

EMN INFORM ON THE STATE OF PROGRESS IN 2020 OF THE EUROPEAN COMMISSION COMMUNICATION ON THE PROTECTION OF CHILDREN IN MIGRATION FROM 2017

EMN INFORM

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INTRODUCTION

This EMN inform summarises the findings of the EMN report on the state of progress in 2020 of the European Commission Communication on the protection of children in migration from 2017. The EMN report maps the progress made by EU Member States and Norway in 2020 in the implementation of the recommended actions laid down in the 2017 Communication on the protection of children in migration.¹

The report is concerned with the categories of minors set out in the 2017 Communication and includes: accompanied minors/families with children;² separated children;³ and unaccompanied minors,⁴ including those: recorded within the asylum system, not applying for asylum but recorded within other migration procedures, and those not applying

for asylum, who remain outside the asylum/migration/ (child) protection system. The report reflects the legislation, policies and practices in place in Member States and Norway from 1 January to 31 December 2020.

The report was prepared on the basis of the annual National Reports on Migration and Asylum submitted by 25 EMN National Contact Points (NCPs),⁵ largely based on desk analysis of existing legislation and policy documents, and information provided by national authorities. Relevant NGOs,⁶ including those that participated in the 2019 reporting process, also contributed additional information at the request of the European Commission.⁷ These contributions illustrate some good practice examples in protecting children in migration.



KEY POINTS TO NOTE

■ Although the presence of migrant children in the EU has decreased in recent years, the number of migrant children, including unaccompanied minors, registered

as present in the EU remained high in 2020. According to Eurostat, Member States and Norway received some 13 550 asylum applications from unaccompanied

- 1 Communication from the Commission to the European Parliament and the Council: The protection of children in migration, COM(2017) 211 final, 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, last accessed on 23 June 2021.
- 2 Accompanied minor: A minor who is accompanied and effectively taken into the care of an adult responsible for them by law or by the practice of the Member State concerned. Families with children: minors who are accompanied by one or both parents or by their legal or customary primary caregiver (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, or a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337 (Qualification Directive) – inferred from the definition of unaccompanied minor in Article 2(l) – see below).
- 3 Separated child: A child under 18 years of age who is outside their country of origin and separated from both parents or their previous legal/customary primary caregiver. These may include children accompanied by other adult family members (Source: EMN Glossary, Version 7).
- 4 Unaccompanied minor: a minor who arrives on the territory of an EU Member State unaccompanied by the adult responsible for them by law or practice of the EU Member State concerned, and for as long as they are not effectively taken into the care of such a person; or who is left unaccompanied after they have entered the territory of the EU Member State (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), Article 2(l)).
- 5 AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK, NO.
- 6 Child Circle, Jesuit Refugee Service (JRS), Missing Children Europe, Terre des Hommes.
- 7 In line with the EMN Guidelines on cooperation with third parties.

minors.⁸ Additionally, not all unaccompanied minors arriving in the EU apply for asylum. However, data on the number of unaccompanied minors who do not apply for asylum is not collected systematically across the EU.

- The protection of children in migration remained an area of considerable development in legislation and policy at EU and national level throughout 2020. Most Member States and Norway introduced new provisions regarding unaccompanied minors applying for asylum in 2020, such as provisions on the representation of unaccompanied minors seeking protection and the possibility for a medical examination to determine the age of a minor.
- Strengthening the care and protection of unaccompanied minors remained a priority in many Member States, including notable developments such as the examination of accommodation and care standards and development of specific approaches for certain age groups of minors; accommodating minors in specially adapted or expanded facilities corresponding to their needs; and bolstering the training of police officers, child services and reception system staff.
- The year 2020 saw an unprecedented situation arising due to the COVID-19 pandemic, with Member States introducing temporary measures to minimise health consequences, for example guidelines to be followed during the identification and registration of (unaccompanied)

minors; and generally striving to maintain access to justice/procedural safeguards, and access to education for all pupils (including those from an immigrant background). Member States generally do not have a specific policy or strategy for the integration of migrant children, however national programmes promoting the inclusion of migrant children through early childhood education and care were implemented in some Member States.

- New alternative (non-institutional) care options for unaccompanied children, particularly regarding family-based care/care-families were introduced or improved by two Member States and Norway in 2020.
- Detention of migrant children is legally permitted in about half of the Member States, although this is reportedly implemented as a last resort and under strong safeguards to protect the well-being of the child. In 2020, most Member States and Norway reported no significant legislative or policy changes in relation to the detention of children, either during the asylum procedure or for the purpose of return.
- Non-governmental organisation (NGO) research and projects have highlighted, among other things the role of guardians in preventing child disappearances and the importance of providing children in migration with access to information and free, quality legal assistance to enable them to access justice.



IDENTIFICATION, REGISTRATION, RECEPTION AND ASYLUM PROCEDURES

The 2017 Communication notes that when crossing borders, migrant children who come into contact with Member State authorities, must always be identified and registered as children, prioritised in border-related procedures, and must receive adequate support from specially trained staff. The Communication recommends that attention is paid to the specific vulnerabilities and protection needs of unaccompanied and separated children, and notes that the identification of a person as a minor is crucial, as it can influence subsequent procedures and treatment.

New developments in 2020 in relation to the identification and registration of minors (i.e. collection of biometric data, identification of special needs) predominantly concerned new or revised procedures for the identification of minors.⁹ In addition, guidelines for staff to minimise COVID-19 health risks during the identification and registration of accompanied and unaccompanied minors (as well as adults), or at reception centres were also adopted.¹⁰

In the area of age assessment, a few Member States¹¹ introduced new methods, such as medical age assessment¹² in cases where there are doubts that the applicant for international protection is a minor; or issued protocols or recommendations on the age assessment procedure as a whole in order to complement the relevant legislation.¹³ One Member State also introduced age assessment as part of the identification process for third-country nationals who claim to be minors but do not apply for asylum.¹⁴

New legislative or policy measures to assist the early identification and referral of child victims of trafficking in human beings were prompted, in some Member States,¹⁵ by the increasing number of unaccompanied minors. These measures included the introduction of new overall strategies for combating trafficking in human beings,¹⁶ new legislation or recommendations on the identification of victims and the provision of support and protection,¹⁷ and capacity building measures, such as guidelines¹⁸ and training¹⁹ of staff, to improve frontline identification of victims by youth welfare and/or police officers. Additionally, two Member

8 Eurostat (migr_asyunaa), Asylum applicants considered to be unaccompanied minors by citizenship, age and sex – annual data (rounded), 2021, https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyunaa&lang=en, last accessed on 5 July 2021. 2020 statistics not available for UK.

9 BE, BG, CY, FR, HR, IE, IT, NL, NO.

10 BE, CY, FR, HR (guidelines for staff to minimise COVID-19 health risks during the identification and registration of unaccompanied minors), IT.

11 BG, DE, IT, NL, SE.

12 BG.

13 DE, IT, NL.

14 NL.

15 E.g. CY.

16 CZ, FR.

17 LT, SK.

18 CY, CZ, ES (accompanied minors arriving at Madrid Barajas airport who apply for international protection).

19 DE.

States (Hungary and Norway) improved the status of victims of trafficking, by recognising sex workers as victims (and not as perpetrators) and extending residence rights to more trafficking victims where they cooperate in criminal proceedings.

The 2017 Communication provides that reception conditions should be in line with the EU *acquis*, and include safe and appropriate accommodation, as well as the necessary support services to secure the child's best interests and well-being. In 2020, many Member States reported further efforts to improve the protection and care of unaccompanied minors, including in new reception facilities, by

examining minimum standards for their accommodation and care, developing specific approaches for certain age groups, and adapting or expanding facilities tailored to the needs of unaccompanied children.²⁰ Additional reception places, or 'Safe Zones' in some Member States, were created or became operational for unaccompanied minors within existing facilities.²¹ Following the onset of the COVID-19 pandemic, a few Member States also introduced temporary measures safeguarding unaccompanied minors²² (e.g. new isolation capacities within (separate) reception facilities, transfer to additional branches where they may lodge their application for asylum, etc.).



GUARDIANSHIP

Minors who are unaccompanied or separated from their caregiver are particularly vulnerable and susceptible to abuse and exploitation; therefore, the 2017 Communication recommended that Member States focus their efforts on strengthening guardianship authorities and institutions to ensure the swift appointment of guardians for all unaccompanied minors. The Communication further stated that guardians can help to prevent minors from going missing or becoming a victim to trafficking, underlining their crucial role in guaranteeing access to rights and in safeguarding

the interests of all unaccompanied minors, including those not applying for asylum.

Guardianship systems and approaches vary considerably across the EU. To strengthen these systems and approaches, a few Member States introduced new provisions in 2020,²³ for example regulating the obligations of the representative to assist a child in the international protection procedure,²⁴ expanding the definition of family members,²⁵ clarifying the distribution of powers between the family court judge and the guardianship judge,²⁶ and increasing the guardian's allowance for the maintenance of a child.²⁷



ALTERNATIVE (NON-INSTITUTIONAL) CARE

The 2017 Communication encourages Member States to ensure that a range of alternative (non-institutional) care options for unaccompanied children are provided. It finds that, while the use of family-based care/ foster care for unaccompanied children has expanded in recent years and proven successful and cost-effective, it is still under-utilised. In 2020, two Member States and

Norway sought to introduce or improve alternative care options for unaccompanied children, such as implementing family-based care (Estonia), out-of-family care options, including in a childcare institution, foster family, or guardian's family (Latvia), and alternative care and settlement for unaccompanied minors in care-families (Norway).



ACCESS TO EDUCATION (INCLUDING EARLY CHILDHOOD EDUCATION AND CARE)

The 2017 Communication encouraged Member States to ensure that all migrant children have timely access to inclusive formal (or non-formal) education, including early childhood education and care, regardless of the status of the child and/or of their parents; to develop and implement targeted programmes to support access to education; to prioritise education in all integration-related policies, using more EU funds to support integration/education.

Across the EU, access to education is a basic right for children which is made available to them as early as possible. However, the year 2020 created an unprecedented situation for all teachers, parents and pupils/students, as a result of the COVID-19 pandemic, with Member States striving to maintain access to education for all pupils. Many Member States temporarily held online classes,²⁸ with some Member States reporting online language classes for migrant children,²⁹ study support classes, allocated additional funds to provide migrant children with laptops,³⁰ and/

20 AT, BE, BG, CY, EE, FI, FR, HU, IT, LV, NO.

21 BE, BG, CY, IT.

22 AT, BE, FR, IT, SK.

23 AT, BG, LU, PL.

24 BG.

25 AT, where "unmarried minors seeking/granted asylum or subsidiary protection are considered family members of the person who represents them legally but is not their parent, provided that the legal representation already existed before entry."

26 LU, by replacing the term 'guardianship judge' with 'family affairs judge.'

27 LV.

28 AT, BE, BG, CY, CZ, EE, FI, FR, HR, IE, IT, LU, PL, NL, SI, SK, NO.

29 AT, CZ, HR, LU, SK.

30 NL.

or on-call school support hours for newly arrived pupils.³¹ Additionally, two Member States (Finland and Germany) introduced continued programmes for early childhood development and education,³² aiming to make education more inclusive for newly arrived (migrant) children and provide tailored support to their families. Lastly, in the area of primary and secondary education, two Member States

(Austria and Finland) extended or plan to extend compulsory education for all, including migrant children to the age of 18 years. In one Member State (Belgium), from September 2020 onwards, compulsory education starts from the age of five (instead of six) years, to ensure that all children attend early childhood education (kindergarten) for at least one year, facilitating their transition into primary education.



ACCESS TO JUSTICE

The 2017 Communication states that there are sometimes long delays in processing asylum applications and other proceedings concerning children in migration. It emphasised that children's status determination procedures should be prioritised (the 'urgency principle') in line with the Council of Europe Guidelines on child-friendly justice.³³

Although in some cases procedural safeguards were suspended due to the COVID-19 pandemic,³⁴ a few Member

States strengthened procedural safeguards for minors in the asylum procedure in 2020.³⁵ They adopted new fast track process for minors in the asylum procedure;³⁶ introduced new child-friendly information materials, guides or apps explaining the procedure for unaccompanied minors;³⁷ reviewed procedural guarantees³⁸ and established new and permanent forms of cooperation between relevant authorities,³⁹ to ensure that the best interests of the child are sufficiently taken into account.



DETENTION AND ALTERNATIVES TO DETENTION

The 2017 Communication underlines that administrative detention of children on migration grounds should always be in line with EU law, applied exclusively in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible, and never in prison accommodation. Where there are grounds for detention, everything possible must be done to ensure a viable range of alternatives to the administrative detention of children in migration.

The majority of Member States and Norway reported no significant legislative or policy changes in relation to the

detention of children in 2020, either during the asylum procedure or for the purpose of return.⁴⁰ The remaining Member States introduced a number of changes to the detention of minors,⁴¹ such as suspending detention,⁴² expanding the possibilities for detention for certain minors with the purpose of return⁴³ and revising the procedure for accommodating minors who arrived with an adult asylum seeker who was detained.⁴⁴

31 AT, BG, LU.

32 The Federal Government programmes *Sprach-Kitas* and *Kita-Einstieg* in DE and the *Oikeus oppia* (Right to Learn) and *Oikeus Osata* (Right to Skills) programmes in FI.

33 Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice,' https://search.coe.int/cm/Pages/result_details.aspx?ObjID=09000016804b2cf3, last accessed on 7 September 2021.

34 E.g. BE.

35 BG, CY, FI, FR, MT, NL, SE.

36 MT.

37 FI, FR, SE.

38 BG.

39 NL.

40 AT, BG, CY, DE, FI, FR, HR, HU, IE (children cannot be detained for immigration-related purposes by law in IE), IT, LT, LU, MT, PL, SE, SK, SI, NO.

41 BE, CZ, EE, LV, NL, PT.

42 BE.

43 NL.

44 LV.

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