



Children in Migration

**EMN report on the state
of progress in 2020 of
the European Commission
communication on the
protection of children in
migration from 2017**

January 2022



Disclaimer

This report has been produced by the European Migration Network (EMN), which comprises the European Commission, its Service Provider (ICF) and EMN National Contact Points (EMN NCPs). It incorporates information provided by NGOs working with children in migration. The report does not necessarily reflect the opinions and views of the European Commission, EMN Service Provider (ICF) or the EMN NCPs, nor are they bound by its conclusions. Similarly, the European Commission, ICF and the EMN NCPs are in no way responsible for any use made of the information provided. The report was part of the 2021 Work Programme for the EMN..

Suggested citation

European Migration Network (2022). Children in Migration: Report on the state of implementation in 2020 of the European Commission communication on the protection of children in migration, 2017. Brussels: European Migration Network.

Explanatory note

This report was produced at the European Commission's request to the EMN to compile information on the state of implementation at national level in 2020 of the 2017 Commission Communication on the protection of children in migration (COM (2017) 211 final). It was prepared on the basis of information submitted by 25 EMN NCPs (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) through their national contributions to the EMN Annual Report on Migration and Asylum 2020. The specific questions relating to children in migration to which the 25 EMN NCPs responded, was developed by the EMN in conjunction with the European Commission.

National contributions were largely based on desk analysis of existing legislation and policy documents, and information provided by national authorities. The listing of Member States in the report results from the availability of information provided by the respective EMN NCPs.

It is important to note that the information contained in this report refers to the situation in the above-mentioned Member States and Norway from 1 January up to 31 December 2020 and specifically the contributions from their EMN NCPs. More detailed information on the topics addressed here may be found in the available national reports from EMN NCPs supporting the Annual Report on Migration and Asylum 2020, and it is strongly recommended that these are consulted as well.

CONTENTS

EXECUTIVE SUMMARY	5
KEY POINTS TO NOTE	5
AIMS AND SCOPE OF THE STUDY	5
METHOD AND ANALYSIS	6
IDENTIFICATION, REGISTRATION, RECEPTION AND ASYLUM PROCEDURES	6
GUARDIANSHIP	7
ALTERNATIVE (NON-INSTITUTIONAL) CARE	7
ACCESS TO EDUCATION (INCLUDING EARLY CHILDHOOD EDUCATION AND CARE)	7
ACCESS TO JUSTICE	8
DETENTION AND ALTERNATIVES TO DETENTION	8
1. INTRODUCTION	9
1.1. RATIONALE AND AIMS OF THE REPORT	9
1.2. SCOPE OF THE REPORT	9
1.3. METHOD AND ANALYSIS	10
1.4. STRUCTURE OF THE REPORT	10
2. EU DEVELOPMENTS	11
3. NATIONAL DEVELOPMENTS	13
3.1. IDENTIFICATION, REGISTRATION, RECEPTION AND ASYLUM PROCEDURES	13
3.2. GUARDIANSHIP	15
3.3. ALTERNATIVE (NON-INSTITUTIONAL) CARE	16
3.4. ACCESS TO EDUCATION (INCLUDING EARLY CHILDHOOD EDUCATION AND CARE)	17
3.5. ACCESS TO JUSTICE	19
3.6. DETENTION AND ALTERNATIVES TO DETENTION	20

EXECUTIVE SUMMARY



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 minors.¹ 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.



AIMS AND SCOPE OF THE STUDY

This 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.²

The report is concerned with the categories of minors set out in the 2017 Communication, and includes:

1 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.

2 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.

accompanied minors/families with children;³ separated children;⁴ and unaccompanied minors,⁵ 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.



METHOD AND ANALYSIS

The report was prepared on the basis of the annual National Reports on Migration and Asylum submitted by 25 EMN National Contact Points (NCPs),⁶ largely based on desk analysis of existing legislation and policy documents, and information provided by national authorities.

Relevant NGOs,⁷ including those that participated in the 2019 reporting process, also contributed additional information at the request of the European Commission.⁸ These contributions illustrate some good practice examples in protecting children in migration.



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 assessment in cases where there are doubts that the applicant for international protection is a minor;¹² 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 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

3 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).

4 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 (EMN Glossary, Version 7).

5 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)).

6 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.

7 Child Circle, Jesuit Refugee Service (JRS), Missing Children Europe, Terre des Hommes.

8 In line with the EMN Guidelines on cooperation with third parties.

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.

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 minors (e.g. new isolation capacities within (separate) reception facilities,²² 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/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

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.

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.

(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 guarantees,³⁸ 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 return,⁴³ and revising the procedure for accommodating minors who arrived with an adult asylum seeker who was detained.⁴⁴

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?Objec-tID=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.

1. INTRODUCTION

1.1. RATIONALE AND AIMS OF THE REPORT

This 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,⁴⁵ with a view to further understanding progress made in the implementation of the Communication's recommendations.

The 2017 Communication sets out actions to reinforce the protection of all third-country national migrant children at all stages of migration to and within the EU, at the EU and national level. This is the second report in this series developed by the EMN, and builds on the earlier report⁴⁶ covering the period 2019.

1.2. SCOPE OF THE REPORT

The scope of this report covers migrant children in the categories set out in the 2017 Communication:

- Accompanied minors/families with children.⁴⁷
- Separated children.⁴⁸
- Unaccompanied minors, including those:⁴⁹
 - recorded within the asylum system,
 - not applying for asylum but recorded within other migration procedures, and
 - not applying for asylum, who remain outside the asylum/migration/(child) protection system.

Rather than reflecting on developments in 2020 concerning all the actions laid down in the 2017 Commission Communication on the protection of children in migration (a brief overview of these developments has been presented already in the EMN Annual Report on Migration

and Asylum 2020⁵⁰), this report will focus on a reduced number of priority areas, that are topical at the time of drafting and are of specific interest in relation to the EU Strategy on the Rights of the Child.⁵¹ These will be explored in greater depths, and include:

- Guardianship for unaccompanied children;
- Alternative (non-institutional) care;
- Access to education (including early childhood education and care);
- Access to justice;
- Detention – and alternatives to detention.

The report reflects the legislation, policies and practices in place in Member States and Norway from 1 January to 31 December 2020.

45 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.

46 European Migration Network (EMN), 'Children in Migration: Report on the state of implementation in 2019 of the European Commission Communication on the protection of children in migration from 2017,' 2021, https://ec.europa.eu/home-affairs/networks/european-migration-network-emn/emn-publications/emn-studies_en, last accessed on 21 December 2021. Previously, progress made in the implementation of the Communication was mapped by two informal groups of experts in the Directorate-General for Migration and Home Affairs (DG HOME) and the Directorate-General for Justice and Consumers (DG JUST) of the European Commission.

47 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 (Qualification Directive, inferred from the definition of unaccompanied minor in Article 2(l) – see below).

48 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 (EMN Glossary, Version 7, https://ec.europa.eu/home-affairs/networks/european-migration-network-emn/emn-glossary_en, last accessed on 21 December 2021).

49 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 (Qualification Directive, Article 2(l)).

50 EMN, 'Annual Report on Migration and Asylum 2020,' 2021, https://ec.europa.eu/home-affairs/sites/default/files/00_eu_arm2020_synthesis_report_en.pdf, last accessed on 23 June 2021.

51 European Commission, The EU Strategy on the Rights of the Child and the European Child Guarantee, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/eu-strategy-rights-child-and-european-child-guarantee_en, last accessed on 21 December 2021.



1.3. METHOD AND ANALYSIS

The European Migration Network (EMN) report was prepared on the basis of the annual National Reports on Migration and Asylum submitted by 25 EMN National Contact Points (NCPs).⁵²

National contributions from these Member States and Norway were largely based on desk analysis of existing legislation and policy documents, and information provided by national authorities. The information collected thus refers mainly to the legislative and policy frameworks that the Member States and Norway have put in place, rather than how these frameworks are implemented.

Four relevant NGOs,⁵³ including those that participated in the 2019 reporting process, also contributed additional information at the request of the European Commission, in line with the EMN Guidelines on cooperation with third parties.⁵⁴ These contributions illustrate some good practice examples in protecting children in migration.

Statistics on unaccompanied minors collected during the 2019 and 2020 data collection exercises for the EMN Annual Report on Migration and Asylum have also been included in the report.



1.4. STRUCTURE OF THE REPORT

The report is divided into six sections, which closely follow the key chapters of the 2017 Communication, and include:

- Section 2: Identification, registration, reception and asylum procedures children in migration
- Section 3: Guardianship for unaccompanied minors;
- Section 4: Alternative care (non-institutional);
- Section 5: Access to education (including early childhood education and care);
- Section 6: Access to justice, and
- Section 7: Detention and alternatives to detention.

⁵² 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.

⁵³ Child Circle, Jesuit Refugee Service (JRS), Missing Children Europe, Terre des Hommes.

⁵⁴ Internal document available on request.

2. EU DEVELOPMENTS

The number of unaccompanied minors seeking asylum has decreased in recent years, from 29 195 in 2017 to 13 550 in 2020.⁵⁵ It is however important to underline that not all unaccompanied minors arriving in the EU apply for asylum. Data regarding the number of unaccompanied minors who do not apply for asylum is not collected in a systematic manner across the EU and is often fragmented; however, the numbers of minors falling in this latter category are not negligible (see Table 1 below).

Table 1: Unaccompanied minors recorded within the child protection system (i.e. outside of the asylum procedure) in 2020⁵⁶

EU MSs & NO	Total	Female	Male
CY	0	0	0
CZ ⁵⁷	88	1	87
DE ⁵⁸	7 563	1 196	6 367
EE	1	0	1
ES ⁵⁹	3 387	219	3 168
FR ⁶⁰	9 524	556	8 968
HR ⁶¹	133	n/i	n/i
HU ⁶²	24	3	21
IE	51	17	34

EU MSs & NO	Total	Female	Male
IT	8 186	121	8 065
LT ⁶³	3	0	3
LV ⁶⁴	<5	<5	<5
PL ⁶⁵	16	1	15
SI ⁶⁶	304	4	300
SK ⁶⁷	70	2	68
NO	0	0	0

Source: EMN National Contact Points. No statistics available or applicable for AT, BE, BG, DE, DK, EL, FI, LU, MT, NL, PT, RO and SE.⁶⁸

A number of important developments at the EU level took place in 2020 and 2021, including the presentation of the proposal of the New Pact on Migration and Asylum, which emphasises the need to protect vulnerable groups.⁶⁹ The Pact lays out the development of the EU Strategy on the Rights of the Child,⁷⁰ adopted in March 2021, with the aim to mainstream children's rights across all relevant EU policies. The New Pact also recalls the importance of continuing to work to achieve the objectives of the 2017 Communication, prompting the Commission to ask the EMN for this progress report. At the same time, a proposal was launched for a Council Recommendation establishing the European Child Guarantee,⁷¹ which aims to promote equal opportunities for all children in Europe, a large proportion of whom are living at risk of poverty and social exclusion. The European Child Guarantee was adopted by the Council in June 2021.

- 55 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. Data exclude UK.
- 56 Unaccompanied minors recorded within the child protection system (i.e. outside of the asylum procedure) in 2020 – flow data (i.e. unaccompanied minors newly recorded between 1 January 2020 and 31 January 2020) i.e. whose age of minority has been confirmed by the (Member) State authorities. "n/i" means data not available; "n/a" means not applicable.
- 57 Facility for Children-foreigners of the Ministry of Education, Youth and Sports. This number includes all unaccompanied minors in CZ who did not apply for international protection and who are recorded within the child protection system. The total number of 88 unaccompanied minors from third countries who did not apply for international protection came to the specialised Facility for Children-foreigners during 2020. Some cases may not be included in this figure.
- 58 Destatis, 'Statistiken der Kinder- und Jugendhilfe,' https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Soziales/Kinderschutz/Publikationen/Downloads-Kinderschutz/vorlaeufige-schutzmassnahmen-5225203207004.pdf?__blob=publicationFile, last accessed on 1 December 2021.
- 59 By 31 December 2020, about 515 minors were still pending for registration (due to the substantial number of migrants who arrived in the Canary Islands).
- 60 Number of unaccompanied minors recognised by judicial decisions from 1 January to 31 December 2020. The French unaccompanied minors' mission is not informed of situations that could lead to asylum applications. These data may include some asylum applications. Source: UAMs Mission / Directorate of Judicial Youth Protection – Ministry of Justice, March 2021.
- 61 Total represents the number of unaccompanied minors detected in illegal border crossings or staying illegally but excluding those who applied for asylum.
- 62 The data were provided by the Hungarian Police.
- 63 Refugees' Reception Centre.
- 64 State Border Guard.
- 65 Identified unaccompanied minors staying in detention and remaining outside the asylum procedure.
- 66 Data include unaccompanied minors that were in the return procedure. Within the total number, three unaccompanied minors were returned voluntarily.
- 67 Ministry of Labour, Social Affairs and Family of the Slovak Republic. In 2020, the Slovak Republic recorded 9 unaccompanied minors applying for asylum.
- 68 EMN, 'Annual Report on Migration and Asylum EU 2020 – Statistical Annex,' 2021, https://ec.europa.eu/home-affairs/networks/european-migration-network-emn/emn-publications/annual-reports-migration-and-asylum_en, last accessed on 21 December 2021.
- 69 Communication on a New Pact on Migration and Asylum, COM(2020) 609 final, https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-f13-11ea-b44f-01aa75e-d71a1.0002.02/DOC_3&format=PDF, last accessed on 2 September 2021.
- 70 European Commission, 'EU Strategy on the Rights of the Child,' 2021, https://ec.europa.eu/info/sites/default/files/child_rights_strategy_version_with_visuals3.pdf, last accessed on 2 September 2021.
- 71 Proposal for a Council Recommendation establishing a European Child Guarantee, COM(2021) 137 final, OJ L 223, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0137&from=EN>, last accessed on 2 September 2021.

Furthermore, the European Commission adopted the EU Strategy for a more effective fight against child sexual abuse on 24 July 2020,⁷² setting out a comprehensive multi-stakeholder approach to safeguarding all children, including the most vulnerable, from both online and offline crimes, using all available tools at EU level. Finally, the EU Action Plan on Integration and Inclusion 2021-2027 was adopted in November 2020,⁷³ which includes the education, training and the integration of migrant children and their families as key aspects.

72 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions EU strategy for a more effective fight against child sexual abuse, COM(2020) 607 final, https://ec.europa.eu/home-affairs/system/files/2020-07/20200724_com-2020-607-commission-communication_en.pdf, last accessed on 1 December 2021.

73 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: Action Plan on Integration and Inclusion, COM(2020) 758 final, https://ec.europa.eu/home-affairs/sites/default/files/pdf/action_plan_on_integration_and_inclusion_2021-2027.pdf, last accessed on 2 September 2021.

3. NATIONAL DEVELOPMENTS



3.1. IDENTIFICATION, REGISTRATION, RECEPTION AND ASYLUM PROCEDURES

3.1.1. Identification and registration, including Age assessment

The 2017 Communication on the protection of children in migration notes that when migrant children come into contact with different authorities in Member States when crossing borders, they must always be identified and registered as children, prioritised in border-related procedures and receive adequate support from specially trained staff. Biometric data should be collected using child-friendly and gender-sensitive approaches. The Communication recommends that Member States should pay attention to the specific vulnerabilities and protection needs of unaccompanied and separated children, who may be at a higher risk of exploitation and trafficking, and notes that the identification of a person as a minor is crucial, as it can influence subsequent procedures and treatment.

The EMN Children in Migration Report 2019 found that all Member States and Norway foresee that an official with adequate training in dealing with children is present during the identification and registration procedure of minors. Most Member States⁷⁴ reported that border guards and police authorities receive special training to identify minors and victims of trafficking, where possible applying child-friendly⁷⁵ and gender-sensitive⁷⁶ approaches when collecting fingerprints and biometric data.

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 identifying minors.⁷⁷ In France, the system introduced in 2019 for assessing individuals who claim to be minors temporarily or definitively deprived of their family's protection, was gradually implemented in 2020. The aim is to better guarantee child protection and to avoid transfers between departments. In Bulgaria, following amendments to its Law

on Asylum and Refugees, a mandatory procedure for the identification of vulnerable groups and their special needs was introduced. In Ireland, a pilot vulnerability assessment programme was introduced by the International Protection Accommodation Service in December 2020. In line with the recast Reception Conditions Directive 2013/33/EU, minors fall the vulnerable groups that can be assessed in the programme.

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.⁷⁸ In the area of age assessment, a few Member States⁷⁹ introduced medical age assessment in cases where there were doubts that the applicant for international protection was a minor;⁸⁰ and two issued protocols or recommendations on the age assessment procedure as a whole in order to complement the relevant legislation.⁸¹ In Italy, for example, a protocol was adopted setting out a multidisciplinary approach to determining age in cases of well-founded doubts about the declared age or where age cannot be ascertained from identification documents or other procedures. In September 2020, the Netherlands introduced the possibility for age assessment as part of the identification process for third-country nationals who claim to be minors but do not apply for asylum, to prevent the placement of adult migrants in facilities meant for minors.

New developments with regard to minors who are (potential) **victims of trafficking in human beings** mostly consisted of legislative or policy measures to assist the early identification and referral of these children.⁸² These developments were all prompted by the need for 'clear' and 'uniform' criteria for the identification of victims of trafficking, and in the case of Cyprus, by the increasing number of unaccompanied minors. The changes included the introduction of new strategies for combating

74 AT, BE, BG, CY, CZ, EE, EL, ES, FI, FR, HR, HU, IE, IT, LU, LV, MT, NL, PL, PT, SK, SE, SI, NO.

75 EE, IE, MT, NL.

76 BE, CZ, EE, EL, FI, HR, IT, LU, NL, SE, SK.

77 BE, BG, CY, FR, HR, IE, IT, NO.

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

79 BG, DE, IT, NL, SE.

80 BG.

81 DE, IT.

82 CY, CZ, DE, ES, HU, LT, SK, NO.

trafficking in human beings overall,⁸³ new legislation or recommendations on the provision of support and protection of victims and on their identification as such;⁸⁴ and capacity building measures, such as guidelines⁸⁵ and training⁸⁶ of staff, to improve frontline identification of victims by youth welfare and/or police officers.

Other developments concerned the status of victims of human trafficking. In Hungary, as of July 2020, sex workers below the age of majority are now treated as victims (and not as perpetrators) by the law and placed in children's homes. In Norway, a general legislative amendment allowed more victims of trafficking (including minors) residency where they provided evidence in relation to their human trafficking case in criminal proceedings.

3.1.2. Providing adequate reception facilities

the 2017 Communication notes that reception conditions should be in line with the EU *acquis* and should include safe and appropriate accommodation. Necessary support services should also be provided to secure the child's best interests and well-being, including independent representation, access to education, healthcare, psychosocial support, leisure and integration-related measures.

The 2019 Children in Migration Report found that approaches to provide adequate reception for families with children and unaccompanied minors varied across Member States. That is, most Member States accommodated families with children applying for asylum in general reception facilities for asylum seekers,⁸⁷ while unaccompanied minors were usually accommodated in special reception centres or child and youth welfare facilities.⁸⁸ Overall, Member States reported that they aim to ensure that the measures put in place correspond to the best interests of the child, the specific situation of the child, their age, gender and vulnerability, with provision for flexibility in reception conditions and integration strategies to respond to changes in needs as children get older.⁸⁹

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.⁹⁰

For example, in Austria, a working group within the Human Rights Advisory Council of the Austrian Ombudsman Board was set up to look into standards for accommodation and care of unaccompanied minor refugees. The recommendations submitted by the working group to the

Federal Government in July 2020 included: improving the system of guardianship; accommodating minors in facilities suited to their needs as (unaccompanied) children; integrating official responsibilities with child and youth welfare; training of staff; enhancing the options for children's participation in society; and providing for a fuller schedule of daily activities.⁹¹ Other Member States and Norway introduced provisions targeting certain groups of unaccompanied minors. For example, Norway was in the process of regulating the responsibility and care for unaccompanied asylum-seeking minors aged 15 to 18 years, to ensure that all unaccompanied asylum-seeking minors are followed up by the relevant authorities.⁹² In Hungary, unaccompanied minors aged 14 to 18 years who sought asylum were accommodated in a child protection facility, following a judgment of the Court of Justice of the EU in May 2020.⁹³ Italy, with the support of EASO, produced a comprehensive operational handbook on the procedures for the first reception of unaccompanied minors. The handbook was expanded on the basis of online workshops involving reception system staff and is aimed at collecting and sharing good practices.

Additional reception places, or 'Safe Zones' as they are called in some Member States, were created or became operational for unaccompanied minors within existing facilities.⁹⁴ Notably, in Bulgaria, there was a major addition of 138 places for unaccompanied minors, bringing the total reception capacity for this group to 238 places. In addition, according to a new law on social services in Bulgaria, which came into force on 1 July 2020, unaccompanied minors seeking international protection, or who have received international protection, can be accommodated in social services for children in line with their needs. In Belgium, capacity was added in the two first phases of reception due to a considerable rise in the number of arrivals of unaccompanied minors, and additional places were created in the adult sections of reception centres for non-vulnerable unaccompanied boys who declared themselves to be at least 17 years old and who met the minimum criteria for autonomy. In Italy, the capacity of the reception system for applicants for international protection and unaccompanied minors (SIPROIMI) reached almost 4 000 places in 2020.

Lastly, following the onset of the COVID-19 pandemic, a few Member States introduced temporary measures affecting unaccompanied minors,⁹⁵ including: the transfer of unaccompanied minors in admission procedures to a regional directorate or a branch office (in addition to federal reception centres) where they may lodge an application for asylum;⁹⁶ the option to receive meal vouchers upon voluntary departure from reception centres for certain unaccompanied minors who could stay in a safe and stable place outside reception facilities;⁹⁷ new isolation

83 CZ.

84 LT, SK.

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

86 DE.

87 AT, BE, BG, CZ, EE, EL, FI, FR, HR, IE, IT, LV, LT, LU, NL, PT, SE, SI, SK, NO.

88 BE, CY, CZ, DE, EL, ES, FI, FR, HR, IT, LT, LU, NL, PT, SE, SI, SK, NO.

89 AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, LU, LV, MT, NL, PL, PT, SE, SI, SK, NO.

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

91 Human Rights Advisory Council of the Austrian Ombudsman Board, *Stellungnahme des Menschenrechtsbeirates zur Unterbringung von unbegleiteten minderjährigen Flüchtlingen*, <https://volksanwaltschaft.gv.at>, last accessed on 6 December 2021.

92 In NO, the new regulation on care responsibility for unaccompanied minors between 15 and 18 years in reception centres entered into force on the 1st of July 2021.

93 Before the judgement only unaccompanied minors under the age of 14 years were accommodated in a child protection facility in HU.

94 BE, BG, CY, IT.

95 AT, BE, FR, IT, SK.

96 AT. Among the reasons for this time-limited modification was to allow more flexible responses in the event that any centres might need to be shut down due to COVID-19.

97 BE.

capacities for unaccompanied minors within (separate) reception facilities;⁹⁸ measures to prevent the transfer of minors between facilities or to prevent the end of child welfare measures for young adults or individuals that became adults during the state of emergency.⁹⁹

3.2. GUARDIANSHIP

Minors who are unaccompanied or separated from their caregiver are particularly vulnerable and susceptible to abuse and exploitation. The 2017 Communication states that guardians can help to prevent minors from going missing or becoming victims of 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.

Although the importance of inclusive protection systems, including guardianship is underlined in the EU *acquis*, the Children in Migration Report 2019 found that guardianship systems vary considerably from one Member State to another. In line with EU law, Member States must provide for the timely appointment of a guardian¹⁰⁰ or representative¹⁰¹ for unaccompanied minors. Guardians have the responsibility to ensure the child's well-being and to protect minors deprived of parental care, while the role of representatives is to enable minors to participate in administrative, civil or criminal judicial proceedings. In practice, guardianship to unaccompanied minors is provided most commonly through municipalities,¹⁰² child and youth welfare offices,¹⁰³ assigned individuals,¹⁰⁴ and other types of guardianship, such as foster care.¹⁰⁵ The 2017 Communication encourages Member States to strengthen guardianship systems to ensure that guardians for all unaccompanied children are swiftly in place.

In 2020, new legislation in relation to guardianship was introduced by some Member States,¹⁰⁶ for example, to expand the definition of family members¹⁰⁷ or to further clarify the distribution of powers between the family court judge and the guardianship judge.¹⁰⁸

Box 1 Expansion of the definition of 'family member' in Austria

An amendment to the Asylum act 2005 expands the legal definition of what is considered a 'parent-child' relationship;¹⁰⁹ from 24 December 2020, the term "family member" as defined in Art. 2 para 1 sub-para 22 of the Asylum Act 2005 was expanded

Italy activated monitoring systems in order to verify and control the effective protection status of unaccompanied minors in the first reception facilities, whereby the monitoring activities were conducted remotely due to the pandemic.

as follows: asylum seekers, persons granted asylum and beneficiaries of subsidiary protection who are unmarried minors are considered family members of the person who represents them legally but is not their parent, and can within the framework of family procedures obtain such protection status as is accorded to their particular representative.^{110 111} Under previous legal arrangements, the scope of protection for the legal representative of a minor child could be legally derived from the status of the child, yet the minor child's scope of protection could not be derived from that of the child's legal representative.¹¹²

Source: EMN Austria

Bulgaria introduced a major legislative development, regulating the obligations of the representative to assist a child in the international protection procedure:

Box 2: Representation of unaccompanied minors - Bulgaria

In 2020, the appointment of a representative for unaccompanied minors by municipal administrations in Bulgaria was scrapped. Instead, qualified lawyers from the Legal Aid Register of the National Legal Aid Bureau may now be appointed as representatives of unaccompanied minors.

An amendment to the Law on Asylum and Refugees (LAR) set out the obligations of the representative of an unaccompanied minor, requiring this person to possess the necessary knowledge, to assist the child in the international protection procedure, including to inform the child of the meaning and possible consequences of the personal interview and, if necessary, how to prepare for it. A representative may not be a person whose interests are, or could be, in conflict with the interests of the unaccompanied child.

Source: EMN Bulgaria

98 BE, SK.

99 FR.

100 AT, BE, CY, CZ, DE, EE, ES, FI (for unaccompanied minors applying for a residence permit), FR, HR, IT, LT, LU, LV, MT, NL, PL, PT, SE, SK and NO. A guardian is 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, 'Report on guardianship systems for children deprived of parental care in the European Union,' 2015, <https://fra.europa.eu/en/publication/2015/guardianship-systems-children-deprived-parental-care-european-union>, last accessed on 19 August 2021).

101 BG, EL, FI, HU, IE, LU, LV, PT. A representative is a person or an organisation appointed by the competent bodies to assist and represent an unaccompanied minor [...] with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary (Qualification Directive, Article 31).

102 BG, CZ, EE, IT, LV, SE.

103 AT, CY, CZ, DE, FR, HR, IE, LT, NL, SK. Also possible in EE, but not implemented in practice.

104 BE, CZ, DE, FI, IT, LV, LU, PL, PT, SE, SK, NO. Also possible in EE, but not implemented in practice.

105 BG, ES, IT, LT, LU, PL.

106 AT, BG, LU, PL.

107 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."

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

109 Asylum Act 2005, FLG I No. 100/2005 in the version of federal law FLG I No. 145/2020.

110 Federal Act Amending the Settlement and Residence Act, the Asylum Act 2005 and the Federal Office for Immigration and Asylum Procedures Act, FLG I No. 145/2020.

111 Government Proposal – Explanatory Notes: Federal Act Amending the Settlement and Residence Act, the Asylum Act 2005 and the Federal Office for Immigration and Asylum Procedures Act – 349 of the supporting documentation XXVII. Legislative Term, www.parlament.gv.at, last accessed on 21 December 2021.

112 EMN Austria, 'Annual Policy Report Austria,' 2020, p. 21, <https://www.emn.at/wp-content/uploads/2020/12/emn-annual-policy-report-austria-2020.pdf>, last accessed on 21 December 2021.

From 1 January 2020, Latvia made a legislative change to increase the amount of the guardian's allowance for the maintenance of a child.¹¹³ Legal changes in Luxembourg amended Article 20 of the amended Asylum Law by replacing the terms “guardianship judge” by those of “family affairs judge”, following the entry into force of the Law of 27 June 2018 establishing the family court judge, and the new distribution of powers between the family court judge and the guardianship judge.

In addition to the legislative changes highlighted above, Belgium and Austria plan policy changes to further strengthen the guardianship system for unaccompanied minors. In Austria, the Government Programme 2020–2024 envisages improved protection of unaccompanied minors, as well as a better legal status for this group that puts an emphasis on guardianship.¹¹⁴ In Belgium, the General Policy Note on Asylum and Migration of 4 November 2020, stated that the signalling and identification procedure of unaccompanied minors would be further strengthened and the role of the Guardianship Service in supporting minors would be improved. Furthermore, the possibility to ensure the presence of the Guardianship Service in the Arrival Centre for applicants of international protection will also be examined.

The NGO Missing Children Europe has highlighted the role of guardians in preventing child disappearances through its recent INTERACT project (see Box 3).

Box 3: The role of guardians in preventing child disappearances in the context of migration: Missing Children Europe

The INTERACT project applied an innovative methodology to identifying gaps that can lead to the disappearance and exploitation of children in migration:¹¹⁵ some 90 professionals from six countries (Belgium, France, Greece, Italy, Sweden and the UK) worked together on two fictionalised disappearance cases.

The project found that not all of the Member States studied implement a guardianship system and that its scope and quality differ across Europe. For example, participants from some countries did not immediately appoint a guardian, in some cases because children are only appointed a guardian if they are applying for asylum. In addition, some countries do not appoint a guardian to all unaccompanied minors.

In order to help to prevent child disappearances in the context of migration, the INTERACT project highlighted the importance of the immediate appointment of a guardian in every case, even when a child does not apply for asylum, as well as participation in the European Network of Guardianship Institutions. Best practices and guidelines that emerged from the project can be found in the INTERACT Handbook.¹¹⁶

Source: Missing Children Europe



3.3. ALTERNATIVE (NON-INSTITUTIONAL) CARE

The 2017 Communication encourages Member States to ensure that a range of alternative (non-institutional) care options for unaccompanied children is 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.

As provided by the recast Reception Conditions Directive 2013/33/EU, suitable options could include, in particular for unaccompanied children, placement with adult relatives or a foster family, accommodation centres with special provisions for children or other suitable accommodation, such as closely supervised open reception centres designed to ensure the protection of children, or small-scale independent living arrangements for older children.¹¹⁷ The United Nations Guidelines for the Alternative Care of Children constitute relevant standards in that regard.¹¹⁸

The Children in Migration Report 2019 found that almost all Member States and Norway seek to locate family members early in the asylum procedure, typically during the initial interview phase,¹¹⁹ and offer alternative care options. The most popular alternative care option is foster or host families¹²⁰ which was found to usually be the preferred option for younger children. Most Member States and Norway aim to provide semi-independent accommodation for older children,¹²¹ usually in the form of apartments or smaller residential units.

During 2020, two Member States and Norway sought to introduce or improve alternative care options for unaccompanied children. In Estonia, the Social Insurance Board has been working towards implementing family-based care in the case of unaccompanied minors, for example, in a foster home, instead of institutional care. In Latvia, a legal framework established a mechanism to cover the expenses of an out-of-family care provider,¹²² including in a childcare institution, foster family or guardian's family,

113 By increasing this to €107.50 per month (for a child under the age of seven) and €129 per month (for a child above the age of seven).

114 Austrian Federal Government, 'Aus Verantwortung für Österreich: Regierungsprogramm 2020–2024,' p. 141, <https://www.bundeskanzleramt.gv.at/dam/jcr:7b9e6755-2115-440c-b2ec-cbf64a931aa8/RegProgramm-lang.pdf>, last accessed on 21 December 2021.

115 Missing Children Europe, 'Interact: Towards a more efficient cooperation across border for the protection of children in migration from trafficking and exploitation. Report on multi-agency practical simulations on fictional cases in Belgium, France, Greece, Italy, The United Kingdom and Sweden,' 2019, <https://missingchildreneurope.eu/?wpdm-dl=1324>, last accessed on 21 December 2021; and 'Practical guidance on preventing and responding to trafficking and disappearances of children in migration,' 2019, <https://missingchildreneurope.eu/?wpdm-dl=1323>, last accessed on 21 December 2021.

116 Missing Children Europe, 'Practical guidance on preventing and responding to trafficking and disappearances of children in migration,' 2019, <https://missingchildreneurope.eu/?wpdm-dl=1323>, last accessed on 21 December 2021.

117 As set out in 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), OJ L 180, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>, last accessed on 6 December 2021.

118 UN General Assembly, 'Guidelines for the Alternative Care of Children: resolution / adopted by the General Assembly,' 2010, <https://www.refworld.org/docid/4c3acd162.html>, last accessed on 6 December 2021.

119 AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK, NO. In IE, family member tracing takes place when the minor is referred to child protection services, prior to the commencement of any international protection or immigration status application process.

120 BE, BG, CY, DE, EE (not implemented in practice), ES, FR, HR, IE, IT, LU, NL, PL, PT, SE, SK, NO.

121 BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, IT, LU, NL, PL, PT, SE, NO.

122 Law "Amendments to the Law on the Protection of the Rights of the Child" – *Latvijas Vēstnesis* No. 257A, 23.12.2019. – [entered into force on 06.01.2020.]

for the accommodation of a minor third-country national who has been left without parental care and who does not have the status of an asylum seeker or a refugee or an alternative status in Latvia. Norway planned a project for

alternative care and settlement for unaccompanied minors in care-families, to be recruited and followed-up by the private organisation 'Aberia'. The project was implemented in 2021 and will be evaluated by NTNU Social Research.



3.4. ACCESS TO EDUCATION (INCLUDING EARLY CHILDHOOD EDUCATION AND CARE)

The 2017 Communication states that children in migration can face barriers accessing education. It highlights how children are not always assured early access to education, although this is fundamental for securing their future and well-being. Access to education while awaiting the identification of a durable solution,¹²³ such as integration in the host country or return to a third country, should also be ensured. Of particular importance is the early integration to support children's transition into adulthood, particularly through education, guidance and support.

To address these challenges, the 2017 Communication encouraged Member States to ensure that all 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 it; to prioritise education in all integration-related policies, using more EU funds to support integration/education.

In 2019, all Member States and Norway reported that access to education is a basic right for children and is made available to them as early as possible. Whilst the length of time before access to education is granted varies across Member States, the majority reported that access is facilitated as soon as possible. In Belgium, for example, education is mandatory between the ages of five and 18 years, and mandatory education starts 60 days after the minor is registered in the foreigners register, the waiting register or the population register of the municipality where they reside. In Ireland, all migrant children, including children of asylum seekers, refugees, migrant workers and unaccompanied minors can access pre-school, first and second level education in a manner similar to Irish nationals, until they have reached the age of 18 years.

3.4.1. Access to education

with regard to access to education, 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,¹²⁴ with some Member States reporting online language classes for migrant children,¹²⁵ study support classes and/or on-call school support hours for newly arrived pupils.¹²⁶ Luxembourg increased the work of intercultural mediators available during online classes to support teaching staff and ease

the transition of recently arrived minors into the general education system. The national budget for intercultural mediators was intensified accordingly. The Department of the Schooling of Foreign Children (SECAM) continued to support the schooling of children aged 11 to 24, who recently arrived in the Luxembourgish school system, but who could not be admitted to a school because of the special circumstances of the pandemic.

Some Member States increased efforts to reduce the length of time during which children's education was disrupted, by providing laptops to disadvantaged pupils¹²⁷ and/or access to the internet for children in reception centres.¹²⁸ Notably, the Dutch government provided funds for vulnerable children such as asylum-seeking minors to follow education remotely, and schools received additional financing to mitigate the negative impacts for newcomers.

Besides the immediate challenges of access to education posed by the COVID-19 pandemic, a number of additional legislative and policy changes were introduced by Member States to improve access to education, for example, through targeted new services, as in Luxembourg (see Box 4).

Box 4: The integration and reception of children of foreign origin and new to Luxembourg

On 10 September 2020, the Minister of Education, Children and Youth stated that the procedures for taking care of newly arrived pupils (*élèves primo-arrivants*) would be reviewed with the aim of guaranteeing that children who arrive in the middle of their education are received, oriented and supported during their educational and social integration path.¹²⁹ The Ministry plans to set up a service specifically responsible for the integration and reception of children of foreign origin, who are new to Luxembourg. The service will be followed-up four years after the arrival of the students with the aim of making any adaptations if necessary to the provision available, and to avoid pupils dropping out.

The new service will provide initial and in-service training for teachers as well as various projects to raise awareness of inter-culturalism and multilingualism and aims to contribute to improved support for this school population.

Source: EMN Luxembourg

¹²³ Any means by which the situation of refugees can be satisfactorily and permanently resolved to enable them to live normal lives (EMN Glossary, Version 7).

¹²⁴ AT, BE, BG, CY, CZ, EE, FI, FR, HR, IE, IT, LU, PL, NL, SI, SK, NO.

¹²⁵ AT, CZ, HR, LU, SK (in case of UAMs).

¹²⁶ AT, BG, LU.

¹²⁷ AT, BE, CZ, NL.

¹²⁸ BE, PL, NL.

¹²⁹ The Government of Luxembourg, 'Une rentrée 2020-2021 sous le signe du bien-être et des perspectives d'avenir des enfants des jeunes,' Press Release, <https://men.public.lu/fr/actualites/communiqués-conference-presse/2020/09/10-rentree.html#:~:text=Le%20ministre%20de%20l'%C3%89ducation,jamais%20de%20cr%C3%A9er%20pour%20eux>, last accessed on 6 September 2021.

The NGO Terre des Hommes promoted a project – MINT (Mentoring for Integration of third country national children affected by migration) – in 2019–2020 which facilitated access to language learning as part of a wider integration ambition, using an innovative mentoring model (see Box 5 below).

Box 5 Social integration of newly arrived third-country national children: Terre des Hommes Hungary

Recognising that newly arrived third-country national children and young people are especially vulnerable to social exclusion, the general objective of the MINT¹³⁰ – Mentoring for Integration (of third country national children affected by migration) project, implemented by Terre des Hommes Hungary and its partners, was to ensure that third-country national children and young people residing in the targeted host countries are successfully integrated in their host societies. The project piloted an innovative and replicable peer-to-peer mentoring model, that aimed to contribute to building more inclusive societies in the Czech Republic, Hungary, Poland, Romania and Slovenia. This complex programme provided newly arrived migrant children with support, advice, and friendship in the form of mentors in order to facilitate easier integration, but it also contributed to improving their **linguistic and social skills** as well as to amplify children's voices to communicate their needs to stakeholders such as their local peers, teachers, local and national authorities.

According to data collected from migrant children, their families and local youth, the mentoring programme has had a positive impact on children's self-esteem and their language skills resulting from their involvement in group activities with their peers and through a closer connection with their mentors. Through the project, 150 newly arrived third-country national children were supported by 134 trained, local youth volunteer mentors over two mentoring cycles, and over 700 migrant children and adults benefitted from various language learning opportunities. Ten child- and youth-led awareness-raising videos contributed to raising awareness of the general public on the realities – both positive and challenging – lived by migrant children and youth.

Source: Terre des Hommes Hungary

3.4.2. Early childhood education and care

early childhood education and care is an important tool for the integration of children, in particular for fostering their language skills. In 2020, two Member States (Finland and Germany) introduced continued programmes for early childhood development and education.¹³¹ The programmes aimed to make education more inclusive for newly arrived (migrant) children and to provide them and their families with tailored support, with the ultimate goal to level out social inequalities.

Box 6: The Right to Learn and Right to Skills programmes – Finland

In Finland, the *Oikeus oppia* (Right to Learn) programme (2020–22) aims to secure an equal start for learning by improving quality and equality in early childhood education and care and offering comprehensive school education. The purpose of the programme is to reduce and prevent learning differences arising from children's socio-economic background, immigrant background or gender, to strengthen and develop learning support, and to improve literacy.

Similarly, the *Oikeus Osata* (Right to Skills) programme (2020–22) was also launched for equality and quality in vocational education and training. The programme aims to ensure that all students in vocational education and training in Finland acquire solid occupational competence and good basic skills for work, life and lifelong learning.

Both programmes were implemented by the Finnish Ministry of Education and Culture together with the Finnish National Agency for Education.

Source: EMN Finland

Box 7: The Federal Government programmes Sprach-Kitas and Kita-Einstieg – Germany

In Germany, the Federal Government programmes *Sprach-Kitas* (Language Day Care Centres) and *Kita-Einstieg* (Stepping into Childcare) offer low-threshold access to early-childhood education, language learning and needs-based specialist support for teachers. The *Sprach-Kitas* programme is primarily directed at child day-care facilities serving an above-average proportion of children in need of special language instruction. The programme finances 6 500 specialists supporting day care teams in language education, inclusive education and working with families. The *Kita-Einstieg* programme supports low-threshold services providing preparation and support for accessing child day-care.

Source: EMN Germany

In 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.

In Norway, the financing of free full-time care for children in kindergartens included one-year old children in asylum centres, effective from August 2020.

3.4.3. Primary and secondary education

in the area of primary and secondary education, two Member States extended or plan to extend compulsory education to the age of 18 years.¹³² For example, in Austria, the Federal Government Programme 2020–2024 envisages the introduction of an education obligation,

130 MINT: Mentoring for integration of children affected by migration, <https://childhub.org/en/series-of-child-protection-materials/mint-mentoring-integration-children-affected-migration>, last accessed on 15 October 2021.

131 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.

132 AT, FI.

to apply to all young people between their ninth year of schooling and the age of 18. Young people, including beneficiaries of international protection, are to be allowed to leave the education system only after achieving minimum basic skills standards.

3.5. ACCESS TO JUSTICE

The 2017 Communication states that there are sometimes long delays in processing asylum applications and other proceedings concerning children. It continues that children's status determination procedures should be prioritised (the 'urgency principle') in line with the Council of Europe Guidelines on child-friendly justice.¹³³

In 2020, a few Member States strengthened procedural safeguards for minors in the asylum procedure,¹³⁴ for example by adopting new fast tracking policy on minors in the asylum procedure¹³⁵ and by introducing new child-friendly information materials, guides or apps explaining the procedure for unaccompanied minors;¹³⁶ or by reviewing procedural guarantees¹³⁷ and establishing new and permanent forms of cooperation between relevant authorities (see Box 8 below),¹³⁸ to ensure that the best interests of the child are sufficiently taken into account. For example, under the Bulgarian legislation outlined above, an unaccompanied child shall be informed immediately of their representative who, in turn, is required to possess the necessary knowledge to assist the child in the asylum process, such as to inform them of the meaning and possible consequences of the personal interview. Italy ensured that the provision of information and immediate support, legal guidance, cultural mediation and psycho-social support started from the earliest stage of their arrival, amongst other things through agreements with third sector and international organisations.

Box 8 Permanent cooperation to ensure the best interests of the child in migration procedures – the Netherlands

In the Netherlands, following a project, a permanent form of cooperation has been established in March 2020 between the Immigration and Naturalisation Service (IND), the Repatriation and Departure Service (DT&V) and the Child Care Protection Board. The partners in the collaboration – known as Collaboration Children in Alien Policy (*Samenwerkingsverband Kinderen in het Vreemdelingenbeleid*) – can exchange data and knowledge in cases involving children. Their task is to jointly ensure that there is attention from various disciplines for children in migration procedures.

Source: EMN the Netherlands

Additionally, from August 2020, in Norway a renewal of all curricula for primary and secondary education, including the curricula in Norwegian for language minorities and in minority languages, has gradually been implemented.

In some cases, procedural safeguards were suspended, as a result of the COVID-19 pandemic. Such was the case in Belgium where children could not be heard in the child-friendly hearing rooms at the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), which had to close temporarily to comply with COVID-19 restrictions. At the same time, the CGRS carried out a pilot project interviewing 12 unaccompanied minors via videoconference, together with the Guardianship Service, Fedasil and Red Cross.

Box 9: Amended rules on no-fault permit for unaccompanied minors – the Netherlands

In March 2020, to offer unaccompanied minors certainty about their future more quickly, and to prevent repeated applications, the rules applicable to unaccompanied minors who cannot return to their country of origin through no fault of their own (no-fault policy) were changed. The no-fault permit for unaccompanied minors was introduced in 2013 to create a safety net for children who could not return to their country of origin, despite cooperating with the return procedure. Unaccompanied minors may be eligible for the no-fault residence permit if it was demonstrated that return would not be possible within a maximum of three years, or if after three years the child has not been able to return. However, in the implementation of this policy in the Aliens Act Implementation Guidelines, the three-year period was counted from the date on which the last residence permit application was submitted. As this was not in line with the intention of the no-fault policy, the Implementation Guidelines were changed to limit the period to the three years following the first asylum application.

Source: EMN the Netherlands

The NGO Missing Children Europe has flagged the importance of providing children in migration with access to information to enable them to access justice (see Box 10 below). The NGOs Child Circle and KIND Europe have, with the assistance of DLA Piper, mapped legal aid systems for unaccompanied children in several European countries and raised awareness of the importance of free quality legal assistance in securing access to justice in a 2021 report.¹³⁹

133 Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice', 2010, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3, last accessed on 7 September 2021.

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

135 MT.

136 FI, FR, SE.

137 BG.

138 NL.

139 Child Circle & KIND, 'Advancing Protection for Unaccompanied Children in Europe by Strengthening Legal Assistance,' 2021, <https://supportkind.org/resources/advancing-protection/>, last accessed on 20 December 2021.

Box 10: Providing children in migration access to information: the Miniila App: Missing Children Europe

The Miniila App is a mobile phone application developed by Missing Children Europe and launched in December 2019 and implemented throughout 2020. It aims to support young migrants by increasing their access to information and services. The application currently operates in Belgium, Bulgaria, France, Germany, Greece, Italy, Sweden and the UK, and can be accessed in English, French, Arabic, Farsi and Tigrinya.

An impact study, conducted by the University of East London,¹⁴⁰ found that young migrants perceive the Miniila App as a positive and helpful tool that is easy to use. They indicated that the app allows them to solve problems and avoid danger. Children who participated in the study universally agreed on the relevance of the content and would suggest the app to their friends. Participants also indicated that they use the app on a long-term base for support with family reunification, the asylum process, etc.

Source: *Missing Children Europe*



3.6. DETENTION AND ALTERNATIVES TO DETENTION

The 2017 Communication stresses that, given the negative impact of detention on children, in line with EU law administrative detention should be used in exceptional circumstances only as a measure of last resort, for the shortest time possible, and never in prison accommodation. Where there are grounds for detention, the 2017 Communication encourages Member States to ensure and monitor the availability and accessibility of a viable range of alternatives to the administrative detention of children in migration.

The Children in Migration Report 2019 found that detention of both unaccompanied minors and minors with families is legally permitted in 14 Member States and Norway,¹⁴¹ while the latter group may also be detained in two Member States.¹⁴² Most Member States and Norway reported it was implemented only as a last resort.¹⁴³ Additionally, nearly half of the Member States and Norway provided for the detention of families with children in view of return (primarily where there is risk of absconding or non-compliance).¹⁴⁴ Three Member States also reported having strong safeguards in place to protect the well-being of the child, such as age restrictions below which minors cannot be detained, ensuring access to legal aid and support, and implementing alternatives to detention.¹⁴⁵ In 2019, 11 Member States did not detain unaccompanied minors in view of return¹⁴⁶ and four Member States did not detain families with children.¹⁴⁷

In 2020, two-thirds of Member States and Norway reported no significant legislative or policy changes in relation to detention of children either during the asylum procedure or for the purpose of return.¹⁴⁸ The remaining Member States introduced a number of changes to the detention of minors,¹⁴⁹ such as suspending detention,¹⁵⁰

expanding the possibilities for detention for certain minors with the purpose of return¹⁵¹ and revising the procedure for accommodating minors who arrived with an adult asylum seeker who was detained.¹⁵²

In Belgium, irregularly staying families with children could no longer be detained in the closed family units while awaiting repatriation. In the Netherlands, the detention period for a specific group of unaccompanied minors was increased (from two) to four weeks (see Boxes 11 and 12 below).

Box 11: Suspension of detention - Belgium

The new Belgian Government stated in its Coalition Agreement of 30 September 2020 that minors, both accompanied and unaccompanied, could not be detained in closed centres. This was also explicitly mentioned by the State Secretary for Asylum and Migration in his General Policy Note on Asylum and Migration of 4 November 2020.

This is in line with a judgement of the Council of State which already partially suspended the detention of irregularly staying families with children in the closed family units in April 2019, meaning that they could no longer be detained while awaiting repatriation.

Nevertheless, the practice of return homes or housing units and other possible alternatives to detention for families with children without legal residence in Belgium will be evaluated and possibly expanded to ensure that (forced) return remains an option for this target group.¹⁵³

140 Moore, S.H. & Donagiorgio, D.G. 'Navigating Digital Resources; Meet Miniila For Young Migrants In Transit Across Europe' (2021), <https://drive.google.com/file/d/1FX-8vNuzRyDbk5b3VTx6NpqBX6hG3xweT/view?usp=sharing>, last accessed on 6 December 2021.

141 AT, CZ, DE, EE, FI, HR, LT, LU, LV, MT, NL, PL, SE, SI, NO.

142 BE (a judgment of the Council of State saw the use of detention of families with minors suspended since 4 April 2019), FR.

143 AT, CZ, DE, EE, FI, HR, LT, LU, LV, MT, NL, PL, SE, SI, NO.

144 AT, BE, DE, EE, FI, FR, HR, LV, LT, LU, NL, SE, NO.

145 AT, CZ, FI.

146 BE, BG, CY, EE, ES, FR, IE (children cannot be detained for immigration-related purposes by law in IE), IT, PL, PT, SK. Although they allow for the detention of unaccompanied minors by law, in EE, LT, LU and MT this rarely happens in practice.

147 CY, ES, IE, IT. For more information, please see: EMN, 'Children in Migration: Report on the state of implementation in 2019 of the European Commission Communication on the protection of children in migration from 2017', 2021. Previously, progress made in the implementation of the Communication was mapped by two informal groups of experts in the Directorate-General for Migration and Home Affairs (DG HOME) and the Directorate-General for Justice and Consumers (DG JUST) of the European Commission.

148 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.

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

150 BE.

151 NL.

152 LV.

153 General Policy Note, State Secretary for Asylum Policy and Migration and National Lottery, DOC 55 1580/014, 4 November 2020, p. 35.

As a result, a first study into alternatives to detention, regardless of the category or status of foreign nationals, whether minors or not, was carried out by the Immigration Office in December 2020. The proposals were submitted to the State Secretary for Asylum and Migration and are the subject of further research into feasibility, costs and effectiveness.

Source: EMN Belgium

Box 12: Preventing unaccompanied minors from absconding and potentially becoming victims of exploitation as a consequence – the Netherlands.

Unaccompanied minors are sent to the asylum registration desk in Ter Apel after being found during surveillance, irrespective of whether they want to apply for asylum or not. After their arrival, many abscond, often because they do not want to apply for asylum, or because they would have been eligible for return and reunification with their parents in the country of origin.¹⁵⁴

On 27 March 2020, a change was made to Paragraph A5/2.4 of the Aliens Act Implementation Guidelines with regard to the expansion of situations in which unaccompanied minors can be placed in detention for the purpose of return. Detention in the Netherlands is (by a national cap on the Receptions Conditions Directive and Return Directive) limited to situations where the unaccompanied minor was either 1) suspected of or convicted of a crime, 2) had effectively absconded previously or 3) could be removed within 2 weeks. The timeframe of 2 weeks – extended to 4 weeks when an unaccompanied minor is apprehended for the first time – proved too short even if the identity of the minor was available upon apprehension, mostly due to the necessary safeguards that need to be in place when returning a minor.¹⁵⁵

Source: EMN the Netherlands

As a new development launched in 2020, the Jesuit Refugee Service in Belgium highlighted a new pilot programme aiming to reduce the use of detention in general and to end child detention for migration reasons, using an approach based on independent case management (see Box 13 below).

Box 13: Reducing the use of detention for children through the ‘Plan Together’ alternative to detention (ATD) pilot: Jesuit Refugee Service Belgium (JRS Belgium)¹⁵⁶

Plan Together is a community and rights based ATD pilot providing independent holistic case management to accompanied minors and their families who are at risk of detention¹⁵⁷ because of their undocumented status (with a target of 15 families). The pilot was launched in September 2020 in the Flanders and Brussels regions of Belgium, and will run until March 2023, with the specific objective to contribute to an overall reduction of the use of detention in general and to end child detention for reasons related to migration. The approach enables minors to stay in their familiar environment and community whilst they and their parent(s) work towards case resolution with the assistance of case managers who visit the families at their homes regularly.

Case management is tailored to the individual needs of each family member and the best interest of the children. It is not bound to a time-frame, and focusses on building a relationship of trust, empowering family resilience, and providing family members with clear and accurate information in order to explore together all options and durable solutions: i.e. legal stay in Belgium, in another EU Member State, or in their country of origin. Experience has demonstrated that stable accommodation and secure access to basic needs are essential conditions for case management to achieve its full impact.

Source: JRS Belgium

154 Parliamentary Papers II, 2018–2019, 19 637, no. 2530.

155 Government Gazette, 2020, no. 15932.

156 JRS Belgium is one of the implementers of the European Alternatives to Detention Network. In July 2020, an evaluation report on three pilots was published: European Programme for Integration and Migration (EPIM), ‘Alternatives to detention: Building a culture of cooperation. Evaluation of two-year engagement-based alternative to immigration detention pilot projects in Bulgaria, Cyprus and Poland, 2020, https://www.epim.info/wp-content/uploads/2020/07/2020-ATD-Evaluation-Report_Final.pdf, last accessed on 21 December 2021.

157 Legally undocumented families are detained in open return houses with, in practice, a restriction of movement. They are considered by an official return commission as being another form of detention.



Keeping in touch with the EMN

EMN website www.ec.europa.eu/emn

EMN LinkedIn page <https://www.linkedin.com/company/european-migration-network/>

EMN Twitter <https://twitter.com/EMNMigration>

EMN National Contact Points

Austria www.emn.at

Belgium www.emnbelgium.be

Bulgaria www.emn-bg.com

Croatia <https://emn.gov.hr/>

Cyprus www.moi.gov.cy

Czech Republic www.emncz.eu

Denmark https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/authorities/denmark_en

Estonia www.emn.ee

Finland www.emn.fi

France <https://www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM3/Le-reseau-europeen-des-migrations-REM>

Germany www.emn-germany.de

Greece <http://emn.immigration.gov.gr>

Hungary www.emnhungary.hu

Ireland www.emn.ie

Italy www.emnitalyncp.it

Latvia www.emn.lv

Lithuania www.emn.lt

Luxembourg www.emnluxembourg.lu

Malta <https://homeaffairs.gov.mt/en/mhas-information/emn/pages/european-migration-network.aspx>

Netherlands www.emnnetherlands.nl

Poland www.emn.gov.pl

Portugal <http://rem.sef.pt>

Romania www.mai.gov.ro

Slovak Republic www.emn.sk

Slovenia www.emm.si

Spain <http://extranjeros.empleo.gob.es/en/redeuropeamigracion>

Sweden www.emnsweden.se

Norway www.emnnorway.no

Georgia <https://migration.commission.ge>

Republic of Moldova <http://bma.gov.md/en>