

PROTECTION OF CHILDREN IN MIGRATION IN MEMBER STATES AND NORWAY – STATE OF PLAY IN 2019

EMN INFORM

2021

In 2017, the European Commission published a *Communication on the protection of children in migration*.¹ This 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 EU and national levels. This Inform summarises the results of the 2019 Report on the state of implementation of

the Communication on the protection of children in migration. It maps the progress made by EU Member States and Norway as regards the recommended actions laid down in the Communication. Additional material was contributed by NGOs,² at the request of the European Commission, and based on recent research on relevant topics.



KEY POINTS TO NOTE

- In line with the 2017 Communication, European Union (EU) Member States and Norway set in place rules to ensure that an official with adequate training in dealing with children is present during the identification and registration procedure of minors and provide special training to border guards/police authorities to identify minors and victims of trafficking.
- The majority of Member States and Norway accommodate families with children applying for asylum in general reception facilities for asylum seekers, while unaccompanied children are usually accommodated in special reception centres.
- While most Member States provide for the appointment or designation of a guardian or representative to unaccompanied minors recorded within the asylum system, half also provide for the appointment or designation of representatives for unaccompanied minors who are not applying for asylum but are recorded within other migration procedures.
- Detention of unaccompanied minors and minors with families is legally permitted in several EU Member States, although this is reportedly only implemented as a last resort and under strong safeguards to protect the wellbeing of the child.
- Member States generally do not have a specific policy or strategy for the integration of minors of a migrant background. However, national programmes promoting the integration of migrant children through sport and other leisure or cultural activities are implemented in some Member States, and new developments were reported in 2019 in relation to the integration of minors.
- Member States collected different types of data in relation to children in migration. All Member States and Norway collect data on the number of children applying for asylum, as well as their age and nationality. Disaggregated data on whether children are accompanied or unaccompanied, their gender and place of reception are not available in all Member States.
- In 2019, less than half of the Member States made use of EU funding (mostly from the Asylum, Migration and Integration Fund (AMIF)) for programmes prioritising the protection of unaccompanied children and/or families with children.
- Non-governmental organisation (NGO) research points to remaining challenges and gaps in the practical implementation of legislation and policies to protect children in migration across the EU, (i.e. guardianship, identification of unaccompanied minors, and minors who are victims of trafficking).

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

2 The following NGOs provided input for this Report: Missing Children Europe, European Network on Statelessness, Red Cross EU Office, Danish Refugee Council (DRC), Defence for Children International Belgium, Project Play, PICUM, and Refugee Rights Europe..

SCOPE AND AIMS OF THE STUDY

This Report³ maps the progress made by EU Member States and Norway in 2019 in the implementation of the recommended actions laid down in the 2017 *Commission Communication on the protection of children in migration*,⁴ with a view to further understanding progress made in the implementation of the Communication's recommendations. The scope of this Report is limited to migrant children in the categories set out in the 2017 Communication:

- Accompanied minors/families with children.⁵
- Separated children.⁶
- Unaccompanied minors, including those:⁷
 - 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.

There is a distinction between the latter two categories but they may overlap and the terms may be used interchangeably (e.g. in Finland, an asylum-seeking child accompanied by other adult family members is considered an unaccompanied minor).

The Report reflects the legislation, policies and practices in place in Member States and Norway from 1 January to 31 December 2019.

METHOD AND ANALYSIS

The Report was prepared on the basis of national contributions from 26 European Migration Network (EMN) National Contact Points (NCPs),⁸ submitted in response to a questionnaire developed by the EMN in conjunction with the European Commission. The questionnaire was developed to facilitate comparability of the information collected from the participating national authorities. National contributions from the 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, policy and practice frameworks that the Member States and Norway have put in place, rather than how these frameworks are implemented.

Additional material was contributed by NGOs,⁹ at the request of the European Commission, and based on recent research on relevant topics. These contributions illustrate some of the challenges in protecting children in migration and the impacts of these challenges, as experienced by children.

SWIFT AND COMPREHENSIVE IDENTIFICATION AND PROTECTION

As the 2017 Communication points out, migrant children crossing borders may come into contact with different Member State authorities and they must always be identified and registered as children. They should be prioritised in all border-related procedures and receive adequate support from specially trained staff, who should apply child-friendly and gender-sensitive approaches to biometric data collection. As well as applying special safeguards for all children, the Communication states that Member States should pay special attention to the specific vulnerabilities and protection needs of unaccompanied and separated children, who may be at a higher risk of exploitation and trafficking. The identification of a person as

a minor is crucial, as it can influence subsequent applicable procedures and treatment, including the types of support offered, additional procedural guarantees, and type of reception conditions provided.

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.

In most Member States,¹⁰ border guards/police authorities receive special training to identify minors and victims of trafficking. In general, these authorities establish the identity of the minor and register their presence in the country, then refer them to child protection authorities.

3 The European Commission invited the EMN to develop the Children in Migration Report for the first time in 2019. In the past two years, 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.

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

5 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 (Source: Qualification Directive 2011/95/EU – inferred from the definition of unaccompanied minor in Article 2(1) – see below).

6 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).

7 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 (Source: Article 2(l) of 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, OJ L 337, 20.12.2011, pp. 9-26).

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

9 The following NGOs provided input for this Report: Missing Children Europe, European Network on Statelessness, Red Cross EU Office, Danish Refugee Council (DRC), Defence for Children International Belgium, Project Play, PICUM, and Refugee Rights Europe.

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

Member States reported that officials who perform the identification and registration of minors are required to collect biometric data in a child-friendly and gender-sensitive manner. In line with the current EU *acquis*, particularly the Eurodac Regulation,¹¹ Member States do not take the fingerprints of applicants for international protection if they are less than 14 years of age, nor do some Member States take photographs of children younger than 14 years.

Some Member States reported specific efforts to create a child-friendly atmosphere during the identification and registration process, for example police wearing plain clothing rather than uniforms, or giving children time to get used to their surroundings.¹² Border/police authorities generally take the vulnerability and gender of child applicants into consideration when collecting biometric data, for example by ensuring that both female and male staff are present.



PROVIDING ADEQUATE RECEPTION

The 2017 Communication provides that reception conditions should be in line with the EU *acquis*, with reception conditions to include not only safe and appropriate accommodation, but also any necessary support services to secure the child's best interests and wellbeing, such as: independent representation, access to education, health-care, psychosocial support, leisure and integration-related measures.

Practices and frameworks to provide adequate reception for families with children and for unaccompanied minors vary. The majority of the Member States and Norway accommodate families with children applying for asylum in general reception facilities for asylum seekers,¹³ while

unaccompanied minors are usually accommodated in special reception centres.¹⁴ However, most Member States foresee that vulnerabilities are assessed promptly, that they follow the best interests of the child and put in place the required safeguards to guarantee the wellbeing of the child.¹⁵ All Member States aim to ensure that staff are properly trained and that there is ongoing monitoring of the quality of services and facilities. Overall, Member States reported that the measures put in place correspond to the 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.



ENSURING SWIFT AND EFFECTIVE ACCESS TO STATUS DETERMINATION PROCEDURES AND PROCEDURAL SAFEGUARDS

In its 2017 Communication, the Commission recommended that Member States focus their efforts in a number of areas, including strengthening guardianship authorities/institutions to ensure swift appointment of guardians for all unaccompanied minors, and implementing reliable multi-disciplinary and non-invasive age assessment procedures. In addition, the Commission underlined the importance of ensuring swift and effective family tracing, within or outside the EU, by making full use of existing cross-border cooperation channels. Finally, the Communication recommended that priority be given to cases concerning minors in line with the urgency principle (e.g. asylum applications),¹⁶ as well as to the relocation of unaccompanied minors from Greece and Italy.

Member States' legislation provides for the appointment or designation of a custodian to unaccompanied minors, either in the form of a guardian¹⁷ or a representative.¹⁸ While Member States provide for such appointment or

designation for unaccompanied minors recorded within the asylum system, half also provide for the appointment or designation of representatives for unaccompanied minors who are not applying for asylum but are recorded within other migration procedures.¹⁹

Concerning procedural safeguards, most Member States reported implementing procedures or measures to provide information in a child-friendly manner.²⁰ Most Member States and Norway prioritise²¹ and/or fast-track²² applications for international protection of unaccompanied minors.

In terms of age assessment, most countries' legislation foresees medical examination for the purpose of age assessment only after all other methods and procedures have been exhausted and the age of the individual is still not determined.²³

11 Eurodac Regulation No 603/2013.

12 EE, IE, MT, NL.

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

14 BE (only during the initial stay in the Observation and Orientation Centres for unaccompanied minors), CY, CZ, DE, EL, ES, FI, HR (only for unaccompanied minors above the age of 16 who are applicants for international protection and can be accommodated in general facilities for applicants of international protection; all other children are housed within the child welfare system), IT, LT, LU, NL, PT, SE, SI, SK and NO.

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

16 The Council of Europe Guidelines on child-friendly justice state that children's status determination procedures should be prioritised (the 'urgency principle'). For more information, see: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3

17 BE, CY, CZ, DE, EE, ES, FI (for unaccompanied minors applying for a residence permit), FR, HR, IT, LT, LU, LV, NL, PL, PT, SE, SK and NO.

18 BG, EL, FI, HU, IE, LU, LV, PT.

19 BE, BG, CY, CZ, DE, EE, ES, FR, HR, IE, IT, LT, LU, LV, NL, SE, SK and NO.

20 AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, EL, HR, IE, IT, LT, LU, LV, NL, PL, PT, SE, SK and NO.

21 BE, BG, CY, DE, EE, ES, FI, FR, EL, HR, IE, IT, LT, LU, LV, MT, NL, PL, SE, SI and NO.

22 BE (applies to the registration of applications), LU, PL, PT, SI.

23 BG, CY, CZ, DE, EE, FI, FR, HR, HU, IT, LV, LT, NL, PL, PT, SE, SI.



DETENTION FOR THE PURPOSE OF RETURN OF UNACCOMPANIED MINORS AND FAMILIES WITH CHILDREN

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.

Detention of unaccompanied minors and minors with families is legally permitted in several EU Member States but many reported that it is implemented only as a last resort.²⁴ Member States reported that strong safeguards are in place to protect the wellbeing of the child, including

providing age restrictions below which minors cannot be detained, ensuring access to legal aid and support, and implementing alternatives to detention. Examples of Member States' alternatives to detention include the obligation to remain in a specified location or the duty to report regularly to reception centres, migration authorities or the police.

Voluntary return is possible in almost all Member States²⁵ and Norway and they reported measures to ensure that voluntary return respects the best interests of the child. Finally, the forced removal of unaccompanied minors is legally permissible in 10 EU Member States and Norway,²⁶ but only as a very last resort and in special circumstances.



ENSURING DURABLE SOLUTIONS

The 2017 Communication states that the identification of durable solutions²⁷ should explore all possible options, including integration in the host country and resettlement, but also family reunification and return to the country of origin.

The 2017 Communication further highlights the importance of early integration to support children's development into adulthood, particularly through education, guidance and support. It also recommends that Member States increase the use of resettlement and other legal pathways for children, particularly for the most vulnerable children, such as unaccompanied minors and separated children.

Member States generally do not have a specific policy or strategy for the integration of minors of a migrant background. Some Member States²⁸ reported that reception facilities, carers and representatives do a great deal of the work on the integration of migrant children, including

through national programmes promoting integration through sport and other leisure or cultural activities. Six Member States specifically reported new developments in relation to the integration of minors in 2019, notably provision of language training and the introduction or transformation of bodies responsible for migrant integration and the protection of minors.²⁹

Twelve Member States and Norway prioritise the resettlement of unaccompanied minors or families with children.³⁰ Several reported having quotas for resettling children, although they were not always fast-tracked in the procedure.³¹ Other Member States did not apply quotas when identifying refugees for resettlement, although in practice they may prioritise the arrival of families with children (e.g. Finland). One-third of Member States did not prioritise or implement the resettlement of unaccompanied minors or families with children in 2019.³²



TRANSITION INTO ADULTHOOD

There is no legal framework in EU or international law covering the specific situation of unaccompanied minors turning 18 years of age. The 2017 Commission Communication encouraged Member States to provide guidance, support and opportunities for continuing education and training to children in that transitional phase, particularly migrant children in State care.

Generally, when unaccompanied children reach the age of majority, they are required to leave the child protection

system (i.e. childcare facilities and guardianship system). However, some Member States allow those who turn 18 to stay in their care placement or in child-specific accommodation until they finish the school year, and in some cases, until they complete their vocational training or higher education studies.³³

Twenty Member States and Norway provide support in the transition to adulthood for unaccompanied children recorded within the asylum procedure,³⁴ while 13 do

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

25 AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, EL, HR, IT, LT, LU, LV, MT, NL, PT, SE, SI, SK.

26 AT, DE, EE, FI, HR, LU, LV, NL, PL, SE and NO.

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

28 BE, BG, CZ, EL, FI, IE, IT, NL, PT, SE, SI, SK.

29 BG, CY, EE, EL, IT, LV.

30 BE, BG, EE, FR, HR, IE, IT, LU, LV, MT, PT, SE and NO.

31 BE, SE and NO.

32 AT, CY, CZ, DE, EL, ES, PL, SK, SE.

33 CZ, EE, IE, IT, PL, SK.

34 BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, IT, LT, MT, NL, PL, PT, SE, SK and NO.

so for unaccompanied children in other migration procedures, who are legal residents in the country.³⁵ The duration and type of support provided varies between the

Member States but most often includes support in finding accommodation, educational assistance, psychosocial support and financial assistance.

CROSS-CUTTING ISSUES

The 2017 Communication highlights that data on migrant children are very fragmented and not always comparable, hindering the identification of children's needs. The Commission encouraged Member States to collect more detailed and disaggregated data on children in migration to inform policy development and make better use of child support services.

The type of data collected on children in migration varies between Member States and for the different categories of children. For example, all Member States and Norway collect data on the number of children applying for asylum, while only 18 Member States and Norway collected disaggregated data on whether children are accompanied or unaccompanied.³⁶ Similarly, most Member States

reported collecting data on age³⁷ and nationality,³⁸ with fewer gathering data on gender³⁹ and place of reception or care placement in the Member State.⁴⁰ Eleven Member States collect data on children who go missing or abscond from reception and care facilities.⁴¹ Five Member States⁴² have implemented centralised systems for the collection of data on unaccompanied children.

In 2019, less than half of the Member States made use of EU funding (primarily from AMIF) for programmes prioritising the protection of unaccompanied children and/or families with children.⁴³ Some of the areas where EU funding was used included integration, reception, mental health support and the provision of training for professionals working with migrant children.

FULL PUBLICATION

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https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/reports/studies_en

35 BE, BG, CY, CZ, DE, EE, ES, FR, HR, IE, IT, NL, SK.

36 AT, BE, BG, EE, FI, FR, HR, IE, IT, LT, LU, MT, NL, PL, PT, SE, SI, SK and NO.

37 AT, BE, BG, CY, CZ, EE, EL, FI, HR, IE, IT, LV, LT, LU, MT, NL, PL, SE, SI, SK.

38 AT, BE, BG, CY, CZ, EE, EL, FI, HR, IE, LV, IT, LT, LU, MT, NL, PL, SE, SI, SK.

39 BE, BG, CY, EE, EL, FI, HR, IE, IT, LV, LT, LU, MT, NL, SE, SI, SK.

40 BE, BG, CY, CZ, EE, EL, HR, IE, IT, LV, NL, PL, SE.

41 BE, CY, CZ, EE, EL, FI, IE, IT, LU, NL, SE.

42 ES, FI, FR, IT, SE.

43 BE, BG, CY, EE, EL, ES, FI, FR, IT, NL, PL, SE, SK.



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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