp. 271-276, doi: 10.1007/s00414-011-0554-9.



Key findings from EU+ states' practice

No EU+ state has reported the use of ultrasound or sonography for age assessment purposes.

Further information can be found in Annex 4 to this publication.

4. Physical development assessment

Physical development assessment includes the comparison of height, weight and skin rating across individuals or populations in relation to a set of reference values. Depending on the EU+ state's practice, the physical development assessment may include a general physical examination to describe any signs of a condition which may interfere with the maturation rate⁽⁵⁶⁾.

When it involves measuring and assessing visible signs of sexual maturity it is also called **sexual maturation observation**.

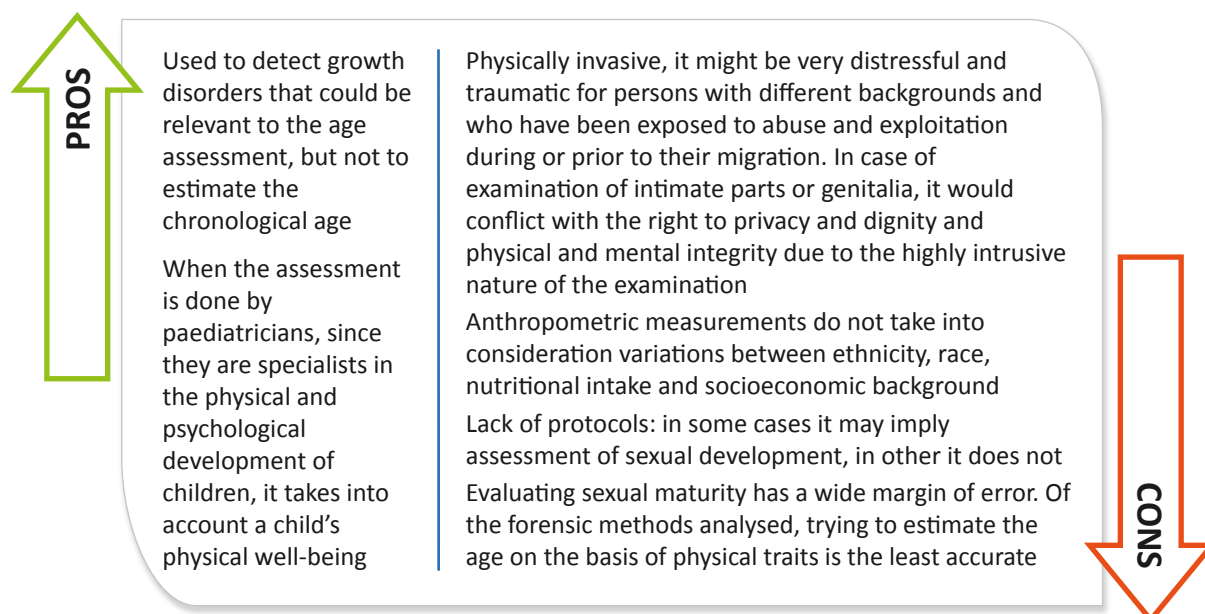
- In boys, examination is based on penile and testicular development, pubic hair, axillary hair, beard growth and laryngeal prominence.
- In girls, the examination is focused on breast development, pubic hair, axillary hair and shape of the hip. On average, girls reach full sexual maturity at the age of 16 years and boys at the age of 17 years⁽⁵⁷⁾.

Depending on the practice and the examinations carried out in the specific EU+ states, apart from a paediatrician, other physicians such as a gynaecologist may be involved.

i As reflected in the final recommendations and through the guidance, EASO considers that no method implying nudity or the examination of genitalia as a sexual maturity observation should be used under any circumstance.

⁽⁵⁶⁾ For more information: Unicef, *Age assessment practices: a literature review and annotated bibliography* (2011), available at http://www.unicef.org/protection/Age_Assessment_Practices_2010.pdf; SCEP, *Position paper on age assessment in the context of separated children in Europe* (2012), available at <http://www.scepnetwork.org/images/16/163.pdf>; Norwegian Computing Centre, *Age estimation in youths and young adults* (2012), available at http://publications.nr.no/1355995517/Age_estimation_methods-Eikvil.pdf; Professor Sir Al Aynsley-Green Kt., *The assessment of age in undocumented migrants* (2011), available at [https://www.humanrights.gov.au/sites/default/files/content/ageassessment/submissions/Sir%20Al%20Aynsley-Green%20Kt%20\(Submission%2038\).pdf](https://www.humanrights.gov.au/sites/default/files/content/ageassessment/submissions/Sir%20Al%20Aynsley-Green%20Kt%20(Submission%2038).pdf).

⁽⁵⁷⁾ For more information: SCEP, *Position paper on age assessment in the context of separated children in Europe* (2012); Unicef, *Age assessment practices: a literature review and annotated bibliography*; Schmeling et al., 'Forensic age estimation in unaccompanied minors and young living adults' in *Forensic medicine — From old problems to new challenges* (2011); Schmeling et al., 'Age estimation of unaccompanied minors — Part 1. General considerations', *Forensic Science International*, (2006). The Royal College of Paediatrics and Child Health concludes that 'overall, it is not possible to actually predict the age of an individual from any anthropometric measure, and this should not be attempted' (The King's Fund and the Royal College of Paediatrics and Child Health, 1999:40).



Key findings from EU+ states' practice

11 EU+ states confirmed the use of the physical development assessment to estimate the age of an applicant.

Seven EU+ states resort to sexual maturity observation to assess the age of a person.

Further information can be found in Annex 4 to this publication.

C. Medical methods (using radiation)

1. X-ray

X-ray, also called 'radiography', projects limited radiation (called electromagnetic waves) to generate the images of the inside of the body in different shades of black and white. This is because different tissues absorb different amounts of radiation. Calcium in bones absorbs X-rays the most, so bones look white. Fat and other soft tissues absorb less and look grey. Air absorbs the least, so lungs look black.

Skeletal age is determined from the development stage of bones. These examinations estimate development stages from the fusion/maturation of specific bones. The main methods of X-ray include carpal, collarbone, dental or hip. While many EU+ states make use of these methods they do not apply them in the same way and often use different combinations and/or order. This diversity of practices is mainly due to the fact that age assessment procedures remain, to a large extent, determined by national legislation with procedures evolving through national jurisprudence.

Carpal (hand/wrist) X-ray

This consists of the evaluation of the form, the size of bone elements and the degree of epiphyseal ossification through hand radiographs. An image is compared against the following.

- (a) Radiographic atlas, which consists of standard images of the relevant age and sex to determine the development stage. For this approach, the Greulich and Pyle atlas has become the standard reference. This method was a result of a 1935 study which aimed to assess skeletal maturity rather than evaluate age, and it did not take into account interracial or socioeconomic differences.
- (b) Individual bones (single bone method) where the degree of maturity is determined for the individual bones and combined to calculate an overall maturity stage. For this approach, the Tanner-Whitehouse approach (exists in three editions) is the main reference. The second edition is based on the assessment of skeletal maturity and a prediction of adult height. Each of the 20 bones in the hand is individually compared with a series of pictures of the development of that particular bone. Reference standards were established in the 1950s and 1960s. On average the skeletal development of hand bones is complete at the age of 17 years in girls and at 18 years in boys ⁽⁵⁸⁾.

While ethnic origin does not exert a noteworthy influence on ossification rates, socioeconomic status is a key factor that affects the rate of ossification. A high socioeconomic status accelerates ossification rates, whereas low socioeconomic status delays ossification. Consequently, applying X-ray standards to individuals of a lower socioeconomic status leads to underestimating a person's age. This is considered to be acceptable as it would not have an adverse effect on the examined person ⁽⁵⁹⁾.

Collar bone X-ray

This method involves assessing the fusion of the clavicle. To be determined an adult, both clavicles of the individual have to be fused. Traditional classification systems differentiate between four stages of development; the last stage has now been divided into two additional stages. (If the fusion is complete and a scar is visible it can be assumed in the case of women that the person is at least 20 years old, and in the case of men that the person is at least 21 years old.) Total fusion of the clavicle with the scar no longer showing was first noted in both sexes at the age of 26 years at the earliest ⁽⁶⁰⁾.

Dental X-ray

This method involves studying an X-ray of teeth, known as an *orthopantogram*. Skeletal development is measured through the sequential changes in the eruption and structure of teeth during childhood growth. By the age of 16-20 years of age, all teeth except the third molars (wisdom teeth) are fully formed. At this stage the latter show a wide range of the developing crown and root.

The two main methods are as follows:

- (a) Gleiser and Hunt (1955) ⁽⁶¹⁾ describe tooth development in 15 stages;
- (b) Demirjian (1973) ⁽⁶²⁾ describes the tooth development in eight stages, where each stage of the teeth growth is given a score according to a statistical model ⁽⁶³⁾.

⁽⁵⁸⁾ For more information: Tanner, J.M. et al., 'Reliability and validity of computer-assisted estimates of Tanner-Whitehouse skeletal maturity (CASAS): comparison with the manual method', *Karger*, (1994), Vol. 42, No 6; Frisch, H. et al., 'Computer-aided estimation of skeletal age and comparison with bone age evaluations by the method of Greulich-Pyle and Tanner-Whitehouse', *Pediatric Radiology*, (1996), Vol. 26, Issue 3, pp. 226-231; Gertych, A. et al., 'Bone age assessment of children using a digital hand atlas', *Computerised Medical Imaging and Graphics*, (2007), Vol. 31, Issues 4-5, pp. 322-331.

⁽⁵⁹⁾ Schmeling, A., Garamendi, P.M., Prieto, J.L. and Landa, M. I., 'Forensic age estimation in unaccompanied minors and young living adults', in *Forensic medicine – From old problems to new challenges*, Professor Duarte Nuno Vieira (Ed.), *InTech*, (2011), available from: <http://cdn.intechopen.com/pdfs-wm/19163.pdf>.

⁽⁶⁰⁾ For more information: Schmeling, A. et al., 'Studies on the time-frame for ossification of the medial clavicular epiphyseal cartilage in conventional radiography', *International Journal of Legal Medicine*, (2004), Vol. 118, Issue 1, pp. 5-8.

⁽⁶¹⁾ Gleiser, I. and Hunt, E. E. 'The permanent mandibular first molar: its calcification, eruption and decay', *Am. J. Phys. Anthropol.*, (1955), Vol. 13, pp. 253-283, doi:10.1002/ajpa.1330130206

⁽⁶²⁾ Demirjian, A., Goldstein, H. and Tanner, J. M., 'A new system of dental age assessment', *Human Biology*, (1973), Vol. 45, No 2, pp. 211-227, available at <http://www.bristol.ac.uk/media-library/sites/cmm/migrated/documents/dental-age-assessment.pdf>

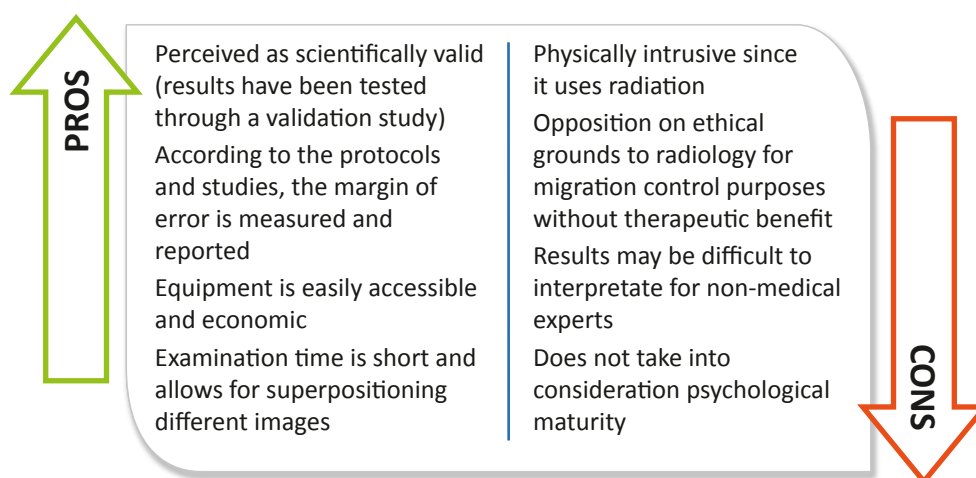
⁽⁶³⁾ For more information: (al n.d.), 'Assessment of dental maturity of Brazilian children age 6 to 14 years using Demirjian's method', *Int J Paediatr Dent*, (2002), Vol. 12, No 6, pp. 423-428; Liversidge, H.M., 'The assessment and interpretation of Demirjian, Goldstein and Tanner's dental maturity', *Ann Hum Biol.*, (2012), Vol. 39, Issue 5, pp. 412-431, doi:10.3109/03014460.2012.716080.

With regard to the eruption and mineralisation of the third molars, it has been ascertained that black Africans display an accelerated development when compared to Europeans; by contrast, a relative retardation in the development can be recorded in the case of Asians. For this reason, population-specific reference studies should be used to assess the development of third molars in the practice of age estimation ⁽⁶⁴⁾.

Despite its wide variability, different studies have claimed that the development of the third molar probably provides the best way to discriminate between an adult and a child and should be one of the most used age assessment procedures for late teenage individuals.

Pelvic bone X-ray

As positioning of the bones change as a person approaches adulthood ⁽⁶⁵⁾, skeletal age can be determined by the appearance of certain bones of the pelvis.



Key findings from EU+ states' practice

Among medical examinations, the carpal X-ray is the method most used by EU+ states. 23 respondents confirmed its use in their territory.

Secondly, the dental X-ray is also quite common among the respondents, with 19 positive replies.

Thirdly, 12 EU+ states use the collar bone X-ray.

Finally, three EU+ states added the pelvic bone X-ray as an alternative method to be used occasionally in the process.

Example from practice

FI — A medical age assessment to establish the age of an applicant is carried out by the Department of Forensic Medicine at the University of Helsinki at the request of the police, the Border Guard or Finnish Immigration Service. Methods used are dental observation, carpal X-ray and dental X-ray. Two experts shall draw up a joint assessment. At least one of the experts shall be an employee of the Department of Forensic Medicine at the University of Helsinki. An expert may be an approved medical practitioner or an approved dentist with the necessary competence.

⁽⁶⁴⁾ Olze, A., Schmeling, A., Taniguchi, M., Maeda, H., van Niekerk, P., Wernecke, K-D. and Geserick, G., 'Forensic age estimation in living subjects: the ethnic factor in wisdom tooth mineralization', *Int J Legal Med*, (2004), Vol. 118, pp. 170-173; Olze, A., van Niekerk, P., Ishikawa, T., Zhu, B.L., Schulz, R., Maeda, H. and Schmeling, A., 'Comparative study on the effect of ethnicity on wisdom tooth eruption', *Int J Legal Med*, (2007), Vol. 121, pp. 445-448.

⁽⁶⁵⁾ For more information: Schmeling, A. et al., 'Age estimation of unaccompanied minors — Part 1. General considerations', *Forensic Science International*, (2006); Schmidt, S. et al., 'Sonographic evaluation of apophyseal ossification of the iliac crest in forensic age diagnostics in living individuals', *International Journal of Legal Medicine*, (2011).

NL — The medical age assessment does not attempt to establish the age of the applicant, but is only meant to distinguish between adulthood and possible minority. In light of this, a hand/wrist X-ray is analysed. If the wrist is not completely fused, the examination ends and the applicant is considered a minor. If it is completely fused, an additional (three) collarbone X-rays will be taken. Two independent radiologists have to separately come to the conclusion that both clavicles are fused. An additional expert (forensic anthropologist), after gathering both radiologists' conclusions, will make a decision on the basis of their results. In case of inconclusive results or disagreement between the radiologists' reports, the applicant is considered a minor. The decision can be appealed.

Some additional considerations

MRI, X-ray and computed tomography (CT/CAT) are different techniques used to capture the image of the bone growth. These images will be compared to reference studies to establish the stage of the growth development that the image corresponds to and eventually to frame the range of age related to this growth stage.

MRI or MR

- Combines a powerful magnet with an advanced computer system and radio waves to produce accurate, detailed pictures of organs and tissues, bones and other internal body structures. To produce the cross-sectional imaging, an MRI uses magnetic fields and radio frequencies.
- Suitable for imaging organs, soft tissue and internal structures.
- Radiation free.

X-ray

- An X-ray uses a limited amount of radiation that passes through the body to capture a single image of the examinee's anatomy.
- Dense objects, such as bones, block the radiation and appear white on the X-ray picture.
- Involves radiation.

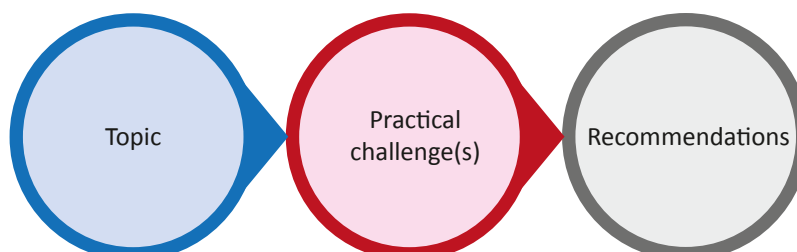
CT/CAT

- Examination that combines X-rays with computers to produce 360-degree, cross-sectional views of the body through multiple X-rays taken at different angles.
- Suitable for image bone, soft tissue and blood vessels all at the same time. It provides the radiologist with details of bony structures or injuries. Due to the radiation exposure, the CT is not recommended for pregnant women or children unless absolutely necessary.

Another important factor to be taken into consideration is the latest developments in the use of computer-assisted interpretation of X-ray images or of MRI images. The purpose of this software is to reduce the intra-observer and inter-observer deviation (called inter-rater), so the same image is categorised in the same way despite possible intra-observer (same observer evaluating the same image at different times) or inter-observer (different observers evaluating the same image) errors.

Chapter 5 Final recommendations

The final recommendations do not intend to summarise the guidance on the procedural safeguards included in Chapters 2 and 3 but to provide a concrete response to the practical challenges that the age assessment process raises. In light of this, the recommendations are grouped with the topic and practical challenge they intend to respond to, as follows:



EASO key recommendations

A.	Topic	Practical implementation of the best interests of the child
	<p>Practical challenge</p> <p>EASO recommends</p>	<p>Irregular implementation of the principle throughout the EU+ territory</p> <ol style="list-style-type: none"> 1. A BIA should be conducted to ensure that the particular age assessment process considered is compatible with the individual circumstances of the applicant and that the expected outcome is beneficial to the process and not harmful for the child. 2. The BIA should verify that all the safeguards are in place and that the BIC are observed: <ul style="list-style-type: none"> ■ a qualified, independent representative and/or a guardian has been appointed to act in the child's best interests and exercise legal capacity; ■ procedures are shouldn't be hyphenated and are conducted by qualified professionals; ■ age-appropriate information on the process is provided on a regular basis, as well as on its implications and the right to refusal in simple terms and in a culturally sensitive manner — under supervision, cultural mediation may be of use; ■ applicant's views are gathered and taken into consideration according to his or her age and maturity; ■ benefit of the doubt is applied before, during and after the process until conclusive results are reached; ■ informed consent is obtained at least for medical examinations, the right to refuse medical examinations is respected and reasons for a refusal are explored — in particular it is recommended that consent is obtained and documented (in writing and any other form of evidence) from the child and the guardian as appropriate; ■ confidentiality, data protection and safety are considered; ■ the least intrusive method is selected to ensure that the least intrusive process is applied following a gradual implementation; ■ the most accurate method is selected and margin of error is documented; ■ an effective remedy is available.

B.	Topic	Motivation/necessity of the assessment
	Practical challenge	The need for age assessment should be justified and substantiated based on serious doubts
	<i>EASO recommends</i>	<ol style="list-style-type: none"> 1. Age assessment should not be conducted as a routine practice. The need for and benefits of the particular age assessment process must be assessed and documented. 2. Exhaust all sources of information at disposal before deciding to undertake an age assessment. 3. Consider all evidence in conjunction with a wider range of factors (physical, psychological, developmental, environmental and cultural factors, gender) to save the need for later age assessment. 4. Assume that the applicant is a child (benefit of the doubt) while there are doubts on the applicant's age. 5. Applicants should not bear the financial cost of the assessment.
C	Topic	Qualified professionals
	Practical challenge	Specialisation in age assessment is not always available
	<i>EASO recommends</i>	<ol style="list-style-type: none"> 1. Professionals should be specialists not only in the field of the method considered but also in its specific application for age assessment purposes. Professionals should receive continuous training in the latest developments of the method, in child rights and in how to conduct the examinations in a gender- and culturally sensitive manner. 2. In disputed cases, the examiners can refer the case to a supervisor or to a coordinating and multidisciplinary panel. 3. Personnel responsible for determining the age should be properly trained to understand the results and the margin of error it contains.
D.	Topic	Intrusiveness
	Practical challenge	<p>No consensus on the intrusiveness of the different methods</p> <p>Some methods in use are physically or psychologically intrusive</p>
	<i>EASO recommends</i>	<ol style="list-style-type: none"> 1. First analyse any existing evidence before deciding to undertake further assessment. 2. Once age assessment is deemed to be necessary, apply non-medical methods first and then medical methods only if doubts remain. In such cases, radiation-free methods should be applied first and only as a last resort can other methods involving radiation be considered. 3. Methods should be selected according to the special circumstances or needs of the individual case (gender, range of presumed age) and the process should be respectful of the ethnic and cultural background of the child. 4. Any method involving nudity or the examination, observation or measurement of genitalia or intimate parts should not be used for age assessment purposes.

E.	Topic	Accuracy of the methods and/or the process
	Practical challenge	None of the methods can currently determine the exact age of a person Documenting and interpreting the margin of error
	EASO recommends	<ol style="list-style-type: none"> 1. Apply benefit of the doubt and consider the applicant a child as soon as doubts on the age of the applicant are raised and until conclusive results are obtained. 2. Explore different aspects involving psychological and physical development as part of the process to improve the accuracy so that the decision is based on a wider range of evidence. 3. Qualified and experienced professionals should regularly demonstrate their proficiency and are specially trained on cultural diversity and special needs of children. 4. Whenever possible, refer the difficult cases to a competent centre for further consultation. 5. Accept the applicant's claimed age when it falls within the range determined by the age assessment. Otherwise, the lowest age of the segment should be selected as a result. 6. Acknowledge the margin of error and apply benefit of the doubt. 7. The margin of error should be documented and included in the results, communicated to and understood by the determining authority.
F.	Topic	Multidisciplinary and holistic approach
	Practical challenge	The multidisciplinary and holistic approach is not broadly applied
	EASO recommends	<ol style="list-style-type: none"> 1. Analyse different aspects (assessing both psychological and physical development and not resorting only to medical methods) as part of the multidisciplinary process to improve the accuracy so that the decision is based on a wider range of evidence. 2. Involve experts in different aspects of development and in how to assess the age within their field of expertise. 3. Base the decision on the conclusion of a panel of experts with multidisciplinary specialisation when several methods were applied. 4. Set up coordination mechanisms for the practical implementation of a multidisciplinary approach.
G.	Topic	Repetitive assessments on the same applicant in different EU+ states
	Practical challenge	Age assessments conducted in other EU+ states are not always recognised
	EASO recommends	<ol style="list-style-type: none"> 1. When available, the results of age assessments conducted by other EU+ states should be recognised in order to avoid unnecessary assessments, especially in Dublin cases. 2. The information on age assessment transferred to another EU+ state should be complete, including reference to the methods applied and the reasoning leading to the final outcome.

H.	Topic	Refusal to undergo age assessment
	Practical challenge	Risk of automatic consideration as an adult
	EASO recommends	<ol style="list-style-type: none"> 1. Reasons for refusal should be explored and when possible the assessment should be adjusted so consent can be obtained. 2. The refusal should not automatically lead to a conclusion pointing to adulthood.
I.	Topic	Effective remedy
	Practical challenge	Results from age assessments are not always subject to administrative/judicial review
	EASO recommends	<ol style="list-style-type: none"> 1. The decision on age assessment should be issued before the decision on the international protection application is made, as the consideration as an adult or a child may influence the asylum procedure. 2. This decision should be subject to an administrative/judicial review.

Annex 1 Glossary

This glossary aims to identify and/or develop a common understanding of the most relevant terms used in the age assessment process. In addition, it includes terms that are mentioned in the narrative of the guide although they are not further explored in the publication (for example the best interests determination, burden of proof, etc.). The purpose of the definitions compiled in the glossary is to serve as a source of reference for the relevant actors in the age assessment field, such as EU+ states' policymakers, experts conducting the examinations, officials and a panel of experts evaluating the results or other practitioners in general.

Term	Definition	Source
Accuracy	<p>The quality or state of being correct or precise</p> <p>The degree to which a measurement, or an estimate based on measurements, represents the true value of the attribute being measured.</p> <p>Additional information</p> <p>There is no age assessment method that can provide accurate results on the chronological age of the person. For this reason the preferred term is age assessment and not age determination.</p> <p>In the context of medical examinations being used as methods to assess the age, there are some requirements to be fulfilled by the reference studies to be considered accurate:</p> <ul style="list-style-type: none"> — adequate sample size, — verified ages of test persons, — uniform age distribution, — separation by gender, — details of date of examination, — clear definition of characteristics studied, — exact description of methodology, — details on reference population relative to genetic–geographic origin, — socioeconomic status, state of health, — details of group size, mean or median value and a measure of variation for each, — characteristic studied. 	<p>Oxford online dictionary https://en.oxforddictionaries.com/definition/accuracy</p> <p>Medical online dictionary http://medical-dictionary.thefreedictionary.com/accuracy</p> <p>Schmeling et al., 2011.</p>

Term	Definition	Source
Age	<p>The length of time that a person has lived or a thing has existed.</p> <p>Additional information: for the purpose of this tool, age is an essential element of a child’s identity, as the Convention on the Rights of the Child defines childhood by reference to age.</p> <p>Chronological age is measured in years, months and days from the moment when the person was born.</p> <p>Biological age is defined by an individual’s present position with respect to his or her potential lifespan, meaning that an individual may appear to be younger or older than his or her chronological age.</p> <p>Social age is defined by an individual’s roles, responsibilities and habits with respect to other members of the society of which he or she is a part. An individual may therefore be older or younger depending on the extent to which he or she shows the age-graded behaviour expected of him by his particular society or culture.</p> <p>Psychological age is defined by the behavioural capacities of individuals to adapt to changing demands and includes the use of adaptive capacities of memory, learning, intelligence, skills, feelings, motivations and emotions for exercising behavioural control and self-regulation.</p>	<p>https://en.oxforddictionaries.com/definition/age</p> <p>Settersen et al., 1997:240</p> <p>Smith, T. and Brownlees, L., Unicef, 2011, pp. 7-8.</p>
Age assessment	<p>The process by which authorities seek to establish the chronological age or range of age of a person in order to establish whether an individual is a child or an adult.</p>	<p>UN Committee on the Rights of the Child General Comment No 6</p> <p>EMN Glossary</p>
(Minimum) Age of criminal responsibility	<p>The minimum age below which children shall be presumed not to have the capacity to infringe the penal law.</p>	<p>Article 40(3) of CRC</p>
Benefit of the doubt	<p>A legal principle that allows the authorities to accept/ assume the applicant’s statements as material facts in the event of uncertainty, unless proven otherwise.</p> <p>If there is a possibility that the individual is a child, she or he should be treated as such.</p> <p>If after conducting the age assessment MS are still in doubt concerning the applicant’s age, they shall assume that the applicant is a minor.</p>	<p>EASO’s definition</p> <p>UN Committee on the Rights of the Child, General Comment No 6</p> <p>Article 25(5) APD</p>

Term	Definition	Source
<p>Best interests assessment (BIA)</p>	<p>(a) A unique activity that should be undertaken in each individual case, in the light of the specific circumstances of each child or group of children or children in general. These circumstances relate to the individual characteristics of the child or children concerned.</p> <p>(b) Consists of evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific child or group of children.</p> <p>(c) An ongoing procedure for making decisions about what immediate actions are in an individual child's best interests, e.g. protection and care interventions. They are holistic and conducted by staff with relevant professional expertise.</p> <p>Additional information</p> <p>According to the EU asylum <i>acquis</i>, when assessing the best interests of the child, MS shall in particular take due account of the following:</p> <p>(a) family reunification possibilities;</p> <p>(b) the minor's well-being and social development, taking into special consideration the minor's background;</p> <p>(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;</p> <p>(d) the views of the minor in accordance with his or her age and maturity.</p> <p>The concepts of best interests assessment (BIA) and best interests determination (BID) can be understood as part of the same process, which starts in principle as soon as an unaccompanied or separated child is discovered and ends when the child has obtained a durable solution to her or his situation of separation and of displacement from country of origin or place of habitual residence.</p>	<p>(a) and (b) UNCRC, General Comment No 14, 2013, http://www.refworld.org/docid/51a84b5e4.html</p> <p>(c) UNHCR, Safe and Sound, http://www.refworld.org/docid/5423da264.html</p> <p>UNCRC, General Comment No 6, paragraph 31</p> <p>Article 3 and Article 3(1) CRC</p> <p>Recitals 9 and 22, Article 2(j) and Article 23(2) RCD</p> <p>Recital 33 and Article 25(6) APD</p> <p>Recitals 18, 19 and 38 and Article 20(5) and Article 31 QD,</p> <p>Recital 35 Eurodac regulation</p> <p>Recital 13 and Article 6 Dublin regulation</p> <p>Article 24, EU Charter of Fundamental Rights</p> <p>UNHCR, Safe and Sound, http://www.refworld.org/docid/5423da264.html</p>
<p>Best interests of the child</p>	<p>(a) is a threefold concept: a substantive right, a fundamental and interpretative legal principle and a rule of procedure aimed at ensuring both the full and effective enjoyment of all the rights recognised in the Convention on the Rights of the Child and the holistic development of the child;</p> <p>(b) is the well-being of the child: in a broad sense this includes their basic material, physical, educational and emotional needs as well as needs for affection and safety.</p>	<p>(a) UNCRC, General Comment No 14, 2013, http://www.refworld.org/docid/51a84b5e4.html</p> <p>(b) UNHCR, Guidelines on Determining the Best Interests of the Child, http://www.unhcr.org/4566b16b2.pdf</p>
<p>Best interests determination (BID)</p>	<p>The formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions affecting the child that will have a fundamental impact on the child's future (i.e. durable solutions), including identifying a durable solution. Due to the magnitude of the decision, BID requires in-depth information accumulated in the course of the best interests process about the child.</p>	<p>UNCRC, General Comment No 14, 2013, http://www.refworld.org/docid/51a84b5e4.html</p> <p>UNHCR Safe and Sound, http://www.refworld.org/docid/5423da264.html</p>

Term	Definition	Source
Burden of proof or duty to substantiate	<p>In the international protection context, the burden of proof is a concept that encompasses, on the one hand, the duty of the applicant to substantiate his/her application and on the other hand the duty of investigation placed on the asylum authority. In that sense, it is a shared burden of proof, and the principle of cooperation underlies both elements.</p> <p>Depending on individual and contextual circumstances, the authorities may assume a greater investigative burden.</p> <p>Additional information</p> <p>Although the burden of proof usually is shared between the examiner and the applicant in adult claims, it may be necessary for an examiner to assume a greater burden of proof in children's claims, especially if the child concerned is unaccompanied. If the facts of the case cannot be ascertained and/or the child is incapable of fully articulating his/her claim, the examiner needs to make a decision on the basis of all known circumstances, which may call for a liberal application of the benefit of the doubt. Similarly, the child should be given the benefit of the doubt should there be some concern regarding the credibility of parts of his/her claim.</p>	<p>EASO evidence assessment module</p> <p>Recital 25, Articles 12(a) 13 (a) and 25 (5)APD, Article 4 (1) QD</p> <p>UNHCR: Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998. See also, UNHCR, The Heart of the Matter — Assessing Credibility when Children Apply for Asylum in the European Union, December 2014: http://www.refworld.org/docid/55014f434.html [accessed 2 July 2017]</p>
Child/minor	Is every human being below the age of 18 years	<p>Article 2(6) ATD</p> <p>Article 2(d) RCD</p> <p>Article 2(l) APD</p> <p>Article 2(k) QD</p> <p>Article 2(i) Dublin III regulation</p> <p>Article 2(f) FRD</p> <p>Based on Article 1, UN Convention on the Rights of the Child (UNCRC), 1989</p>
Country of origin information (COI)	Information used by the MS authorities to analyse the socio-political situation in countries of origin of applicants for international protection (and, where necessary, in countries through which they have transited) in the assessment, carried out on an individual basis, of an application for international protection.	<p>EASO COI report methodology</p> <p>EMN Glossary</p>
Computed (axial) tomography (CT/CTA)	An imaging procedure that uses special X-ray equipment to create detailed pictures, or scans, of areas inside the body	Radiology Info https://www.radiologyinfo.org , a public information resource developed by physicians from the Radiological Society of North America (RSNA) and the American College of Radiology (ACR)
Consent	Informed, free and voluntary agreement. The consent of the child, and his or her representative or guardian in case of unaccompanied or separated children, is required for medical examinations to conduct the age assessment	<p>Article 25(5) APD</p> <p>UN High Commissioner for Refugees (UNHCR), <i>Field Handbook for the Implementation of UNHCR BID Guidelines</i>, November 2011, available at: http://www.refworld.org/docid/4e4a57d02.html</p>

Term	Definition	Source
Cultural mediators	Professionals with a profound knowledge of community traditions who render interventions more culturally appropriate and bridge gaps between the cultural and professional cannons.	Based on Al-Krenawi, A. and Graham J. R., 2001.
Guardian	<p>(a) Guardianship refers to the designation of responsibility to an adult or organisation for ensuring that a child's best interests are fully represented.</p> <p>(b) A guardian is considered to be an independent person who safeguards the child's best interests and general well-being, and to this effect complements the limited legal capacity of the child, when necessary, in the same way that parents do (FRA definition).</p> <p>Additional information</p> <p>A guardian serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child.</p>	<p>(a) Inter-agency Working Group on Unaccompanied and Separated Children, <i>Inter-agency guiding principles on unaccompanied and separated children</i>, 2004, http://www.refworld.org/docid/4113abc14.html</p> <p>(b) UNCRC, General Comment No 6, 2005</p> <p>(c) FRA, Guardianship for Children Deprived of Parental Care, 2014, http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship</p>
Inter-observer reliability	<p>Refers to statistical measurements that determine how similar the data collected by different observers are.</p> <p>Additional information</p> <p>It is important for the observers to have as close to the same observations as possible — this ensures validity in the experiment. If the raters significantly differ in their observations then either measurements or methodology are not correct and need to be refined.</p>	Based on Russell K. Schutt's book, <i>Investigating the social world: the process and practice of research</i> , University of Massachusetts Boston, eighth edition, 2015.
Intra-observer reliability	<p>The ability to consistently get the same results when the same observer is making observations at different times.</p> <p>Additional information</p> <p>For example, a doctor with good intra-observer reliability skills would read a patient's X-ray or medical diagnostic test the same way when viewing it several weeks later. Intra-observer reliability is also called self-reliability or intra-rater reliability.</p>	Based on Russell K. Schutt's book, <i>Investigating the social world: the process and practice of research</i> , University of Massachusetts Boston, eighth edition, 2015.

Term	Definition	Source
Intrusive/ invasive	<p>The term invasive is commonly used in medical procedures to indicate introduction of instruments or other objects into the body or body cavities, implying even cutting tissues.</p> <p>The term intrusiveness can refer to a behaviour, act, state or disposition towards being intrusive (annoying someone or make them feel uncomfortable), interrupting and disturbing to others, invading their personal space or interfering in their private life.</p> <p>Additional information</p> <p>Invasiveness can be used as a synonym of intrusiveness, thus both terms can be interchangeable in this context.</p> <p>Since the negative effects of the age assessment methods do not always imply the abovementioned physical effects related to invasiveness (introduction of instruments or other objects into the body or body cavities, implying even cutting tissues) but can imply the intrusion on one's privacy, the preferred term in this publication is intrusiveness owing to its broader spectrum.</p>	<p>Online Oxford dictionary definition</p> <p>https://en.oxforddictionaries.com/definition/us/invasive</p>
Medical examinations	<p>For the purpose of this tool, medical examinations are the examinations, check-ups or assessments conducted by medical professionals (doctors, radiologists, general practitioners or paediatricians, etc.)</p>	<p>EASO's definition</p>
Representative	<p>A person or an organisation that assists and represents an unaccompanied child in the asylum procedure, ensuring the of the child and exercising legal capacity for the child where necessary.</p> <p>Additional information</p> <p>Representatives or legal representatives differ from the qualified lawyer or other legal professionals who provide legal assistance, speak on behalf of the child and legally represent him or her in written statements and in person before administrative and judicial authorities in criminal, asylum or other legal proceedings as provided in national law.</p>	<p>Based on Article 24(1) RCD recast and Article 25(1) APD recast.</p> <p>FRA, Guardianship for Children Deprived of Parental Care, 2014.</p> <p>http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship</p>
Unaccompanied child or minor	<p>A child/minor who arrives in the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member States concerned, and for as long as he/she is not effectively taken into the care of such a person/adult; it includes a child/minor who is left unaccompanied after he or she has entered the territory of the Member States.</p>	<p>Article 2(e) RCD</p> <p>Article 2(m) APD</p> <p>Article 2(l) QD</p> <p>Article 2(j) Dublin III regulation</p> <p>Article 2(f) FRD</p> <p>UNCRC, General Comment No 6, 2005</p> <p>UNHCR, Safe and Sound, p. 22, http://www.refworld.org/docid/5423da264.html</p>
Validation study	<p>Works consisting of research using processes by which the reliability and relevance of a procedure for a specific purpose are established.</p>	<p>Encyclopaedia of medical concepts</p> <p>http://www.reference.md/files/D023/mD023361.html</p>

Term	Definition	Source
Separated children	Children who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.	UNCRC, General Comment No 6, 2005 UNHCR, Safe and Sound, p. 22
Trafficking of children	<p>Trafficking of children is the recruitment, transportation, transfer, harbouring or reception of children, including the exchange or transfer of control over children, for the purpose of exploitation.</p> <p>In contrast with the exploitation of adults, when the subjects of exploitation are children it will be a punishable crime even without using the threat of or use of coercion, abduction, fraud, deception, the abuse of power, the abuse of a position of vulnerability, payments or benefits to achieve the consent of a person.</p> <p>Additional information</p> <p>Although child smuggling has similarities with child trafficking, the two types of criminal activities should not be confused.</p> <ul style="list-style-type: none"> • Smuggling of children is the criminalised activity of facilitation of irregular entry into a country irregularly (often involves payment). The purpose of trafficking is to exploit a child and it is regarded as a crime against the person. • Trafficking is generally carried out with the use of coercion and/or deception, etc. With smuggling it is the opposite. • Trafficking involves the intention to exploit the child victim subsequent to their arrival in a state, whereas the role of the smuggler usually ends as soon as the child reaches his or her country of destination. • Trafficking can take place both within and across national frontiers, whereas international movement is required for smuggling. • A child's entry into a state can be regular or irregular in the case of trafficking, whereas smuggling is generally characterised by irregular entry. <p>Child trafficking is not solely a trans-border crime; as the purpose of the criminal activity is the exploitation of children, children might be trafficked even within national borders.</p>	Article 2(5) ATD Frontex, VEGA Handbook: Children at Airports, 2015 http://frontex.europa.eu/assets/Publications/Training/VEGA_Children_Handbook.pdf

Annex 2 The best interests of the child and age assessment: practical tools

Since the main focus of this publication is the primary consideration of the best interests of the child when deciding to undertake an age assessment for the particular child, and how to conduct a safe process when necessary, EASO has developed the following practical tools to support those responsible for assessing if the process respects the child's best interests.

- A. The **best interests assessment form (BIA form)** is designed to ensure that all key steps are completed by the responsible authorities or a party delegated by the authorities, and appropriately considered when assessing the need to undergo an age assessment. In that sense, the BIA form intends to serve as a supporting document to enable the assessor to verify that the relevant information and safeguards have been considered before making a decision to undertake an age assessment.

The **BIA form** is structured as follows.

- Collected information.
- Preconditions for the process.
- A list of factors to be given due weight when deciding on the suitability of the process for the individual child or the necessary adjustments to be made.
- BIA outcome: result of the best interests assessment of the potential age assessment process (age assessment to be done, not to be done, or on hold).

- B. A second tool, the **best interests of the child in the age assessment (BIC checklist)**, has been designed to ensure that the procedural safeguards are respected and in place throughout the age assessment process. In light of this, the second checklist is to be used throughout the age assessment process.

- The **BIC checklist** encompasses a compilation of safeguards and the relevant aspects to comply with the best interests and other rights of the child when assessing the age of the child.

The tools have been designed with the assumption that the assessments will be conducted by trained asylum officers with child-specific expertise and experience, or an alternative trained party designated by the determining or other authority to be used and looked at in conjunction with EU, international and national legislation.

It should be noted that the focus of the BIC tools and the guidance provided in this publication is only limited to the age assessment process while the BIA is to be considered until a durable solution is found for the child. Consequently, this best interests assessment does not intend to replace a best interests determination (BID), which will be required when durable solutions for the child are under consideration.

IMPORTANT CONSIDERATIONS WHEN ASSESSING THE BIC FOR THE PURPOSES OF AGE ASSESSMENT

Children have the right to be heard in all decisions that affect their life. It is important to consider the child's opinions, feelings and thoughts when conducting a BIA. The guardian/representative has a key role in ensuring that the child is adequately informed and understands the procedures and processes and the possible outcomes. Some important aspects to consider are as follows.

- Information should be given in a simple, straightforward and clear way. A child's understanding needs to be checked, as some children might fear any authority figure and not dare to ask questions or admit not understanding due to their age, cultural background or psychological state.
- The assessors should **proactively seek to obtain information** from relevant sources for the purpose of the assessment, in particular from those knowledgeable about the child's situation (such as the guardian/representative, current caretaker, social workers at the reception centres, representative, family members, etc.), and therefore the contact details of the relevant parties should be collected as required, prior to the BIA.
- The BIA should also take into account any existing report regarding the child, such as medical reports, vulnerability assessments or any other documents made available at any point during the process, prior to the BIA.
- BIA is an individual assessment and should be separated for each Child. It should be conducted in a **confidential and child-friendly environment** that helps to build trust with the child. The officials and interpreters are bound by confidentiality, the concept of which should also be explained to and understood by the child.
- The child should feel at ease. The competent officer and interpreter should be as informal and **empathetic** as possible.
- If the child so wishes, and if possible, the BIA interviews with the child could be done by an official and interpreter of the **gender preferred** by the child.
- If the child might experience trauma, s/he may not be willing to express any feelings or opinions. Expert interviewers should be sought to use **alternative interview methods** and to provide counselling.
- It is important to explain to the child that their wishes may not all be fulfilled but if possible they will guide the process while the ultimate decision will depend on the circumstances of the case.

A. The best interests assessment form

BIA form	
BASIC DETAILS	
Case/file number	
Applicant	
Guardian/representative	
Assessor	
Interpreter	
Date	
COLLECTED INFORMATION	
Biodata collected (nationality, ethnicity, education, language, health, family history)	<input type="checkbox"/>
Information about the age from other family members or other sources collected	<input type="checkbox"/>
Expert reports included (medical reports, administrative reports, etc.)	<input type="checkbox"/>
If any of the above information not available or not collected, explain why:	
Additional or new information:	
PRECONDITIONS FOR THE AGE ASSESSMENT PROCESS	
The individual has applied for international protection.	<input type="checkbox"/>
The age of the applicant has not been established.	<input type="checkbox"/>
All the available evidence available has been collected and taken into consideration, including the results from the identification and, when needed, assessment of vulnerabilities, health concerns, influence on the assessment, mental/legal capacity and fitness for an age assessment.	<input type="checkbox"/>
A rest and recovery period has been granted, in particular in cases where the applicant shows signs of trauma or former abuse.	<input type="checkbox"/>
The benefit of the doubt is applied.	<input type="checkbox"/>
There are substantiated doubts about the applicant's claimed age.	<input type="checkbox"/>
Please specify:	
A qualified, independent representative and/or a guardian has been appointed and is involved in the process.	<input type="checkbox"/>
Age-appropriate information on the process is provided on a regular basis, as well as information on its implications and right of refusal in simple terms and a culturally sensitive manner.	<input type="checkbox"/>
The applicant's views are gathered and taken into consideration according to his/her age and maturity.	<input type="checkbox"/>
Interpretation is available throughout the process.	<input type="checkbox"/>
If any of the preconditions are not met, explain why:	
Follow-up action if required:	
RELEVANT FACTORS TO ASSESS IF THE AGE ASSESSMENT IS IN THE CHILD'S BEST INTERESTS	
The established age assessment is based on a holistic and multidisciplinary approach allowing for adaptation to the applicant's needs and particular circumstance, gender, cultural background and other vulnerabilities.	<input type="checkbox"/>
Informed consent is obtained at least for medical examinations, and documented (in writing and any other form of evidence from the child and the guardian as appropriate); or	<input type="checkbox"/>
the right to refuse medical examinations is respected, and reasons for a refusal are explored.	<input type="checkbox"/>
The least intrusive process is established following a gradual implementation.	<input type="checkbox"/>
Confidentiality, data protection and safety are considered.	<input type="checkbox"/>
Officials and experts are experienced in working with children and appropriately trained.	<input type="checkbox"/>
The least intrusive method will be selected.	<input type="checkbox"/>
The most accurate method will be selected and the margin of error is acceptable for this applicant (range of age in question, gender, etc.).	<input type="checkbox"/>
The expected outcome is beneficial to the process and not harmful for the child.	<input type="checkbox"/>
An effective remedy is available.	<input type="checkbox"/>
OPTION 1	It is in the best interests of the applicant to be have his her age assessed
<input type="checkbox"/>	Details: (explain reasons for the recommendation)
OPTION 2	The age assessment process is not in the applicant's best interests
<input type="checkbox"/>	Details: (explain reasons for the recommendation)

OPTION 3	The applicant's age assessment should be temporarily on hold due to
<input type="checkbox"/>	Details: (explain reasons for the recommendation)
Name	
Organisation	
Date	
Signature	
ASSESSMENT APPROVED BY	
Name	
Organisation	
<p>The result of the assessment (option 1, 2 or 3) shall condition the decision to undertake or not the age assessment and as such be recorded in the file. Once deemed necessary (after the evaluation of the doubt) age assessment must be conducted in line with applicable safeguards, taking into account the individual circumstances of the applicant and the EASO recommendations.</p>	

B. The best interests of the child checklist for the purpose of age assessment

BIA checklist	
It is in the best interests of the child to conduct an age assessment (option 1 as per the previous BIA form).	
BENEFIT OF THE DOUBT	
<ul style="list-style-type: none"> ■ From the moment there are reasons to believe that a person could be a child, the applicant is treated as such throughout the asylum procedure and the age assessment. <input type="checkbox"/> ■ When the results of the examinations are inconclusive, the applicant is considered as a child. <input type="checkbox"/> 	
REPRESENTATIVE/GUARDIAN	
<ul style="list-style-type: none"> ■ A qualified and independent representative or guardian is appointed before age assessment and is present with the applicant's agreement and involved in the process. <input type="checkbox"/> ■ The role and responsibilities (ensuring the 'best interests of the applicant', and exercising legal capacity) are explained to and understood by the representative/guardian and the applicant. <input type="checkbox"/> ■ The representative/guardian is present during the BIA interview when the applicant wishes it so. <input type="checkbox"/> ■ The representative/guardian is duly informed, has a good understanding of the age assessment process and his or her questions are clarified. <input type="checkbox"/> ■ The representative/guardian can stop the age assessment if felt to be inappropriate and in the best interests of the applicant. <input type="checkbox"/> ■ The representative/guardian is informed about the results and understands how they can be challenged. <input type="checkbox"/> 	
IF THE APPLICANT SHOWS INDICATORS OF TRAUMA OR VICTIMS OF ABUSE	
<ul style="list-style-type: none"> ■ After assessing the psychological and physical condition the applicant is considered fit to undergo an age assessment with the necessary adjustments. <input type="checkbox"/> ■ The following aspects are considered when establishing the particular age process. <input type="checkbox"/> <ul style="list-style-type: none"> • Any examination involving the exhibition, observation or measurement of intimate parts is totally precluded. • The recording of past events or the reconstruction of life history may not be effective due to memory gaps and it can be very distressful for the applicant. • Age assessment methods assessing psychological development may not be suitable if they are not conducted by a trained and experienced specialist. • Age assessment methods assessing physical development may be distressful or particularly intrusive for victims of abuse. ■ Alternative methods or techniques adapted to the special needs of the applicant are available. <input type="checkbox"/> ■ The benefit of the doubt is largely applied. <input type="checkbox"/> ■ A rest and recovery period is guaranteed and extended when necessary. <input type="checkbox"/> ■ A person of trust is allowed to follow the process with the applicant, prior to verifying the suitability of the person. <input type="checkbox"/> ■ Officials and experts particularly trained in dealing with particularly vulnerable persons are selected. <input type="checkbox"/> 	
INFORMATION	
The applicant and representative/guardian are informed about the following.	
<ul style="list-style-type: none"> ■ The existence and reasons for the doubts and who is responsible for providing the information in a child-friendly manner orally and in writing in a language they could understand. <input type="checkbox"/> ■ The possibility that the age may be assessed by an age assessment (and what that means in practice, including a description of the different examinations, whether medical or non-medical). <input type="checkbox"/> ■ Information on the method and on the process (what methods are being used, why these specific methods are preferred, the accuracy and intrusiveness of the method, the impact and potential risks to health that the specific method may have and the roles of professionals involved). <input type="checkbox"/> ■ The rights and obligations derived from the process, in particular the following. <input type="checkbox"/> <ul style="list-style-type: none"> • The right to refuse to undergo medical examination and its consequences. • The possibility to challenge the results of the age assessment and the next steps to follow. • Possible consequences of the result of the examination for the international protection procedure. 	
The information provided is understood by the applicant and the guardian/representative, and this information provision is documented in the file. <input type="checkbox"/>	

Best interest of the child checklist for the purpose of age assessment (page 2 out of 3)	
<p>THE APPLICANT’S VIEWS ARE HEARD</p> <ul style="list-style-type: none"> ■ After explaining in a constructive and empathetic manner the reasons why the claimed age is in doubt: <ul style="list-style-type: none"> • in case of possible inconsistencies about the age; • in case of new documentation or evidence relevant to age assessment; • in case of a refusal to undergo a medical examination; • once the age assessment is concluded and if the results differ from the claimed age; ■ the applicant is given the opportunity and the means to challenge the decision, and therefore to be heard. 	<input type="checkbox"/> <input type="checkbox"/>
<p>INFORMED CONSENT — applicant and/or guardian/representative</p> <ul style="list-style-type: none"> ■ Taking into consideration health/education/maturity, the applicant is in a position to give informed consent. ■ The applicant is involved in the decision to undertake the age assessment in accordance with his/her maturity, including consultation of their view and/or that of their guardian or representative. ■ Consent for a medical examination is obtained where this will be part of the age assessment. ■ It is possible to withhold consent if it is believed the process is not in the best interests of the applicant. 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<p>CONSEQUENCES OF REFUSAL</p> <ul style="list-style-type: none"> ■ The applicant has the opportunity to refuse the process and the reasons for refusing are explored. ■ The refusal is supported by the guardian/legal representative. ■ It has been clearly established that a decision to reject an application for asylum/international protection is not based solely on the applicant’s refusal to undergo age assessment. ■ The refusal does not lead to an automatic assumption of adulthood. 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<p>HOLISTIC AND MULTIDISCIPLINARY APPROACH</p> <ul style="list-style-type: none"> ■ The process takes into consideration the needs and special circumstances of the applicant and is adapted when necessary (depending on the range of age, gender, ethnicity, cultural background of the person, vulnerability and other needs). ■ The process avoids unnecessary examinations. If doubt remains, medical methods are used after exhausting other non-medical alternatives. ■ If age assessment is needed, the process combines methods assessing different types of development (maturity, psychological and physical development, behaviour, etc.). ■ The assessment is conducted by experts with a multidisciplinary background on different methods if necessary and gathering input from those interacting with the applicant. 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<p>LEAST INTRUSIVE AND MOST ACCURATE METHOD</p> <ul style="list-style-type: none"> ■ The least intrusive and most accurate methods are identified taking into account the range of age to assess, the gender, ethnicity, cultural background, special needs and circumstances of the particular case. ■ The examinations respect the applicant’s physical integrity and dignity. ■ Those involved have an understanding of the culture and ethnicity of the applicant and can apply this within the context of an age assessment. ■ Examinations involving nudity and examinations of genital and breast development are precluded from the process. ■ Methods involving radiation are used as a last resort and specifically justified for the individual case. ■ The margin of error is documented and understood by the expert or panel of experts deciding on the final results. ■ The applicant’s privacy and confidentiality are respected during assessment. 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<p>DATA PROTECTION</p> <ul style="list-style-type: none"> ■ For the age assessment purposes, the information about the applicant’s asylum claim, or the fact that a claim has been made, is not disclosed to the alleged actors of persecution, or country of origin authorities, government officials or their agents (e.g. by seeking to obtain birth certificates or other identity documents confirming the age of the applicant). ■ The information has been gathered fairly, lawfully and for the specific purpose of age assessment. ■ Recording and sharing of information and evidence about any assessment of the age is in accordance with data protection regulation. 	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Annex 3 Legal and policy framework

This annex compiles the most relevant child-related provisions established in international and European legal instruments, as well as the national legal framework and jurisprudence referenced by the national authorities in the survey circulated in 2016; however, the content should not be considered exhaustive. It also includes references to soft-law instruments and material pertinent for the age assessment purpose, and the hyperlinks when available to ease the user's consultation. Finally, it includes a blank section to be completed by the users of this tool with the relevant provisions and instruments that have been developed at the national level.

1. International legislation

Legal instrument	Rights and safeguards	Relevant article
UN Convention on the Rights of the Child of 20 November 1989 (CRC)	Family	Preamble
	Child's definition	Article 1
	Principle of non-discrimination	Article 2
	Best interests of the child	Article 3(1), 9 (3), 18(1), 20
	Right to life, survival and development	Article 6
	Registration, name, nationality and parental care	Article 7
	Preservation of identity and family relations	Article 8
	Right to maintain personal relations and contact	Article 9
	Restoring family links	Arts 10, 22.2
	Respect for the views of the child: right to be heard	Article 12
	Protection of all forms of violence	Article 19
	Care and accommodation	Article 20
	Refugee children and family tracing	Article 22
	Right to education	Article 28
	Protection from child labour	Article 32
	Prohibition of torture, detention as last resort	Article 37
	War and armed conflicts	Article 38
Juvenile justice	Article 40	
UN Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967	Refugees Unaccompanied children	Letter B (2) of the No 2545 Final Act of the UN Conference of Plenipotentiaries on the status of refugees and stateless persons.

2. EU *acquis*

Legal instrument	Rights and safeguards	Relevant article
Treaty on European Union	Rights of the child	Article 3(5)
Charter of Fundamental Rights of the European Union	Right to asylum	Article 18,
	Rights of the child	Article 24
Schengen borders code (Regulation 562/2006)	Child Sensitive procedural measures for minors	Article 19 (1) f annex VII
Reception conditions directive (Directive 2013/33/EU) recast	Minor	Article 2(d)
	Unaccompanied minor	Article 2(e)
	Family members	Article 2(c)
	Representative	Article 2(j)
	Best interests of the child and family unity	Recital (9)
	Best interests of the child	Recital (22), Arts 2(j), 11.2, 23, 24
	Vulnerable persons	Arts 21, 22
	Registration and documentation	Article 6
	Family tracing	Article 24.3
Asylum procedures directive (Directive 2013/32/EU) recast	Minor	Article 2(l)
	Unaccompanied minor	Article 2(m)
	Representative	Article 2(n) and Article 25
	Best interests of the child	Recital (33), Arts 2(n), 25.1(a), 25.6
	Right to information	Art 25.4
	Age assessment	Article 25.5
Qualification directive (Directive 2011/95/EU) recast	Minor	Article 2(k)
	Family members	Article 2(j)
	Unaccompanied minor	Article 2(l)
	Best interests of the child and family unity	Recital (18)
	Best interests of the child	Recital (19), (27), (38), Arts 20.5, 31.4-5
	Right to be heard/right to participation, right to information	Article 22, 31
	Maintaining family unity	Article 23
	Family tracing	Article 31.5
Dublin regulation (EU Regulation 604/2013) recast	Minor	Article 2(i)
	Unaccompanied minor	Article 2(j)
	Family members	Article 2(g)
	Relative	Article 2(h)
	Representative	Article 2(k)
	Best interests of the child and family unity	Recital (16)
	Best interests of the child	Recital (13), (24), (35), Articles 2(k), 6, 8, 20.3
	Right to information	Recital (4) and Annex XI Implementing Regulation 118/2004
	Identification of family members and relatives	Recital (35)
	Family tracing, identification of family members and relatives	Article 6(4), 8
	Exchange of information on the child	Annex VII Implementing Regulation 118/2004

Implementing Regulation 118/2014	Family tracing, identification of family members and relatives	Article 1(7) Annex II LIST A(I), LIST B(I)
	Exchange of information on the child	Annex VII
	Information for unaccompanied children on Dublin procedure	Annex XI
Eurodac regulation (Regulation 603/2013) recast	Best interests of the child	Recital (35)
	Identification of child victim of trafficking and protection measures	Recital (23)
Anti-trafficking directive (Directive 2011/36/EU)	Child	Article 2.6
	Vulnerability	Article 2.2
	Best interests of the child	Recital (8), (22), (23), Arts 13,16.2
	Procedural safeguards in criminal investigations	Article 15
	Protection of unaccompanied children victims of THB	Article 16
	Unaccompanied minor	Article 2(f)
	Best interests of the child	Article 10(a)
Directive on residence permits for victims of human trafficking (Directive 2004/81/EC)	Identification as unaccompanied child	Article 10(c)
	Family tracing	Article 10(c)
	Unaccompanied minor	Article 2(f)
Family reunification directive (Directive 2003/86/EC)	Family reunification	Article 2(d)
	Family members	Article 4
	Best interests of the child	Article
	Restoring family links	Article 4 and 10
	Vulnerable persons/vulnerability	Article 3.9
Directive 2011/92/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA	Age of sexual consent	Recital 8 Articles 2 (b), and 3(2)

3. National legislation and jurisprudence

	National legislation and jurisprudence	Relevant jurisprudence
<p>Country</p> <p>Austria</p>	<p>Relevant legislation</p> <p>According to Art. 13/3 Federal Act on the general rules of procedures at the federal office for immigration and asylum, the Federal Office for Immigration and Asylum or the Federal Administrative Court may order, in the frame of a multiple examination method (Art 2/1/25 Austrian Asylum Act 2005) also radiological examinations, particularly x-ray examinations to determine the age, if the alien does not manage to prove an alleged and based on the results of the preliminary proceedings doubtful minority, by providing unobjectionable documents or other appropriate and equivalent means of evidence. Any examination method has to be done with the least possible level of intervention. The cooperation of the alien for a radiological examination cannot be enforced. In case founded doubts continue after the examinations to determine the age, to the benefit of the alien, his minority is to be assumed. This legal provision was originally passed in 2009 in the former Art 15/1/6 Austrian Asylum Act 2005. Since 2014 it is regulated in the Federal Act on the general rules of procedures at the federal office for immigration and asylum.</p> <p>Art 2/1/25 Austrian Asylum Act 2005 defines the multiple examination method as a state of the art model to determine the age based on three individual medical examinations (specially physical, dental and x-ray) examination.- This legal provision was passed in 2009.</p> <p>Art 29/6/2 Austrian Asylum Act 2005 rules that if it is needed, the multiple examination method to determine the age (Art 2/1/25 Austrian Asylum Act 2005, Art 13/3 Federal Act on the general rules of procedures at the federal office for immigration and asylum) has to be performed without any unnecessary delay at the beginning of the admission procedure. This legal provision was passed in 2015.</p>	<p>The Austrian High Administrative Court ruled that where there is not sufficient evidence to prove the alleged minor age of the applicant, the first instance has to mandate an age assessment determination. A presumption of age solely based on the appearance of the applicant by a legal officer is not sufficient (VwGH 16.4.2007, Ra 2005/01/0463; www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnumm er=JW T_2005010463_20070416X00)</p> <p>The Austrian High Administrative Court ruled that if the results of the investigation procedure justify already the assumption of the majority of the applicant, the federal office of immigration and asylum is not obligated to order a multiple examination method to determine the age of the applicant, nor is the principle of benefit of the doubt applicable in such cases. (VwGH 25.2.2015, Ra 2014/20/0045, www.ris.bka.gv.at/Dokumente/Vwgh/JWR_2014200045_20150225L02/JWR_2014200045_20150225L02.pdf) The Austrian High Administrative Court ruled that the result of the multiple examination method to determine the age of the applicant is seen as a part of the whole procedure for establishing the circumstances of the case for taking the decision. A lack of proper investigation or a defective reasoning given in the decision in relation to the age assessment of the applicant leads to an unlawful decision. (VwGH 25.2.2016, Ra 2016/19/0007, www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JW T_2016190007_20160225L00)</p>
<p>Belgium</p>	<p>Guardianship law of 24 December 2002: creation of the Guardianship Service, responsible to take charge of UAMs and designate guardians.</p> <p>Article 7 Guardianship law stipulate:</p> <p>§ 1. When the Guardianship service or the authorities competent for asylum, access to the territory, residence and expulsion have reasonable doubt as to the age of the person concerned, the service Guardianship immediately orders a medical examination by a doctor in order to verify whether or not the person is younger than 18 years old.</p> <p>The medical examination shall be carried out under the surveillance of the Guardianship.</p>	<p>It should also be mentioned that on 18 July 2013, the Constitutional Court clarified that the age determination with a view to the possible appointment of a guardian is an application of a police and security law. The service Guardianship can by no means determine the personal status of the minor nor decide a dispute regarding a civil right. Pursuant to Article 144 of the Constitution, the courts are exclusively competent for such legal actions. Consequently, if the youngster wishes to have his or her name and date of birth confirmed authoritatively (in regard to service Guardianship and the immigration authorities), he or she has to initiate legal proceedings before the competent court, pursuant to Article 46 of the Civil Code and/or Article 27 of the Belgian International Private Law Code.</p>

National legislation and jurisprudence	
	<p>The costs of the medical examination are at the expense of the requesting authority. If the Guardianship service orders an examination on its own initiative, the costs are at the expense of said service.</p> <p>§ 2. When the medical examination shows that the person concerned is younger than 18 years old, Article 8 applies. When the medical examination shows that the person concerned is older than 18 years old, the custody by the Guardianship service expires as of right. The Guardianship service immediately informs the person concerned, as well as the authorities competent for asylum, access to the territory, residence and expulsion and any other authority concerned.</p> <p>§ 3. In case of doubt as to the result of the medical examination, the youngest age is taken into consideration.</p>
Bulgaria	<p>LAW ON ASYLUM AND REFUGEES <i>In force from</i> 01.12.2002</p> <p>Art. 61(3) (supplemented — SG 101/ 2015) Where any reasonable doubt has arisen that such alien is not a minor or under the legal age, the interviewing authority shall commission an expert opinion to establish his/her age.</p>
Croatia	<p>Act on International and Temporary Protection (Gazette No 70/2015)</p>
Cyprus	<p>The activation of the age assessment process is based on the following legal provisions:</p> <ul style="list-style-type: none"> - According to Article 10(1)(g) of the Cyprus Refugee Laws, the Asylum Service may use medical examinations in order to determine the age of the unaccompanied minor, in the framework of the examination of his/her application for international protection. - Article 4(3)(a, b) of the Council Resolution of 26 June 1997 provides, in relation to unaccompanied minors from third countries, that 'a) Unaccompanied applicants for international protection claiming to be minors, have to prove their age, b) If there is no such proof or if there are still serious doubts, member states may estimate objectively the age of applicants for international protection. For this purpose, the member state may refer the minor, with his/her approval and the approval of his/her appointed representative, to a medical age assessment test, conducted by specialised medical staff'.
Czech Republic	<p>325/1999 section 89 326/1999 section 124 109/2002 section 23</p>
	<p>There are no such rulings.</p>
	<p>Not available</p>
	<p>N/A</p>
	<p>Court rulings are individuals</p>

National legislation and jurisprudence	
Denmark	According to The Danish Aliens Act section 40c (2) The Danish National Police and The Danish Immigration Service can demand that an unaccompanied alien stating to be minor participates in a medical examination to determine the aliens age.
Estonia	Forensic Examination Act passed on 1 Jan 2002 Act on granting IP to aliens, passed on 1 July 2006
Finland	Medical age assessment has been in The Finnish Aliens Act since 2010. Section 6a says that: A medical age assessment may be carried out to establish the age of a sponsor or an alien applying for a residence permit if there are reasonable grounds for suspecting the reliability of the information the person has given on his or her age. - There is not ongoing legislative changes relating to age assessment in Finland.
France	Law of March 14th 2016 on the protection of the child. The use of X-rays is now restricted and the sexual maturity observation is now forbidden to assess the age of persons declaring to be under 18.
	<p>The law of 14 March 2016 completed Article 388 of the civil code. No case has been made in the matter since this new law.</p> <p>The most recent decision about this subject is the decision of the Rennes Court of Appeal on 13 January 2015 (https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAc tion=rechJuriJudi&idTexte=JURITEXT0000030123464&fastReqId=1477313596&fastP os=2)</p> <ul style="list-style-type: none"> – Presentation of the situation: The concerned person declared to be born 26 October 1996 in Kinshasa; consequently a minor. A copy of a birth certificate established on 9 August 2012 by the Mayor of the municipality of Bumbu (DRC) was presented to justify his identity. The guardianship procedure was launched and the President of the General Council (<i>department</i>) introduced a motion to stop the supervision. – The analysis of the documents concluded the authenticity of the documents; but recalled that the birth certificate was based on a simple oral declaration by the parents and had thus no judicial value. The document was also insufficient to determine his age due to the lack of probative value and could not justify his age of consent. However, the use of X-rays (wrist and left hand), clinical examinations and the analysis of the growth plates provided an age assessment.
	No court cases including age assessment aspects yet
	There is not so significant court rulings. In general, the results of age assessment have remained in Administrative Court, but in some individual cases the result has been repealed.

National legislation and jurisprudence	
<ul style="list-style-type: none"> – In all actions, reference is made to the report of 16 January 2007 of the National Academy of Medicine, which states that the ‘examination of the bone age thanks to an X-ray of the wrist and left hand’ — referring to the method of the Atlas Greulich and Pyle, remains the simplest and most reliable method. It is the universally used. In particular, no racial differences were demonstrated to date. The Academy stated that ‘it is very rare that the bone development and actual age don’t match; however, when this is the case, most of those situations lead to an underestimation of the real age.’ – All items submitted for consideration of the court prove evidence and conclude the individual’s age of consent. <p>Other decisions with the same reasoning: Court of Appeal of Rennes — 28 October 2014 https://www.legifrance.gouv.fr/affichJurijudi.do?oldAction=rechJurijudi&idTexte=JURITEXT000029685707&fastReqId=698863264&fastPos=3</p> <p>Court of Appeal of Rennes — 28 October 2014 https://www.legifrance.gouv.fr/affichJurijudi.do?oldAction=rechJurijudi&idTexte=JURITEXT000029685066&fastReqId=1179022326&fastPos=4</p> <p>Court of Appeal of Limoges — 3 March 2014 https://www.legifrance.gouv.fr/affichJurijudi.do?oldAction=rechJurijudi&idTexte=JURITEXT000028708995&fastReqId=1179022326&fastPos=9</p> <p>It should be noted that the law of 14 March 2016, answers the following questions:</p> <ul style="list-style-type: none"> – X-rays are used as an alternative means, and in the case of a missing valid identity document and when the alleged age is not certain – The procedure is followed by judicial authorities and after the individual’s agreement – The examination should be used carefully (any doubt should benefit the individual, taking into account other medical and social data) 	

National legislation and jurisprudence	
Germany	<p>Section 42f Social Code VIII describes the rules for age determination in the process of taking into care by the Youth Welfare Services (introduced on 1 November 2016)</p> <p>http://www.bgbli.de/xaver/bgbli/start.xav?startbk=Bundesanzeiger_BGBI#_bgbli__%2F%2F*%5B%40attr_id%3D%27bgbli115s1802.pdf%27%5D__1467628916541</p> <p>(a) Oberlandesgericht (Higher Regional Court) Karlsruhe, Decision dated 26 August 2015 — 18 UF 92/15</p> <p>Headnote</p> <ol style="list-style-type: none"> Further investigations arising from the obligation to investigate ex officio are conditional on doubts about the age of the subject person. If the claim to be a minor is obviously wrong or if the subject person fails to explain the circumstances allegedly proving his or her minor age with sufficient plausibility, the obligation to investigate ex officio does not require ‘indiscriminate’ investigations. (Marginal note 25) While there is the principle of the benefit of the doubt which means that minor age shall be assumed in favour of the subject person, if the doubts regarding his or her majority of age cannot be fully dispelled; this principle does, however, only apply if the court cannot gain reasonable certainty about the person’s actual age after exhausting all procedurally possible and admissible investigation options as indicated by the circumstances. (Marginal note 33) On the scope of the duty to cooperate of the subject person in determining his or her age pursuant to section 27 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. (Marginal note 24) On the significance and the validity of an radiographic examination of the hand skeleton. (Marginal note 31) (Marginal note 32) <p>Other main points</p> <ol style="list-style-type: none"> The duty to cooperate defined in section 27 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction generally includes submitting to a medical examination for verification of the claimed age, to the extent this is not humiliating and reasonable (Concurrence with OLG Hamm, 25 February 2014, 1 UF 213/13). (Marginal note 24) The medical examination required to determine the minor age of the subject as a prerequisite for taking him or her into custody under section 42 Social Code VII (section 62(1) of Social Code I) may consist of a radiographic examination. It is likewise admissible to consult an already existing radiography to determine the subject’s age (Concurrence with OVG Hamburg, 9 February 2011, 4 Bs 9/11JAmt 2011, 472). (Marginal note 32) It is not possible to determine reliably whether an individual has reached the age of majority by solely relying on a radiographic examination of the maturity of the hand skeleton. (Margin note 31) <p>https://www.juris.de/jportal/?quelle=jlink&docid=KORE221492015&psml=jurisw.psmi&max=true</p>

National legislation and jurisprudence	
<p>(b) Higher Administrative Court, Bremen, Decision dated 22 February 2016 — 1 B 303/15</p>	<p>Main points relevant for this questionnaire</p> <ul style="list-style-type: none"> • Minority of age was explicitly defined by law when section 42f of Social Code VIII entered into force on 1 November 2015. • The age of minority must be determined by inspecting the identification documents (among other things the photograph must prove identity with reasonable reliability). In the absence of identification documents the information provided by the subject person remains. If this information is doubtful, a qualified visual inspection must be made to assess and determine the age (outer appearance, questioning with an interpreter, consulting any other documents, if available). The four-eyes principle of two experienced staff members of the youth welfare office always applies. If certain doubts regarding the subject's self-information remain after the visual inspection, but overall it can be assumed with reasonable probability that he or she is of minor age, the requirements for applying the law governing minors are met. • The result of the qualified visual inspection may also be that majority of age must be assumed, because the person's outer appearance shows clear indications that he or she is of age. Likewise an assessment of the information obtained during the interview may lead to this result, if the subject's statements cannot give conclusive and credible evidence of the process of development. Blanket assertions and incongruities in combination with the outer appearance might lead to the same result (Bremen Higher Administrative Court, Decision dated 18 November 2015 — 2 B 221/15). • A qualified visual inspection that takes into account more than merely external physical characteristics, can, in fact, be a suitable method to assess and determine a person's age (Munich Administrative Court, Decision dated 23 September 2014 — 12 CE 14.1833). • If a qualified visual inspection fails to produce a reasonably reliable result, a medical examination must be commissioned. The explanatory memorandum for section 42f of Social Code VIII (Printed Matter of the Bundestag 18/6392) details the criteria for such examination indicating that the gentlest — and to the extent possible — the most reliable method shall be chosen. • This staged procedure corresponds to the relevant technical standard (Recommendations of the Working Group of the Federal Youth Welfare Offices) to which the explanatory memorandum for § 42 of Social Code VIII made reference. https://www.juris.de/jportal/?quelle=jlink&docid=JURE160008628&psml=jurisw.psmi&max=true

National legislation and jurisprudence	
Greece	Art. 13 par 4,5, 6, 7
Hungary	Act. LXXX of 2007 on Asylum, Governmental Decree 301/2007. (XI. 9.) on the execution of Act. LXXX of 2007 on Asylum, Act. XXIX of 2016 on expert witnesses.
Ireland	<p>Refugee Act 1996</p> <p>Section 8(5)(a) of the Refugee Act provides that, where it appears to an authorised officer of the Commissioner or to an Immigration Officer that a person who has arrived in the State is under the age of 18 years, that child must be referred to the Child & Family Agency (TUSLA) which will then decide whether or not to make an application for asylum on their behalf. In the event that an application is made, the Child & Family Agency (TUSLA) plus a legal representative from the Refugee Legal Service then assists the minor throughout the asylum process, including by accompanying them to their interview.</p> <p>International Protection Act 2015 (not yet commenced).</p> <p>Section 14 provides, <i>inter alia</i>, that where it appears to an officer referred to in section 13 that a person seeking to make an application for international protection, or who is the subject of a preliminary interview, has not attained the age of 18 years and is not accompanied by an adult who is taking responsibility for the care and protection of the person, the officer shall, as soon as practicable, notify the Child and Family Agency of that fact.</p> <p>Section 15(4) provides, where it appears to the Child and Family Agency, on the basis of information, including legal advice, available to it, that an application for international protection should be made on behalf of a person who has not attained the age of 18 years (in this subsection referred to as a 'child') in respect of whom the Agency is providing care and protection, it shall arrange for the appointment of an employee of the Agency or such other person as it may determine to make such an application on behalf of the child and to represent and assist the child with respect to the examination of the application.</p> <p>Section 24(1) provides that the Minister, or an international protection officer, where he or she, with reasonable cause, considers it necessary to do so for the purposes of determining whether an applicant referred to in section 15(4) has not attained the age of 18 years, may, subject to this section, arrange for the use of an examination to determine the age of the applicant.</p>
	<p>None</p> <p><i>AM v Refugee Applications Commissioner</i> <i>Applicant/Plaintiff:</i> A.M. Respondent/Defendant: Refugee Applications Commissioner Citation/s: [2005] IEHC 317 URL: http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/2bff9fbfdcl...</p> <p>An asylum applicant claimed he was a minor at the time of his asylum application. The Refugee Applications Commissioner interviewed him to assess his age and assessed him to be not under 18 years of age. The applicant was thereafter processed by the Commissioner as an adult and was in due course issued with a negative asylum determination. The applicant challenged both the age assessment and the refugee status determination.</p> <p>The Court quashed the decision assessing the applicant's age finding that minimum procedural requirements for such a procedure include:</p> <ol style="list-style-type: none"> 1. that an applicant be told the purpose of the interview in simple terms; 2. that an applicant is entitled to be told in simple terms the reason or grounds why the interviewer considers the claim to be false and given an opportunity to deal with such matters; 3. that the applicant is entitled to be told of any reservations held by the interviewer with regard to identity documents and is given an opportunity to deal with the matter; 4. that if the decision is adverse to the applicant that he is clearly and promptly informed of the decision and its reasons; and 5. that the possibility and procedure of reassessment is communicated orally and in writing.

National legislation and jurisprudence	
<p>Section 24(2) provides that ‘an examination under subsection (1) shall be:</p> <ul style="list-style-type: none"> (a) performed with full respect for the applicant’s dignity, (b) consistent with the need to achieve a reliable result, the least invasive examination possible, and (c) where the examination is a medical examination, carried out by a registered medical practitioner or such other suitably qualified medical professional as may be prescribed.’ <p>Section 24(7) provides that reasonable cause may arise based on ‘general statements or other relevant indications, [that] there are reasons to have doubts in relation to the age of the applicant.’</p> <p>Section 24(3) provides that consent for a medical examination must be obtained from either (a) the applicant, (b) the adult who is taking responsibility for the care and protection of the applicant or (c) an employee or other person appointed by the Child and Family Agency who has made an application for international protection on behalf of the child.</p> <p>Section 24(4) provides that the child must be informed in a language which he or she may reasonably be supposed to understand, of:</p> <ul style="list-style-type: none"> (a) the possibility that his or her age may be determined by examination, (b) the method or methods of the examination, (c) the possible consequences of the result of the examination for the international protection application, and (d) the consequences of refusal on the part of the child to undergo the examination. <p>The consequences of refusal to undergo the examination are specified in section 24(5), namely, that the Minister or international protection officer may proceed to determine whether the applicant has attained the age of 18.</p> <p>Specific provisions regarding medical examination in respect of age-disputed persons in the detention context are contained in section 25, in similar terms to section 24.</p> <p>Section 25 provides, <i>inter alia</i>, that for the purposes of paragraph (b) of section 20(7), the Minister may arrange for the carrying out of an examination in order to determine the age of a person.</p>	<p>The Court found that these requirements were not met in the instant case.</p> <p>Principles: Minimum procedural requirements for age assessment of minors in the asylum process include (i) that an applicant be told the purpose of the interview in simple terms; (ii) that an applicant is entitled to be told in simple terms the reason or grounds why the interviewer considers the claim to be false; and to be given an opportunity to deal with such matters; (iii) that the applicant is entitled to be told of any reservations held by the interviewer with regard to identity documents and is given an opportunity to deal with the matter; (iv) that if the decision is adverse to the applicant that he is clearly and promptly informed of the decision and its reasons; and (v) that the possibility and procedure of reassessment is communicated orally and in writing.</p>

National legislation and jurisprudence	
<p>Italy</p> <p>Legislative decree No 142/2015, Art. 17-18-19 (implementing EU REG 2013/33)</p> <p>Decree (under consideration by the Council of Ministers): 'regolamento recante definizione dei meccanismi per la determinazione dell'età dei minori stranieri non accompagnati vittime di tratta, in attuazione dell'art. 4, comma 2, del decreto legislativo 4 marzo 2014, n. 24'</p> <p>Art. 8, DPR 22.9.1988, n. 448 (nei processi penali, in caso di incertezza sulla minore età il giudice dispone, anche d'ufficio, una perizia) Art. 28, co. 3, D.Lgs. 286/98 (BIC) Art. 19, co. 2, lett. a), D.Lgs. 286/98 (divieto espulsione minori stranieri) Art. 19, D.Lgs. 25/2008 implementing EU Directive 2005/85 (age assessment may occur at any stage of the procedure). L'art. 4, co. 2, D.Lgs. 4.3.2014, n. 24, implementing EU Directive 2011/36 (defines the holistic procedure for the age assessment; minor age assumption in case of doubt).</p> <p>In 2017 a new decree containing the procedure to be followed for assessing the age of a UAM suspected of being victims of trafficking was approved http://www.gazzettaufficiale.it/eli/id/2016/12/22/16G00248/sg</p>	<p>27.01.2014 Tribunale di Torino: radiological assessment cannot exclude that — in individual case — could emerged a margin of error of the age assessment. In case of doubt, the minor age is prevalent http://www.questionegiustizia.it/articolo/i-metodi-di-accertamento-dell-eta-cronologica-dei_05-03-2015.php</p>
<p>Latvia</p> <p>On 19 January of 2016 a new Asylum Law of Latvia has entered into force. According to provisions of the Asylum Law, the State Border Guard of Latvia is responsible for acceptance of asylum seekers applications and performance of related initial activities, inter alia determination of asylum seeker identity.</p> <p>Part 2 of Section 7 of the Asylum Law prescribes that in identifying an asylum seeker and ascertaining his or her nationality, the State Border Guard has the right to perform inspection of the asylum seeker and his or her possessions, and also to seize objects and documents, if they may have a significance in examination of the application or if they may pose a threat to the asylum seeker or those around him or her.</p> <p>When determining medical expert-examination, the State Border Guard informs the unaccompanied minor, without delay and in the presence of a representative, in a language which he or she understands or is reasonably supposed to understand, regarding the possibility that his or her age may be determined in the medical expert-examination, regarding the course of the expert-examination, and the possible impact of the results of the medical expert-examination on examination of the application, and also regarding the consequences, which might occur if the representative of the unaccompanied minor refuses from medical expert-examination.</p> <p>If during the age assessment procedure the age of a person under examination is not undoubtedly determined, the conclusion is being taken for the benefit of the person under examination — the person is considered to be a minor.</p>	<p>In accordance with the section No 182 'Assessment of Expert Opinion' of the Administrative Procedure Law, a court shall assess expert opinion in accordance with the provisions of Section No 154, 'Assessment of Evidence' of this law. The section No 154 stipulates, that a court shall assess the evidence in accordance with its own convictions which shall be based on comprehensively, completely and objectively verified evidence, and in accordance with judicial consciousness based on laws of logic, findings of science and principles of justice; no evidence shall have such predetermined effect as would bind a court; a court judgment shall state why preference has been given to certain evidence in comparison with other, and why certain facts have been recognised as proven while other facts as not proven.</p> <p>If the expert opinion is not clear enough or is incomplete, a court may order supplementary expert-examination, assigning performance thereof to the same expert.</p> <p>If the expert opinion is not substantiated or reasoned, or if the opinions of several experts contradict one another, the court may order repeated expert-examination, assigning performance thereof to another expert or several experts.</p>

National legislation and jurisprudence	
	<p>The condition that the representative of an unaccompanied minor has refused from the medical expert-examination for determination of this person's age, cannot be the sole grounds for taking a decision to leave the application of an unaccompanied minor without examination or a decision to refuse to grant refugee or alternative status. According to Article 3 of Regulations No 776 of the Cabinet of Ministers of Latvia from 7 September 2004 'Regulation of the State Forensic Medicine Center', the State Border Guard sends request for forensic medical examination, in order to determine the age of a person, to the State Forensic Medicine Center, which performs age assessment, using methodology registered according to laws and regulations ('Age Assessment Methodology' No 2-20/VTMEC-1/336, adopted on 07.02.2013).</p> <p>Article 11 of the Internal Regulation of the State Border Guard No 1 from 16.01.2015 'Regulations on Activities of Officials of the State Border Guard in Cases When a Foreigner Requests Asylum' prescribes that in the case where an asylum seeker is subjected to age assessment examination, then expert opinion received shall be sent to the court for assessment in accordance with Section 182 of the Administrative Procedure Law.</p>
Lithuania	<p>Law on the Legal Status of Aliens, Article 123 and the Order of the Minister of Internal Affairs of the Republic of Lithuania on granting and withdrawal of asylum in the Republic of Lithuania, Section No 2 (104-114 paragraphs)</p> <p>No national court rulings regarding age assessment were issued.</p>
Luxembourg	<p>According to Article 12(3) of the Revised law on asylum and other forms of protection, dated 5 May 2006, the Minister may order a medical examination in order to determine the age of an asylum seeker. It should be said that the determination of age influences the procedure for granting international protection. In this regard, we refer to Article 9(2) of the abovementioned law, which says that every applicant is obliged to communicate all information needed for the identification of the rightfulness of the application, including the age. In case the applicant refuses the medical examination, he is in default of appearance or it turns out that he is of full age, the applicant will be informed that these circumstances will have a negative influence on the decision taking of the application on international protection. In this case the application for international protection might be processed through the accelerated procedure as foreseen by Article 20 of the abovementioned law. Henceforth he will be considered as being full of age regarding the application. The fact of failing to consent to that medical examination will not prevent the Minister from rendering a decision regarding the application for international protection. Such decision however will not be exclusively based on such a refusal.</p> <p>Not available</p>

National legislation and jurisprudence	
Malta	<p>Legal Notice 243 of 2008</p> <p>Legal Notice 320 of 2005, Article 14</p> <p>The provisions are laid down in the aliens decree ('vreemdelingenbesluit') Article 3.109d, which came into force on 20 July 2015.</p>
Netherlands	<p>23 Oct. 2003, ABRS 200304904/1</p> <p>The Minister must ensure that the assessment is performed reliably and carefully, so that the assessment can support the conclusions. The Minister is required to enlist an expert with the required knowledge. To ensure that the assessment has been performed reliably and thoroughly, the Minister needs to receive a comprehensive report for which the expert takes responsibility, even if the expert does not wish to disclose his name.</p> <p>3 Mar. 2004, ABRS 200307415/1</p> <p>The report of the age assessment is regarded as an experts advice. The argument that conventional X-rays cannot be used to properly image the collarbone is rejected. The research method used in the assessment is reliable.</p>
Norway	<p>Immigration Act, Section 88 Age examination</p> <p>Where, in a case concerning asylum or in a case concerning a residence permit for a family member, it is not possible to establish with reasonable certainty whether the foreign national is over or under the age of 18, the foreign national may be requested to allow himself or herself to be examined in order to determine his or her age. The result of the examination shall be assessed in relation to the other information in the case.</p> <p>If the foreign national refuses to allow himself or herself to be examined, he or she shall be made aware that this may be of significance for the assessment of the case.</p> <p>The King may by regulations make further provisions in respect of the implementation of age examinations.</p>
Poland	<p>Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland.</p> <p>There are no ongoing legislative changes relating to age assessment.</p>
Portugal	<p>Law N27/2008 from 30.06 Asylum law — Article 28 n.3</p> <p>Law N67/98 from 26.10 Law on personal data protection</p> <p>Law N45 /2004 of 19 August Establishes the legal regime of forensic medicine</p>

	National legislation and jurisprudence
Romania	<p>Law No 122/2006 on the Asylum in Romania (published in O.J. No 428/18.05.2006, entered into force on 16 August 2006) provides the following:</p> <p>Art. 16 'Guarantees concerning the unaccompanied asylum applicants minors'</p> <p>(1) The asylum application of an unaccompanied minor shall be examined with priority.</p> <p>(2) The General Inspectorate for Immigration takes measures for the appointment in the shortest time possible of a legal representative who assists the unaccompanied minor asylum seeker during the asylum procedure, including for the period of procedure of the first asylum country, of the procedure of a safe third country, the procedure of a safe European third country or the procedure of determination of the Member State responsible, as applicable.</p> <p>(2¹) The unaccompanied minor is informed immediately with regard to the appointing of a legal guardian. The legal guardian fulfils its duties in accordance with the best interests of the child and has the necessary expertise for this purpose.</p> <p>(3) There is no need to appoint a legal representative for the asylum applicant unaccompanied minor in case she or he shall reach the adult age in 15 days since she or he has lodged the application.</p> <p>(4) The General Inspectorate for Immigration:</p> <p>(a) ensures that the legal representative is given the opportunity to inform the unaccompanied minor about the meaning and the possible consequences of the personal interview, and how to prepare for a personal interview.</p> <p>(b) provides legal information procedures referred to Art. 17 (rights of the asylum applicants) and information about procedures in case of withdrawing international protection, both minor and his legal representative.</p> <p>(c) informs the legal representative and the unaccompanied minor asylum seeker, in a language the latter understands or which is reasonably assumed that he/she understands about the possibility of performing a forensic expert examination for evaluation of age. This information must contain indications about the medical examination methods, the possible consequences of the result of this examination and the effects of a potential refusal to submit to forensic examination.</p>

National legislation and jurisprudence
<p>(4) The forensic examination of age evaluation is performed with the full observance of individual dignity of the minor, using the least invasive methods which allow a reliable result to the extent possible.</p> <p>(5) For the application of the provisions in this article, the General Inspectorate for Immigration shall collaborate with the structures of the local public administration authorities with duties in the promotion and protection of children's rights, as well as with the law courts, to clarify the legal situations of a minor or in case he was introduced to a special protection measure.</p> <p>Art. 41 'Establishing the age of the asylum applicant minor alien'</p> <p>(1) In case the asylum applicant declares she or he is minor and there are no serious doubts regarding her or his age, she or he shall be considered minor.</p> <p>(2) If the unaccompanied minor child cannot prove his/her age and there are serious doubts about his/her minority, the structure specialised in asylum issues from the General Inspectorate for Immigration requests before the resolution of asylum application in administrative stage, the performance of a forensic examination for evaluation of applicant's age, with the prior consent in writing of the minor and his/her legal representative.</p> <p>(3) In case the asylum applicant and/or legal representative refuse to carry out the medical-legal expertise in order to evaluate the age and there are not brought convincing proofs regarding her or his age, she or he shall be considered of adult age.</p> <p>(4) In the case foreseen under paragraph (3), it shall be considered that the respective person has reached the age of 18 at the date of lodging the asylum application.</p> <p>(5) The provisions of paragraph (3) are not applied in the case in which, at the basis of the refusal to have the forensic examination to determine age carried out, there are well-founded reasons, discovered after evaluation by a psychologist within the General Inspectorate for Immigration.</p> <p>(6) The interpretation of the result of forensic examination for evaluation of the applicant's age is made in consideration of the principle of higher interest of the minor.</p> <p>(7) The refusal of the unaccompanied minor applicant to undergo the forensic examination for evaluation of age cannot represent the sole reason for rejection of his/her asylum application and does not prevent the competent authorities from issuing a decision regarding his/her application for international protection.</p>

National legislation and jurisprudence	
<p>Art. 49 'Forensic examination'</p> <p>(1) When it is considered relevant for the resolution of the international protection applicant and if the consent of the applicant exists, the applicant will be subjected to a forensic examination regarding signs of exposure in the past to persecution or to a serious risk.</p> <p>(2) The refusal of the applicant to undergo the forensic examination provided by paragraph (1) does not prevent the General Inspectorate for Immigration from making a decision regarding the asylum application.</p> <p>(3) The forensic examinations provided by paragraph (1) are made by the forensic institutions and their result is transmitted immediately to the General Inspectorate for Immigration. The deduction of expenses is assured by the Ministry of Interior by the budget allotted to the General Inspectorate for Immigration for this purpose.</p> <p>(4) When a forensic examination is not made according to paragraph (1), the General Inspectorate for Immigration informs the applicant in writing that he/she can make a forensic examination at his/her own expense regarding signs of exposure in the past to persecution or to a serious risk.</p> <p>(5) The results of forensic examinations provided by paragraphs (1) and (4) are taken into account by General Inspectorate for Immigration in corroboration with other elements of the application for international protection for its resolution.</p> <p>There aren't ongoing legislative changes relating to age assessment.</p>	

National legislation and jurisprudence	
Slovakia	<p>Act on Asylum 480/2002 Coll. as amended — Section 23/7</p> <p>If the Ministry has doubts about the age of an applicant, the applicant is obliged to undergo a medical examination; in case of the alien pursuant to Section 16 Paragraph 2 it is necessary to obtain the consent of his/her legal representative or guardian. If the medical examination determines that the applicant is a full-aged person, the Ministry shall proceed with him/her as a full-aged person, and it shall without delay inform his/her legal representative or guardian and the competent court on the result of the medical examination. If an alien refuses to undergo a medical examination or if the legal representative or guardian does not agree with this examination, in accordance with this Act, this alien shall be considered a full-aged person for the purpose of the procedure. If the medical examination cannot determine whether he/she is a minor or a full-aged person, in accordance with this Act he/she shall be considered a minor for the purpose of the procedure and legal representative and guardian shall inform the applicant without delay. Within the instruction pursuant to Section 4 Paragraph 2 the Ministry shall inform the applicant on the possibility to execute a medical examination to determine his/her age, the way of its execution, and on consequences of the examination for assessment of the application for granting asylum as well as on consequences of a refusal of the examination.</p> <p>* section 4/2 Prior to filling in the questionnaire, but not later than within 15 days after commencement of the procedure, the authorised employee of the Ministry shall instruct the applicant of his/her rights and obligations during the asylum procedure, of possible consequences of not fulfilling or violating his/her obligations under this Act, of the possibility of being represented in the procedure under this Act and of access to a legal aid. The Ministry shall also provide the applicant with information about non-governmental organisations focusing on the care of applicants and persons granted asylum; if possible, the instructions and information shall be provided in written form and in a language which is supposed to be understood by the applicant.</p> <p>*section 16/2 Legal acts on behalf of an alien who did not attain maturity shall be performed by his/her representative at law. If such an alien stays on the territory of the Slovak Republic without a representative at law, the court shall appoint him/her a guardian</p>
Slovenia	<p>International Protection Act (ZMZ-1) — passed in the year 2016</p>

N/A

N/A

National legislation and jurisprudence	
Spain	<p>Spanish constitution 1978</p> <p>Spanish Act 2/2009, 11 December, amending Organic Law 4/2000 on alien's rights and duties in Spain and social integration.</p> <p>Royal Decree 557/2011, 20 April approving the regulation developing the Organic law 4/2000 on alien's rights and duties in Spain and social integration after its reform made by the Organic Law 2/2009.</p> <p>Spanish Law on minor's judicial protection 1/1996 15 January, partially modifying the Rules of civil Law Procedure.</p> <p>Civil Code</p>
Sweden	<p>Asylum claims are assessed under the Alien's Act from 2005 (SFS 2005:716). The act makes a difference between the procedure for adults and children and several regulations are more advantageous for children. Therefore, age assessment is needed as an important part of the examination of asylum claims under the act.</p> <p>On July 20, 2016, a temporary law came into force which replaces the Alien's Act in some parts for a period of 3 years until July 19, 2019. The aim of the temporary law is to limit the possibility of obtaining a residence permit in Sweden. The act means, inter alia, that only temporary residence permits are granted to refugees and those in need of subsidiary protection. Minors and families with children who applied for asylum before 24 November 2015 are exempted from the law.</p> <p>On 1 May 2017, changes in the Alien's Act and the Alien's Ordinance came into effect that regulate age assessment in cases where the person applied for asylum after 1 February 2017. The new provisions mean that the Swedish Migration Agency will make an age assessment in these cases where a person declares to be under 18 years old and there is reason to question that statement. This age assessment will take place early in the asylum process. The agency will make a temporary decision on the age that can be appealed and the decision is separated from the final decision on residence permit. It is now also by law that applicants who have not submitted enough evidence that they are minors should be offered the opportunity to undergo a medical age assessment. This may be done only if the applicant has given his written consent. The medical age assessment will be conducted before the temporary decision is made. The agency will ultimately decide on the age of the applicant in connection with the final decision on the residence permit case.</p>
	<p>Court order of the Audiencia Provincial de Madrid (Section 22) of 2/2/2012 on age assessment criteria. The order considers that Madrid Regional Government Tutelary Commission of Minors considered as a unique evidence the medical evaluation of the age and this assessment never takes to support accurate conclusions. So it is needed more evidence to conclude on the age of the minor.</p>
	<p>The most recent and significant precedential ruling from the Supreme Migration Court on the matter of age assessment is a decision from 11 February 2014 (MIG 2014:1) where the court underlines i.a. that it is the applicant who holds the burden of proof for his or her stated age and that there is no obligation for the Migration Agency to offer a medical examination, only an obligation to inform about the possibility to undergo such.</p> <p>No available online link to the ruling has been found, but the decision can be found on the Court's Administrative website (only in Swedish) http://www.rattsinfosok.dom.se/lagrummet/index.jsp</p>

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	<p>For cases where the person applied for asylum before 1 February 2017 there is no specific domestic law which aims to regulate the age assessment or when it should be conducted during the asylum process. It is basically an evidence assessment that follows the general principles of law, burden of proof, etc. The age assessment is ultimately conducted when the agency makes the final decision on the residence permit, which can be appealed.</p> <p>Sweden applies a free evidence assessment which means that there are no predetermined rules for what value a certain type of evidence has, and there are not any rules for what kind of evidence may be submitted in support of age (it should be within reason though). In addition it can also be mentioned that there is no legal definition of identity (which includes the person's age) in domestic law in Sweden. It has been defined only by court rulings.</p>
Switzerland	Art. 7, 8 et 17 al. 3bis de la Loi fédérale sur l'asile (LAsi).
United Kingdom	<p>In the UK there is no direct legislation prescribing when an age assessment is required, or relevant, or how it is to be carried out.</p> <p>Immigration officials at the border are permitted to make an initial assessment when an unaccompanied young person is first encountered based on the individual's own statement, any documents available, and the immigration official's assessment in person of physical appearance and demeanour. This is not binding as it can be disputed or challenged by the individual at that point. In addition, the immigration official may request further clarification of the view formed of the individual's age. In both these situations, if there is a challenge from the individual, or a concern by the immigration official, that the individual is under 18, then the principle of 'the benefit of the doubt' is applied and the individual is treated as a child. This means that they will be transferred to the children's services department of a local authority who will then be asked to conduct an age assessment.</p>
	<p>Jurisprudence du Tribunal administratif fédéral (JICRA 2004/30 et JICRA 2005/16)</p> <p>The following areas are covered by legal rulings:</p> <p>Basic requirements before starting the interview</p> <p>1) The assessment must be carried out by two trained social workers — as specified in:</p> <p>AS v London Borough of Croydon [2011] EWHC 2091, paragraph 19</p> <p>R (FZ) v London Borough of Croydon [2011] EWCA Civ 59, paragraph 2</p> <p>Jv Secretary of State for the Home Department [2001] EWHC 3073 (Admin), paragraph 13</p> <p>2) An interpreter must be provided if this is necessary — as specified in R (FZ) v London Borough of Croydon [2011] EWCA Civ 59</p> <p>3) The individual must be offered the opportunity to have an independent appropriate adult present — as specified in:</p> <p>A v London Borough of Croydon [2009] EWHC 939 (Admin)</p> <p>R (NA) v London Borough of Croydon [2009] EWHC 2357 (Admin), paragraph 50</p> <p>R (FZ) v London Borough of Croydon [2011] EWCA Civ 59, paragraph 25</p>

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<p>Under the UK's children's legislation a child is defined as a person under the age of 18 and there is an indirect power therefore for the local authority to determine age in order to be certain that it is providing children's services to a person under 18. The means by which the local authority does this is not set out in legislation but the practice has developed of using two social workers to assess the individual and coming to a determination based in that assessment. They will use their training and experience of working with young people to come to that conclusion. Although there is no prescribed way in which local authorities must carry out age assessments, the courts have set out guidance and minimum standards which must be observed by local authorities. The key legal judgment was one involving the London Borough of Merton (<i>B v London Borough of Merton</i> [2003] EWHC 1689 (Admin)). Since this case, the courts have further developed their view and the cumulative requirements laid down now have to be followed in order to produce a lawful age assessment. This is also known as a 'Merton compliant' age assessment or a 'case-law compliant' age assessment.</p>	<p>4) Local authorities must comply with their own guidance when carrying out the assessment — as specified in:</p> <p><i>A v London Borough of Croydon</i> [2009] EWHC 939 (Admin)</p> <p><i>R (NA) v London Borough of Croydon</i> [2009] EWHC 2357 (Admin)</p> <p>5) If the circumstances of the case are such that the individual is being reassessed (for example, they are undergoing a second age assessment), it is preferable for those who undertook the first assessment not to take part in the second — as specified in <i>R (NA) v London Borough of Croydon</i> [2009] EWHC 2357 (Admin), paragraphs 50 and 69.</p> <p>6) Except in clear cases (where it is very obvious that a person is under or over 18 and there is normally no need for prolonged inquiry), those who are assessing age cannot determine age solely on the basis of the appearance of the claimant — as specified in:</p> <p><i>Merton</i>, paragraphs 27, 37 and 38</p> <p><i>R (FZ) v London Borough of Croydon</i> [2011] EWCA Civ 59, paragraph 3</p> <p>The interview</p> <p>Those who are assessing age must:</p> <ol style="list-style-type: none"> 1) Explain to the claimant the purpose of the interview — as specified in <i>Merton</i>, paragraph 55. 2) Seek to elicit the general background of the claimant, including the claimant's family circumstances and history, educational background, and the claimant's activities during the previous few years — ethnic and cultural information may also be important — as specified in <i>Merton</i>, paragraph 37. 3) Make an assessment of the claimant's credibility and ask questions to test the claimant's credibility if there is reason to doubt the claimant's statement as to their age — as specified in <i>Merton</i>, paragraph 37. 4) Give the claimant the opportunity to explain any inconsistencies in their account or anything which is likely to result in adverse credibility findings — this is best done as soon as possible, when matters are 'fresh in minds' — as specified in: <i>Merton</i>, paragraph 55 <p><i>R (FZ) v London Borough of Croydon</i> [2011] EWCA Civ 59, paragraph 20</p> <p><i>R (NA) v London Borough of Croydon</i> [2009] EWHC 2357 (Admin), paragraph 52</p>

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	<p>5) Remember that cases vary, and the level of inquiry required in one case may not be necessary in another — as specified in Merton, paragraph 50.</p> <p>The conclusion</p> <ol style="list-style-type: none"> 1) A local authority assessing age may take into account information obtained by the Home Office, but it must make its own decision, and for that reason must have adequate information available to it — as specified in Merton, paragraph 39. 2) A medical report is not necessary and local authorities are not required to commission one. If submitted by the claimant, medical reports from paediatricians do not attract greater weight than properly conducted reports from experienced social workers, but nor can the local authority or Secretary of State for the Home Department disregard them — they must be considered if they have been submitted — as specified in: <ul style="list-style-type: none"> Merton, paragraphs 50 and 51 A v London Borough of Croydon [2009] EWHC 939 (Admin), paragraphs 33, 34 and 47. 3) The conclusions and reasons must engage with any documents submitted by the claimant — as specified in R (NA) v London Borough of Croydon [2009] EWHC 2357 (Admin), paragraphs 61-64. 4) Adequate reasons must be given for a decision that a claimant claiming to be a child is not a child (though these need not be long or elaborate) — as specified in: <ul style="list-style-type: none"> Merton, paragraphs 45 and 48 A v London Borough of Croydon [2009] EWHC 939 (Admin) 5) The interview must be written up promptly and notes must be accurate and consistent — as specified in R (NA) v London Borough of Croydon [2009] EWHC 2357 (Admin), paragraphs 50 and 60 — a 2-month period between interview and write-up was found to be contrary to current practice. 6) The absence of the time of commencement and completion of the interview in the assessment document, or the question of breaks, does not make the process defective, however desirable such information might be — as specified in ZS (Afghanistan) v Secretary of State for the Home Department [2015] EWCA Civ 1137, paragraph 36.

3.(a) National guidelines on age assessment

Country	
AT	-
BE	<p>When the UAM presents at the Immigration Department to apply for asylum, the identification form will be filled out and the information on the identity of the UAM, such as the claimed date and place of birth, will be registered.</p> <p>If the Guardianship Service, the Immigration Office or the Office of the Commissioner General for Refugees and Stateless Persons have any doubt about the person concerned being underage, a medical age assessment can be ordered, at the expense of the authority applying for it. In case of doubt, for example related to the minor's physical appearance, behaviour, or way of speaking, or when no identity documents are presented or when the authenticity of these documents cannot be confirmed, an age assessment can be performed. The test is explained to the minor, with the help of an interpreter, and the minor receives an explanation about the test in his/her own language.</p> <p>The age assessment is done by means of a medical test. The medical test is a so-called triple test:</p> <ul style="list-style-type: none"> - clinical impression of a dentist, a radiological examination of the dentition (first test), - the hand and wrist of the non-dominant hand, - medial ends of both collarbones (two extra tests, eventually performed after first test) <p>Belgium opted for a combination of these three tests, to increase the validity and reliability⁽²⁾. In case the three tests give different results, the lowest age is taken. Furthermore, the age minus 1 standard deviation on that particular test is used to determine whether one is indeed below or over 18⁽³⁾. Article 7 of the Guardianship Act stipulates that when there is a doubt on the outcome of the medical test, the lowest age has to be taken into consideration.</p> <p>On the basis of the information gathered in the course of the various medical examinations, the doctor will draw up a report, which will be sent to the Guardianship Service that will take the decision. This decision is sent to the person in question and to the Immigration Office.</p> <p>Age estimation through various disciplines is recommended by specialists such as Prof. Dr. G. Willems (KU Leuven, Faculty of Medicine, Department of Oral Health Sciences, Centre for Forensic Odontology), who has done ample research in the field of dental age estimation and who is internationally recognized as an expert in this field. This practice also respects the recommendations of the AGFAD (Study Group of Forensic Age Estimation of the German Association for Forensic Medicine). This study group, composed of forensic doctors, dentists, radiologists and anthropologists, has published a guideline on this subject and recommends the use of the following methods:</p> <ul style="list-style-type: none"> • a physical examination during which anthropometric data (height and weight, body type), signs of sexual maturation and possible developmental disorders are checked; • a left hand radiograph; • a dental examination during which the dental status is checked and an orthopantomogram is assessed; • if the radiograph shows that the hand bones are fully developed, a radiography or a computed tomography (CT scan) of the clavicle is recommended to determine whether the individual has reached the age of 21. <p>These methods should be combined to increase the accuracy of the diagnosis and to identify any possible developmental disorders. Furthermore, this guideline prescribes the conditions that benchmarking studies have to fulfil in order to be used for age estimation.</p> <p>All hospitals the service Guardianship appeals to, follow the guidelines of this study group when making age estimations.</p>

⁽²⁾ EMN, BELGIAN CONTACT POINT, Unaccompanied minors in Belgium, Reception, Return and Integration Arrangements, p. 26.

⁽³⁾ ECRE/BCHV-CBAR, AIDA National Country Report Belgium, 2013, pp. 43.

	<p>A common remark is that medical examinations do not allow an exact age determination. Indeed, all experts such as Prof. Dr. G. Willems recognise that skeletal and dental age examinations are always educated guesses that do not allow an exact age determination. They stress that the result is an age estimation and that a margin of error of approximately 1 to 2 years should always be taken into account. This method enables the service Guardianship to determine in a reliable way whether or not a guardian has to be appointed, especially when the youngster cannot produce any authentic documents or simply does not know his or her date of birth (in the developing countries, only half of the born children under the age of 5 are registered according to Unicef. In Sub-Saharan Africa, 64 % of the births are not registered and in South Asia even 65 % of the births are not registered).</p> <p>If the person is considered to be older than 18 years old, it is the Immigration Office that determines their age. The 'Gauss curve' is hereby used, whereby the mean age is retained, given the smaller probability that the person will be at the margins of the curve (e.g. the doctor stated in his report that the applicant has an age of 20.6 years with a margin of error of 2 years, 20.6 is then the most probable age. The chance of him/her being younger than 18.6 or older than 22.6 is very low). If the age as claimed by the UAM is possible according to the report of the doctor, the date of birth as claimed by the applicant is accepted. If the asylum applicant claims to be 15 years old, but the age test demonstrates that the age is between 16.6 and 18.6, the person is considered to be 16.6 years old. In that case the Guardianship service will take 16.6 to determine the age of birth and the date on which the guardianship will come to an end.</p> <p>Once the guardianship Service has decided on the age assessment, the CGRS and the Immigration Office must respect this and adjust the registered age in the asylum file and in all other files. Hereby, an 'alias' is used in which the claimed age upon registration is mentioned.</p> <p>The guardian and/or the minor can provide additional proof about the minor's age (e.g. official birth certificate, obtained through the embassy of the country of origin in Belgium or its neighbouring countries), and the guardian can express his/her views about the minor's age. If the minor and/or his/her guardian disagree with the decision of the Guardianship Service, they can file, with the help of a lawyer, an appeal with the Council of State.</p>
BG	Yes. In the Law on Asylum and Refugees, there is an article envisaging the carrying out of age assessment.
CH	-
CY	Yes, Age Assessment process of Unaccompanied Minors in the framework of the Asylum Procedure
CZ	-
DE	<p>The Federal Länder are responsible for the age determination of Unaccompanied Minors which takes place at the time of their being 'taken into care' (Inobhutnahme) as soon as they get into contact with a German authority. Their respective decision is also basis for the asylum procedure.</p> <p>In the preamble of the law changing the Social Code in 2015, reference is made to the recommendations of the Working Group of the Federal Youth Welfare Services (Bundesarbeitsgemeinschaft der Landesjugendämter) http://www.bagjjae.de/downloads/118_handlungsempfehlungen-umf_2014.pdf</p> <p>Thus section 42f Social Code provides the basis for the age determination process which introduces a gradual procedure:</p> <ol style="list-style-type: none"> 1. Check of personal documents, search for additional information 2. Interview (two qualified, experienced staff members), overall impression of development incl. qualified visual inspection 3. In case of doubts: medical examination; method with lowest impact on the child's health. <p>The Working Group of the Federal Youth Welfare Services advises to consult for the age determination process the recommendations of the Group on Forensic Age Diagnostic (Arbeitsgemeinschaft für Forensische Altersdiagnostik, AGFAD); http://campus.uni-muenster.de/fileadmin/einrichtung/agfad/empfehlungen/empfehlungen_ausserhalb_strafverfahren.pdf Internet research: 05/07/2016))</p>
DK	-

EE	-
EL	Protocol on UAM
ES	-
FI	<p>The Finnish Alien Act says that, the performance of an examination requires that the person to be tested has given an informed consent in writing of his or her own volition. The written consent of his or her parent or guardian or other legal representative is also required. Before obtaining consent, the applicant or sponsor and the applicant's or sponsor's parent, guardian or other legal representative shall be given information on the importance of age assessment, the examination methods used, potential health effects, and the consequences of having and of refusing an examination. In a language which he or she may reasonably be expected to understand. A medical age assessment to establish the age is carried out by the University of Helsinki, Department of Forensic Medicine at the request of the police, Border Guard or Finnish Immigration Service.</p> <p>Two experts shall draw up a joint assessment. At least one of the experts shall be an employee of the University of Helsinki, Department of Forensic Medicine. An expert may be an approved medical practitioner or an approved dentist with the necessary competence.</p>
FR	To enforce the L. 221-2-2 article of the Code for social action and families, the decree of 24 June 2016 explains the conditions of reception and age assessment of persons declaring being minors, and who are temporarily or definitively deprived of the protection of their family.
HR	-
HU	-
IE	No. As a general rule, where the Child & Family Agency (TUSLA) has formed the professional opinion that a person referred to them is a minor or is an adult, ORAC accepts the opinion of TUSLA. The outcome of the TUSLA assessment must be notified to ORAC in writing in the form of a detailed report. This report must be included on the applicant's file. A copy of the report is put on the referral file. ORAC acknowledges the report stating that ORAC accepts the professional opinion of the HSE.
IT	No, but we have some regional guidance. See i.e. varie\minori\protocollo_identificazione_msna.pdf
LT	There is no formal policy or guidance at national level regarding age assessment.
LU	-
LV	The Asylum Law (Section 27) prescribes that unaccompanied minors shall be subjected to medical examination, in order to determine person's age.

MT	-
NL	The guidelines for age assessment in the asylum procedure are further specified in the Aliens Act Implementation Guidelines ('Vreemdelingencirculaire') Article C1/2.2.
NO	Policy guidance: PN 2012-011 The policy guideline provides guidelines for processing asylum cases filed by unaccompanied minors. One of the main topics in the guideline is age assessment and age determination.
PL	Office for Foreigners and Border Guard has general internal guidelines in what case the age assessment should be done and what information about the assessment should the applicant be given.
PT	-
RO	N/A
SE	Yes. The policy on age assessment within the Migration Agency is currently being revised, but the guidance from September 2015 is still in force (SR 35/2015). The policy in SR 35/2015 was developed primarily on the basis of the Supreme Migration Court ruling that was mentioned in the answer to Question 2, but also because of criticism by the Swedish Parliamentary Ombudsmen in 2012 (decision no 4107-2011) and 2015 (decision no 6942-2013) in specific cases relating to age assessment performed by the agency. The decisions can be found on the website http://www.jo.se/en
SI	On age assessment we don't have any formal policy or guidance at national level. The procedure concerning age assessment is in accordance with the International Protection Act and only for assessing the age of an unaccompanied minor.
SK	The medical age assessment is performed by means of X-rays of the hands and elbow joints by a Department of Radiology. It is then noted in the medical reports, if the observation of the bones in the X-ray image corresponds to a development and growth of a person older than 18 years. The medical age assessments are carried out at the request of the police, decision-maker and the guardian.
UK	The Home Office has issued guidance to its own staff which is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257462/assessing-age.pdf This guidance is currently being revised. The Association of Directors of Children's Services (ADCS) in the UK has endorsed the following guidance for social workers when carrying out age assessments http://adcs.org.uk/assets/documentation/Age_Assessment_Guidance_2015_Final.pdf http://adcs.org.uk/assets/documentation/information_sharing_proforma_april_2015.doc A shortened form is available at http://www.makeitlooknice.co.uk/adcs/age-assessment-guidance/index.html In addition, the following guidelines have also been produced for social workers conducting age assessments. They are called the 'Hillingdon and Croydon guidelines' based on experience in local authorities with high numbers of unaccompanied migrant children.

Other national legal instruments

[Reference to be inserted]

National jurisprudence

[Reference to be inserted]

National guidance

[Reference to be inserted]

4. Relevant jurisprudence ⁽⁶⁶⁾

Case ECLI:EU:C:2013:367 C-648/11 — MA and Others — the Best interests of the child	http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62011CJ0648
<i>Tarakhel v Switzerland</i> , Application No 29217/12, Council of Europe: European Court of Human Rights, 4 November 2014	http://hudoc.echr.coe.int/eng-press?i=003-4923136-6025044#{%22itemid%22:[%22003-4923136-6025044%22]}
<i>Abdullahi Elmi and Aweys Abubakar v Malta</i> , Applications Nos. 25794/13 and 28151/13 Council of Europe: European Court of Human Rights, in force since 22 November 2016	http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-168780%22]}
Recently in the UK the High Court and the Court of Appeal have found the UK policy of judging the age of a UASC based on appearance/demeanour to be unlawful particularly where it may lead to detention.	http://www.asylumlawdatabase.eu/en/case-law/uk-queen-application-aa-v-secretary-state-home-department-interested-party-wolverhampton#content http://www.asylumlawdatabase.eu/en/case-law/uk-r-application-aa-sudan-v-secretary-state-home-department-9-march-2017#content https://www.refugeecouncil.org.uk/latest/news/4866_court_confirms_government_s_age_policy_is_unlawful

5. Soft Law instruments

UN Committee on the Rights of the Child (CRC), <i>General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration</i> (Article 3, para. 1), 29 May 2013, CRC/C/GC/14.
UN Committee on the Rights of the Child (CRC), <i>General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin</i> , 1 September 2005, CRC/GC/2005/6.
UN Committee on the Rights of the Child (CRC), <i>General comment No. 12 (2009) The right of the child to be heard</i> 1 July 2009 CRC/C/GC/12.
COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL The protection of children in migration {SWD(2017) 129 final}, where an explicit reference is made to EASO to update its age assessment guidance, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf
Council of Europe’s Action Plan on protecting refugee and migrant children (2017-2019) an Action Plan on how to protect children on migration available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168071484e

⁽⁶⁶⁾ Given the dynamic and fast evolving nature of case-law and jurisprudence in this area, links to the following databases might be helpful to be informed about the latest judicial positions on the topic: European database for asylum law (EDAL) <http://www.asylumlawdatabase.eu/en>, Refworld <http://www.refworld.org/cases.html> and the British and Irish legal information institute <http://www.bailii.org>

Annex 4 Overview of the methods and procedural safeguards in use in the age assessment processes ⁽⁶⁷⁾

⁽⁶⁷⁾ The tables included in this annex are a concise extract of the findings from the questionnaire circulated by EASO between 2016 and 2017, aimed at mapping the particularities and similarities of the practice.

Overview of the procedural safeguards in use during age assessment processes (I)

EU+ state	NON-MEDICAL METHODS					MEDICAL METHODS						
	Documents submitted	Estimations based on physical appearance	Age assessment interview	Social service assessment	Psychological interviews	Dental observation	Physical development	Sexual maturity observation	Carpal (hand/wrist) X-ray	Collar bone X-ray	Dental X-ray	Other
Austria	✓	✓	✓			✓	✓	✓	✓	✓	✓	
Belgium	✓		✓	✓		✓	✓		✓	✓	✓	
Bulgaria	✓	✓				✓	✓		✓			
Croatia	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	
Cyprus	✓		✓	✓		✓	✓		✓		✓	
Czech Republic	✓					✓	✓		✓			
Denmark	✓		✓			✓	✓	✓	✓	✓	✓	
Estonia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Finland	✓					✓	✓		✓	✓	✓	
France	✓		✓		✓	✓	✓		✓	✓	✓	
Germany	✓	✓	✓	✓	✓	✓	✓ **					
Greece	✓	✓	✓	✓	✓	✓	✓		✓		✓	***
Hungary	✓	✓	✓	✓	✓	✓	✓		✓		✓	***
Ireland	✓	✓	✓	✓		✓	✓					
Italy	✓	✓	✓	✓	✓ *	✓	✓	✓	✓	✓	✓	
Latvia						✓	✓		✓	✓	✓	
Lithuania	✓	✓				✓	✓		✓	✓	✓	
Luxembourg						✓	✓		✓	✓	✓	***
Malta	✓		✓									
Netherlands	✓	✓							✓			
Norway	✓	✓	✓			✓	✓		✓		✓	
Poland	✓	✓	✓			✓	✓		✓		✓	****
Portugal	✓	✓				✓	✓		✓		✓	****
Romania	✓	✓	✓			✓	✓		✓	✓	✓	
Slovakia	✓	✓ ⁽⁶⁵⁾		✓ ⁽⁶⁵⁾		✓	✓		✓	✓	✓	
Slovenia	✓	✓										
Spain	✓		✓						✓	✓		
Sweden	✓	✓	✓	✓							✓	*****
Switzerland	✓	✓	✓				✓		✓	✓	✓	
United Kingdom	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	27	19	17	11	6	16	11	7	23	12	19	4

(*) For victims of trafficking in human beings or vulnerable persons

(**) Visual assessment

(***) Pelvic bone X-ray

(****) Fourth rib (PT)

(*****) MRI of the knee (SE)

⁽⁶⁵⁾ The initial estimation of age is only a guide, if it is determined by this estimation that a person is a minor and is suspected to be an adult, a medical examination is always undertaken. So the principle of benefit of the doubt is used in this initial estimation.

⁽⁶⁶⁾ In SK there are only some consultations with social workers.

Overview of the procedural safeguards in use during age assessment (AA) processes (II)

EU+ state	The best interests of the child ensured during the AA process	Other approaches attempted before resorting to AA	An independent person supports the applicant during the process	Applicant's views are heard and taken into consideration in accordance with his/her maturity	Applicant is informed about reasons, method, consequences and results for all types of assessments	Applicant is informed for medical assessments only	Applicant's informed consent required regardless of the AA method applied	Applicant's representative's consent required in all cases
Austria	Yes	Yes	Yes	Through legal representative	No	Yes	No	No
Belgium	Yes*	Yes	Only in complex cases**	Yes	Yes	No	Only for medical AA method	No
Bulgaria	Yes**	Yes	Yes**	Through legal representative	No	Yes	Yes	Yes
Croatia	Not specified	Yes	Yes**	Yes**	Yes	No	Only for medical AA method	Only for medical AA method
Cyprus	Yes**	Yes	Yes**	Yes	Yes	No	Only for medical AA method	Only for medical AA method
Czech Republic	*	Not specified	Yes	Not specified	Not specified	Not specified	Only for medical AA method	Not specified
Denmark	Yes**	Yes	Yes	Yes	No	Yes	Only for medical AA method	Not specified
Estonia	*	Not specified	Yes	Not specified	Not specified	Not specified	Only for medical AA method	Only for medical AA method
Finland	Not specified	Yes	Yes**	Not specified	Yes, information page	No	Yes	Yes
France	Not specified	Yes	No	Yes	Yes	No	Only for medical AA method	Not specified
Germany	Not specified	Yes	Yes**	Yes	Yes	No	Yes	Not specified
Greece	*	Yes	Yes	Not specified	Yes	No	Yes	Not specified
Hungary	Not specified	Yes	Yes**	Not specified	Yes	No	Yes	Only in case of applicants below 14 years old
Ireland	**	Yes	Yes**	Yes	Yes	No, only non-medical methods are used	No, only non-medical methods are used	No, only non-medical methods are used
Italy	*	Yes	Yes	Yes	Yes	No	Yes	Yes
Latvia	*	Not specified	Yes	No	No	Yes	No	No
Lithuania	Yes**	Yes	Yes**	Yes**	No	Yes	Yes	Yes
Luxembourg	Not specified	Not specified	Yes	Not specified	Not specified	Not specified	Not specified	Not specified
Malta	*	Not specified	Not specified	Not specified	Not specified	Not specified	Yes	Not specified
Netherlands	Yes**	Yes	IND staff	Yes	Yes, leaflet on IP covers AA	No	Only for medical AA method	Only for medical AA method
Norway	*	Yes	Yes**	Yes	No	Yes	Only for medical AA method	Only for medical AA method
Poland	Not specified	Yes	Yes**	Yes	No	Yes	Only for medical AA method	Only for medical AA method
Portugal	Not specified	Not specified	Yes	Not specified	Not specified	Not specified	Yes	Not specified
Romania	Yes	Yes	During forensic examination	Yes	No	Yes	Only for medical AA method	Only for medical AA method
Slovakia	Yes**	During the assessment	Yes** ⁽⁷⁾	Yes	Yes	Yes	No	Yes (guardian's or representative's written consent)
Slovenia	Yes**	Yes	Yes**	Yes**	Yes	No	Yes	Yes
Spain	Yes*	Not specified	Not specified	Not specified	Not specified	Not specified	Yes	Not specified
Sweden	Yes	During the assessment	Yes	Yes	Yes	No	Only for medical AA method	Not specified
Switzerland	Yes	Yes	Only for Dublin cases	Only in case of negative evaluation on the minority	No	No	Not specified	Not specified
United Kingdom	Yes	Yes	Yes**	Yes	Yes	No	No, since only non-medical methods are used	No

(1) Pending result applicant is treated as a child

(*) Guardian or representative or child welfare services ensure the best interests

Not specified: no answer has been provided or the information would require further clarification

(7) SK: The best interests are represented by a guardian and any further admission by an independent person to the proceedings must be agreed by the guardian (or legal representative).

Summary of key findings

1. The best interests of the child are ensured during the age assessment process
 - The guarantees are ensured in the legal framework: **AT, CH, RO, SE, UK**.
 - The guarantees are ensured by treating the person as a child during the process: **BE, CZ, EE, EL, IT, LV, MT, NO, ES**.
 - The guarantees are ensured by guaranteeing the representative's or guardian's presence: **BG, CY, DK, IE, LT, NL, SK, SI**.

2. Other approaches for obtaining information on the applicant's age are implemented before resorting to age assessment procedures
 - 21 EU+ states usually attempt to obtain information before deciding to conduct an age assessment: **AT, BE, BG, HR, CH, CY, DK, FI, FR, DE, EL, HU, IE, IT, LT, NL, NO, PL, RO, SI, UK**.
 - 2 EU+ states attempt to obtain information during age assessment: **SK, SE**.

3. The applicant is supported by an independent person during the process
 - 22 EU+ states allow an independent person during age assessment: **AT, BG, HR, CY, CZ, DK, EE, FI, DE, EL, IE, IT, LV, LT, LU, NO, PL, PT, SK, SI, SE, UK**.
Among them, 13 EU+ states (**BG, HR, CY, FI, DE, HU, IE, LT, NO, PL, SK, SI, UK**) confirmed that this person will be the guardian or representative.
 - In **BE** the guardian will be present only in complex cases.
 - In **NL** the child will be supported by staff from the migration/asylum authorities, who is not independent.
 - In **CH** an independent person is present only for Dublin cases.
 - In **RO** an independent person is present only during forensic examination.
 - An independent person is present only if agreed by the guardian (or legal representative) in **SK**.
 - In **FR** the applicant is supported by the asylum department.

4. The views of the applicant are heard and taken into consideration in accordance with his/her maturity
 - 14 EU+ states gather and take the applicant's views into consideration: **BE, CY, DK, FR, DE, IE, IT, NL, NO, PL, RO, SK, SE, UK**.
 - 5 EU+ states obtain them through the representative or the guardian: **AT, BG, HR, LT, SI**.
 - **CH** only takes them into consideration in the case of negative results (adult).

5. The applicant is informed of the reasons for an age assessment, the method considered, the consequences and the possible results for the asylum procedure and the consequences of a refusal to undergo such an assessment
 - The applicant is informed about the reasons for the assessment, the method applied, the consequences of the results of such an assessment for the asylum procedure and the consequences of a refusal to undergo it regarding all the methods in 15 EU+ states: **BE, HR, CY, FI, FR, DE, EL, HU, IE, IT, NL, SK, SI, SE, UK**.

- 9 EU+ states inform the applicant only regarding the medical methods: **AT, BG, DK, LV, LT, NO, PL, RO**.
 - In **CH** this happens only in the case of a negative evaluation of the minority.
6. The applicant's and/or representative's informed consent is required for the age assessment regardless of the age assessment method applied
- 11 EU+ states require the applicant's consent for all the methods: **BG, FI, DE, EL, HU, IT, LT, MT, PT, SI, ES**.
 - 12 EU+ states require the applicant's consent only for medical methods: **BE, HR, CY, CZ, DK, EE, FR, NL, NO, PL, RO, SE**.
 - 4 do not require consent: **AT, LV, IE, UK** (**IE** and **UK** do not require it since they do not use medical methods).
 - **SK** does not require the applicant's consent but does require the representative's or guardian's consent.
 - 6 EU+ states require consent from the representative in all the cases: **BG, FI, IT, LT, SI, SK**.
 - 7 EU+ states require consent from the representative only for medical examinations: **HR, CY, EE, NL, NO, PL, RO**.
 - **HU** requires consent from the representative if the applicant's age appears to be below 14 years.
 - 5 EU+ states (**AT, BE, IE, LV, UK**) do not require consent from the representative in any case. **IE** and **UK** do not require it since they do not use medical methods.
7. Benefit of the doubt is applied in the age assessment process
- 17 EU+ states apply the benefit of doubt: **BE, BG, CY, CZ, EE, FR, DE, EL, IE, IT** (with a margin of 2 years) **LV, LU, MT, SK, SE, CH, UK**.
 - In **FI** and **RO** the principle is not applied.
8. The applicant has the possibility to refuse the age assessment, regardless of the method used
- 15 EU+ states recognise the applicant's right to refuse the age assessment regardless of the method: **AT, BE, HR, CY, CZ, EE, FI, DE, EL, HU, IT, MT, NL, RO, SI**.
 - 7 EU+ states recognise the possibility to refuse only medical examinations: **BG, DK, FR, LT, NO, PL, SE**.
 - In **UK** refusal implies an agreement with the presumed age.
 - **LU** does not recognise the possibility to refuse to undergo the process.
9. Refusal to undertake age assessment does not result in automatic assessment as adult
- 12 EU+ states would **not** automatically consider the applicant as an adult in case of refusal: **AT, BE, BG, DK, EE, FR, DE, EL, IT, MT, NO, CH**.
 - 6 EU+ states would consider the applicant as adult if there is no justification for the refusal or no any additional evidence of the minority: **HR, FI, LT, RO, SI, SE**.
 - In **UK** refusal would imply the applicant agrees with the presumed age.
 - 6 EU+ states would automatically consider the applicant as an adult if he/she refuses to undergo an age assessment: **CZ, HU, LU, NL, PL, SK**.

10. Refusal to undertake age assessment is not taken into account when deciding on the application for international protection
 - 7 EU+ states would not take the refusal into account when deciding on the international protection claim: **BE, BG, CY** (clarifying that unless the minority is relevant to the claim), **FI, DE, IT, SK, UK**.
 - 14 EU+ states would take the refusal into account when examining the claim: **AT, HR, EE, HU, LV, LT, LU, NL, NO, PL, RO, SI, SE, CH**.

11. The applicant is informed of results in a language he/she understands or is expected to understand
 - 23 EU+ states ensure the applicant is informed in a language that they understand or supposed to understand: **AT, BE, BG, HR, CY, CZ, EE, FI, FR, DE, EL, HU, IT, LT, MT, NL, NO, RO, SK, SI, SE, CH, UK**.
 - **DK** only informs about the results when an applicant is assessed to be older than the claimed age.

12. Inconclusive results of the age assessment procedure are considered in the applicant's favour
 - 16 EU+ states apply the benefit of the doubt in the case of inconclusive results: **AT, BE, HR, DK, FR, DE, EL, HU, IT, LT, MT, PL, RO, SK, SI, CH**.
 - 6 EU+ states do not apply the benefit of the doubt: **BG, FI, NL, NO, SE, UK**.

13. Sufficient legal remedies are available to the applicant against a decision on age assessment
 - 8 EU+ states offer the possibility to challenge the age assessment decision separately: **BE, DK, FR, IE, IT, MT, SE, UK**. More information is needed in: **BG, CZ, EE, EL, ES, LV, LU, PL, PT, RO, SI**.
 - 9 EU+ states offer the possibility to challenge the age assessment decision as part of the international protection decision or simultaneously: **AT, HR, FI, DE, HU, LT, NL, NO, CH**.
 - 2 EU+ states do not offer legal remedies to the applicant against age assessment: **CY, SK**.

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