



Approfondimento n. 4/luglio 2020

Unaccompanied Minors (UAMS) in the European Union

a cura di

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Con il sostegno di



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Contents

Introduction	3
Key Definitions	3
Best Interests of the Child	4
International Protection (and lack thereof) for UAMs in the EU	7
Guarantees of the Member States	9
Guardianship	9
Accommodation Arrangements.....	9
Integration (Healthcare/Education)	10
Family Reunification	10
Phenomenon of Missing Unaccompanied Minors in the EU	12
Post-Brexit United Kingdom and UAMs	13
EU Relocation of UAMs in Greece	13
Conclusion	14
References	16

Introduction

Every year, thousands of unaccompanied children flee dangerous situations in their home countries and arrive at the borders of the European Union with the desperate hopes of finding security in a new life. These children are amongst the most vulnerable groups of people migrating across the globe, suffering hardships such as physical abuse, sexual abuse, or trafficking. They deserve to be recognized as children first and asylum-seekers second. To properly adhere to the numerous internationally recognized human rights laws, it is required that the EU ensures, through legal action, that every unaccompanied minor that arrives to its borders receives appropriate protection to the fullest extent.

In 2019, there were about 613,000 first-time asylum applicants in the European Union's 27 Member States. Out of this number, around 13,800 asylum seekers were considered to be unaccompanied minors (UAMs) in the EU (Fig. 1), which is nearly 20% fewer than in 2018 (16,800), continuing the downward trend that started after the peak year 2015 (92,000). According to this data, the highest number of asylum applicants considered to be unaccompanied minors in 2019 was registered in Greece at 3,300. In the same year Germany registered 2,700, Belgium registered 1,200, and the Netherlands registered 1,000. The majority of UAMs seeking asylum have arrived from Afghanistan, but large numbers have also travelled from Syria, Pakistan, Iraq, Guinea, and Somalia.¹

This report will examine the laws and regulations created by the UN as well as those of the governing bodies of the European Union that apply to the general rights of children and, more specifically, the rights of unaccompanied minors as they migrate to the territories of EU Member States. It will also briefly explain how the different States apply (or do not apply) said legislation. Because of the particular vulnerability of the unaccompanied minors, it is essential to recognize the separation of this group of people from the greater discussion of migration into the European Union. Specialized research and attention to the phenomenon of UAMs in the European Union will allow for an accurate determination of which steps are necessary to take in order to protect the children and ideally lead to the production of more comprehensive legislation defending all of their rights.

Key Definitions

As most recently stated by the European Union in [Article 2\(I\) of Directive 2011/95/EU \(Recast Qualification Directive\)](#), an **unaccompanied minor (UAM)** in the European Union is a “*minor who arrives on the territory of an EU Member unaccompanied by the adult responsible for them by law or by the 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.*”

It should be noted, however, that UAMs are considered a special case related to migration, the asylum process, and other forms of international protection once arriving in the European Union. They are included within the category “**most vulnerable**” – “*when implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such*

¹2020 Eurostat on UAMs, April 2020, available at <https://ec.europa.eu/eurostat/documents/2995521/10774034/3-28042020-AP-EN.pdf/03c694ba-9a9b-1a50-c9f4-29db665221a8>

as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.”²

- Because of the status as an unaccompanied minor and the lack of guardianship, the child is highly susceptible to danger (sex trafficking, physical violence, mental illness, physical illness, smugglers, etc.) upon entering a new country and seeking asylum.
- As a “vulnerable person”, a UAM identified by the Member State is granted, by law, special treatment and protection regarding the asylum process. It is important to put the status of vulnerability above that of “immigrant” in order to give correct legal attention to UAMs.

It should also be noted that although the European Union has created several directives and regulations regarding the migration and asylum processes of UAMs with the goal of a uniform application across the continent, individual Member States have applied directives or regulations differently. In 2010, the European Commission created a document entitled [“Action Plan on Unaccompanied Minors \(2010-2014\)”](#) as an attempt to create a comprehensive and adaptable framework for EU Member States that addressed necessary protection for UAMs that enter the EU. The plan outlines the idea that an unaccompanied minor should be taken by competent authorities in an appropriate amount of time from the moment the child is found on EU territory or EU borders. It is constructed of ten principles to help guide EU institutions and Member States in their approach towards unaccompanied children as they arrive in the future. Because the Action Plan is not a binding act but a starting point for a further discussion by EU institutions and Member States, many EU members still lack specific laws or a comprehensive framework in their respective states that explicitly outline the special need for protection of unaccompanied minors.

More recently, however, in 2017, Italy passed the Zampa Law (law n. 47/17) and became the first European country to create a structured framework within the legislation that would actively protect UAMs that entered the country.³ Whether it proves effective or not, the Zampa Law could serve as the model for other EU countries to follow if they have plans to pass future legislation protecting unaccompanied minors as the phenomenon of child migration continues.⁴

Best Interests of the Child

Because migration experiences all over the world are unique for each child and affect children in different ways physically, mentally, emotionally, etc., the concept of Best Interest of the Child (BIC) does not have a universal definition or criteria. There is no detailed definition; it depends on the context of the child’s personal situation as well as the context of the legislation in which it

²[Article 20\(I\) of Directive 2011/95/EU \(Recast Qualification Directive\)](#)

³EU FRA Agency, Guardianship for unaccompanied children in Italy, 2017 <https://fra.europa.eu/en/news/2018/innovative-italian-legislation-updates-approach-guardianship>

⁴J. Lelliott, Italy’s ‘Zampa’ law: increasing protection for unaccompanied children, February 2018, available at: <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/syria2018/lelliott.pdf>

is cited. Although this concept does not exclusively apply to the phenomenon of international migration of minors, more specifically, unaccompanied minors, it is crucial to understand the framework regarding the rights of children and their best interest since the ultimate goal is to provide proper, secure care for a child in *any* situation.

With this in mind, BIC is rooted in the [United Nation's Convention on the Rights of the Child \(CRC\)](#) of 1990. Article 3(1) states that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the *best interests of the child* shall be a primary consideration.” Since the publication of this document, however, the concept has been reviewed and updated by the UN to encourage a deeper reflection by the other governing bodies of the international community. The concept of BIC is echoed in the 2012 publication of the [Charter Of Fundamental Rights Of The European Union](#) in Article 24, paragraph 2. Similar to the 1990 document of the CRC, this charter states that “in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.”

Additionally, in 2013, the United Nation's Committee on the Rights of the Children of the Convention on the Rights of the Child, published the [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#), which outlines, in both the public and private spheres, the requirements that are necessary for a child's best interest to be taken as a priority. The Committee proposes that a child's best interest is a threefold concept: **the substantive right**, which ensures that best interest will be a priority in the development of a child, **the fundamental, interpretive legal principle**, which explains that any legal action taken on behalf of a child must serve his or her best interest, and finally the **rule of procedure**, which states that any decision-making process that includes the life of a child or a group of children must center the idea of best interest and assess any positive or negative outcomes that could result from the decision.

This document details the requirements that must be considered when making any best interest decisions (BID) or best interest assessments (BIA) regarding the future of a child that is in the custody of any legal service, this absolutely includes UAMs. Any decisions must be rooted in the idea that “the concept of the child's best interests is complex and its content must be determined on a case-by-case basis.”⁵ Accordingly, the child's best interests are not what one person considers best for a child but what *objectively* secures fully and effective protection for the child.

- Among the elements to be taken into account are the child's views; the child's identity; preservation of the family environment, and maintaining family relations; the child's care, protection, and safety; situations of vulnerability; the child's right to health or the child's right to education.⁶
 - The full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.⁷

⁵Committee on the Rights of the Children, General Comment No. 14, (2013)

⁶Ibidem.

⁷Ibidem.

Another vital soft law document related to the Best Interest Concept is the UNHCR Executive Committee Conclusion n. 107. Together with the CRC's General Comment n. 14, this document can be used as an interpretative instrument in regard to BIC. In 2018, the UNHCR also published guidelines on assessing and determining the Best Interest of the Child and specifies the steps that UNHCR operators must take to ensure that this principle is upheld.

It is crucial that every child systematically experiences a Best Interest Assessment (BIA)⁸ and, in specific cases, a Best Interest Determination (BID)⁹ may be more appropriate. The BIA occurs in the following cases: initiating family tracing, providing temporary care, initiating family reunification, implementing durable solutions for separated children, resettling a child with only one parent, and developing care plans for children at risk.¹⁰ In the case that a UAM is not to be reunified with a parent or legal/customary caregiver, the UNHCR suggests a BID instead of a BIA. It should be noted that the UNHCR considers young adults (from 18 to 21) in certain cases (as for example the short arrival in the host Country) as subject to BIA.

The European Union itself has several principles surrounding the legal regulation of the best interest of unaccompanied minors. For example, regulations such as the Dublin III Regulation or the EURODAC Regulation, and directives such as the Qualification Directive or the Return Directive, all have explicit language stating the importance of the BIC. Individual Member States within the EU, however, can still approach the concept of BIC discretionally and produce (or fail to produce) separate legislation or provisions relative to BIC and unaccompanied minors.

According to the [EU Synthesis Report of 2018](#), which details the action taken by the EU and Norway regarding UAMs following their status determination, all Member States consider the best interest of an unaccompanied minor when it comes to their care and protection, but only six Member States (**Belgium, Denmark, Czech Republic, Finland, France, Latvia, and the Netherlands**) in 2018 had policy procedures in place to determine best interest of UAM in regard to their individual care. In the context of integration, most States (**Belgium, Bulgaria, Denmark, Estonia, Croatia, Finland, France, Hungary, Iceland, Italy, Lithuania, Latvia, Netherlands, Portugal, Slovenia, Sweden, Slovakia, and Norway**) pointed to the fact that the BIC principle is laid out in their own constitution or national legislation. It should be noted, however, these are not necessarily specific to the integration of unaccompanied minors and/or apply equally to all foreign minors. Six States (**Austria, Belgium, Finland, Latvia, Netherlands, and Poland**) pointed to the special responsibility of the legal guardian of the unaccompanied minor in ensuring that the best interests of the child are adhered to. In regard to returning children, in the assessment of the best interests of the child, several Member States (**Austria, Belgium, Czech Republic, Estonia, Spain, Finland, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Slovenia, Sweden, Poland, and Norway**) adopted different procedures, which include legal or policy provisions mandating the obligation to assess the best interests of the child.

⁸ According to UNHCR: *BIA is an assessment made by staff taking action with regard to individual children, except when a BID is required, designed to ensure that such action gives a primary consideration to the child's best interests. The assessment can be done alone or in consultation with others by staff with the required expertise and requires the participation of the child.*

⁹ According to UNHCR: *BID is describes the formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option.*

¹⁰ UNHCR, Guidelines for the assessment and Determination of best interest, 2018, pg. 44

Since the idea of BIC is susceptible to the influence of subjective judgement by nature, individual governments can interpret the principle in ways to fit the frame of their already established laws rather than establish a specific procedure to assess the BIC; results differ immensely from state to state. This variation between laws amongst Member States often results in the failure to keep the best interest of a child at the forefront, which is hazardous to the futures of the unaccompanied minors that continue to seek refuge in the European Union. Take the process of integration as mentioned above, for example. Many States claim to have framework protecting the best interest of children but do so without explicitly mentioning UAMs. Is this really defending the rights UAMs and keeping the BIC at the forefront if their specific vulnerabilities are not even mentioned in the legal framework? Lithuania notes an action plan that respects the BIC in integration and that the procedure was the same for all unaccompanied minors, regardless of their status. In the UK, back when it was still a Member State, did not generally believe that the best interests of a UAM was to stay in the country, therefore integration procedures do not have a place in an action plan.¹¹

The lack of coordination between EU Member States especially affects the ability properly assess the BIC. As reported by UNHCR in 2017¹², it is not clear in the Dublin procedures which State is the most competent to value the BIC in each specific case. The EU Court of Justice has ruled that the BIC must be taken into consideration in cases where the child has moved from the first EU State of arrival and asked for international protection in a second EU State. The vulnerability of the child must be taken into account to avoid the transfer of the UAM from the State in which he was at the moment of the initial ruling.¹³ The BIC procedures often fail consider the children's voices and opinions. Many States have internal methods to assess BIC, but often only take second-hand information from written reports rather than directly from the child.

International Protection (and lack thereof) for UAMs in the EU

Under the laws regarding the rights of refugees set forth by the UNHCR during the Geneva Convention in 1951, seeking asylum is an international right. To ensure the right to asylum is protected in the EU, an area with several open internal borders and large numbers of refugees passing these borders every year, it is crucial that a uniform set of laws regarding the asylum process is properly developed. Beginning in the year 1999 the EU established the Common European Asylum System (CEAS) and has been working, as the number of migrants arriving at

¹¹ [EU Synthesis Report of 2018](#) pg. 31

¹² UNHCR, *Left in a Limbo*, 2017 pg. 82 *"Effective cooperation between Member States in the assessment of the best interests of children in Dublin procedures are essential. To this end, appropriate SOPs should be put in place. Whilst in the interim EASO's existing guidance and Network of Dublin Units could be utilized and built upon to enhance common understanding and inter-state cooperation, depending on the recast of the Dublin Regulation, the new EU Agency for Asylum (EUAA), should be entrusted with providing appropriate guidance to be applied in all Member States to ensure a consistent and effective implementation of the provisions of the Dublin Regulation. Additionally, further guidance could be provided in the Implementing Regulation and Delegated Acts."*

¹³ *MA, BT, DA v. Secretary of State for the Home Department*, C-648/11, Court of Justice of the European Union, 6 June 2013, available at: <http://www.refworld.org/docid/51b0785e4.html>

EU borders continues to rise, to strengthen the framework within the system and create a “joint approach to guarantee high standards of protection for refugees” throughout the entire EU.¹⁴

Due to these standards across the continent, UAMs must also have the right to seek asylum from the time he or she may arrive at and enter into the borders of the European Union. Since the creation of CEAS, there have been a number of EU laws enacted that detail asylum and international protection processes and include a specific mention of the protection of UAMs.

- **Dublin III Regulation**
- **Qualification Directive**
- **Reception Conditions Directive**
- **Asylum Procedures Directive**
- **EURODAC Regulation**

Minors have the right to representation in the process of applying for asylum and they are required to remain in the country until a decision is made regarding his or her status. They are entitled to living in reception centers and detention centers should only be utilized as a last resort. If children qualify for refugee status and they have been granted this protection, they receive a residence permit and special travel documents. Additionally, they have access to EU education, and health care. They also have the right to family reunification under certain circumstances. If a minor does not qualify for refugee status, he or she may be granted subsidiary status if they are in great risk of danger upon returning to their home country.¹⁵

Unfortunately, even though these laws are in place to establish a uniform system to protect children and grant asylum to UAMs across the EU, there are still a number of inequalities amongst the Member States in regard the guaranteed protection for *all* UAMs. For example, one of the most prominent issues that is hindering protection for many children that enter the EU is the difference of treatment between the UAMs actively seeking asylum and those who are not. As mentioned before, UAMs have the right to seek international protection, and should have all the rights granted by the CRC. Under the current laws, however, only UAMs actually going through the process of seeking asylum benefit from these rights. Those not seeking asylum, are basically neglected and it is highly possible that Member States will find the means to remove them under the framework of the Returns Directive.¹⁶ Some Member States even give different living accommodations to the UAMs seeking refuge and to the UAMs who are not. Many UN and EU laws disregard the UAMs that are not seeking asylum and only outline the rights of children if they are a) seeking asylum or b) granted refugee status. What happens to those stuck in between? Do they not deserve the same rights? Neglect of these children by the EU legislation creates a sub-category of UAMs that may be even more vulnerable than the others and may lead to a dangerous outcome if not taken into account immediately.

¹⁴https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en

¹⁵<https://www.loc.gov/law/help/unaccompanied-children/status-of-unaccompanied-children-arriving-at-the-eu-borders.pdf>

¹⁶<https://www.statewatch.org/news/2010/oct/eu-unaccompanied-minors-asylum-and-immigration-legislation-Marie-Diop.pdf>

Guarantees of the Member States

Once an UAM arrives at the borders of the EU and begins the process of seeking asylum, there are a number of amenities and guarantees to which they are entitled. These include, but are not limited to guardianship, accommodation arrangements, and integration procedures. It is important to note, however, that even though they are all subject to EU laws, not all Member States grant the same guarantees and access to certain services can vary greatly depending on the country the UAM enters upon arrival.

Guardianship

According to the EU Synthesis Report of 2018, most Member States provide a guardian and/or representative, usually through court order, as the minor enters the EU. This usually applies to both UAMs seeking asylum and not seeking asylum. There are different types of guardians appointed to UAMs that can carry out different roles. The types often include representatives from child welfare offices or a foster parent. It is important to give a UAM a guardian in a timely manner, but there is not required time-frame mandated across all Member States. For example, Belgium appoints a guardian as soon as the UAMs identity and age are confirmed.¹⁷ Other Member States may wait until the child arrives at the reception facility to appoint a guardian. In Lithuania, temporary guardianship is given within three days of UAM arrival.¹⁸ It is important to note that guardianship standards across Member States are flawed and there are many holes in the framework applied in several countries. This is due to phenomena such as the lack of eligible guardians that are available to help UAMs on an individual basis or a lack of training of guardians that clarifies expectations of the roles.¹⁹ Once the UAM turns 18, he or she is considered an adult, and loses the right to a guardian. This is often a difficult process because in many cases, guardians are not taught how to properly support the UAM in his or her transition into adulthood.

Accommodation Arrangements

In line with EU laws, almost all Member States provide similar accommodation for UAMs, no matter what their current status is in regard to international protection, however, Austria, Belgium, Finland, Hungary, and Poland, apply different accommodation arrangements to asylum-seeking UAMs and UAMs that are not seeking asylum. One example includes Austria's law that grants access to the country's welfare system, but only after a UAM has gained the proper status.²⁰ Many Member States have separate accommodations for victims of trafficking because they may need more attention than other UAMs in regard to amenities such as psychological support. In the case of Greece, where there has been an influx of UAMs in the past five years, accommodation has more challenges than the average Member State. The conditions of the overwhelmed reception centers or other accommodation facilities are often insufficient, which could potentially prove harmful for the UAMs, especially in the wake of a pandemic. If the BIC concept is to be properly applied in all situations, many of these accommodation arrangements will need serious improvement in the near future.

¹⁷[EU Synthesis Report of 2018](#)pg 27

¹⁸*Ibidem.*

¹⁹*Ibidem.*

²⁰[EU Synthesis Report of 2018](#)pg 22

Integration (Healthcare/Education)

Unlike other the other guarantees for UAMs from EU Member States listed in this report, many countries actually have framework that explains the integration process concerning UAMs, which often includes access to healthcare and education. Unfortunately, the best interest of the children is not always taken into account when Member States enact such framework.

Asylum seeking UAMs and those who have been granted international protection have the right to access healthcare in the EU. This usually includes services such as basic and emergency medical care and counseling services. In some Member States, non-asylum seeking UAMs also have access to healthcare in the same way that nationals would, but that does not mean that they are ensured to all services available. For example, States such as Germany and Austria give UAMs automatic access to healthcare and basic welfare support.²¹ This is an uncommon phenomenon, but in Sweden, individual assessments of the UAM are made and healthcare is specialized in accordance to the needs of the child. It should be noted that even though health care is a right for UAMs, the quality of services may not always be sufficient for several different reasons. For example, a child in a smaller town may not have the same health services granted as a child living in a big city. Mental health may not be as big of a priority in the national healthcare of a country and may lack proper financial support, which could be dangerous for UAMs that have been through traumatic experience before or along their journeys.

Similar to their right to healthcare, UAMs seeking asylum also are entitled to access to education within three months of applying for asylum in every Member State under the Reception Directive. According to this directive, the education granted is supposed to be similar or equal to that of children who are nationals of the Member States. Most Member States follow these rules, but as always, there are exceptions. For example, Bulgarian law only grants education access to those with a positive decision on their asylum application. All other UAMs are to be taught by NGOs. Outside of formal schooling, Member States such as Austria, Czech Republic, Denmark, Hungary, Ireland, Italy, Malta, Netherlands, Sweden, Slovenia, Slovakia, and Norway, allow access to language classes to foster a more inclusive environment for the UAMs.²² Because education is such an important part of both integration and the personal development of a child, there is a big emphasis on granting access to the UAMS. Unfortunately, lack of specialized staff, underfunded services, language barriers, and quality of education challenge the ability for a UAM to receive the essential education to which they are entitled.

Family Reunification

In line with the rules of the [Family Reunification Directive](#) enacted in the European Union in 2003, UAMs recognized as refugees in the EU have the right to reunification with his or her family in 25 Member States, excluding Belgium and Hungary (as well as Ireland pre-Brexit). Chapter 5, article 10(3) explains that “if the refugee is an unaccompanied minor, Member States shall authorize the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line; his/her legal guardian; or any other member of the

²¹Ibidem.

²²[EU Synthesis Report of 2018](#)pg33

family where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.” Under the Dublin III Regulation, the Member State in which the UAM applied for asylum should immediately take action to find any family members if possible, keeping in mind the best interests of the child.²³

The family tracing process is an integral part of the BIA for unaccompanied children. Similar to other aspects of the phenomenon, however, there are differences in the EU Member States approach. Most of the States doesn’t have a standard operational procedure implemented nationally for family tracing according to UNHCR Guidelines. The Dublin Regulation, art. 6.4, states the importance of family tracing, but concrete collaboration among States still is not clearly and uniformly structured in the framework. In some cases, countries will even rely on the child’s knowledge on the whereabouts of his or her family to start the procedure. This approach is greatly flawed because a child that just went through the traumatic process of migrating alone to a new country will inevitably have difficulty personally locating his or her own family in another country. National authorities should already have a system in place to navigate this issue without placing all of the responsibility on the child. The Implementing Regulation (EU) No 118/2014 on establishing the presence of family members in another Member State by way of probative and circumstantial evidence provides guidance to Member States as to the means of proof and circumstantial evidence, assessing the presence of the family in another Member States.²⁴ However, according to UNHCR 2018 Report, the practical use of the 2014 act is not too common.

In recent years, in response to the influx of migrants in the EU, many Member States have made slight adjustments to their existing laws surrounding family reunification within their own territories. For example, Austria introduced a three-year waiting period between the moment the UAM is granted subsidiary protection status and the application for his or her family reunification.²⁵ In France there is a draft law that aims to facilitate the granting of a 10-year card to family members of minor refugees, including brothers and sisters of minors.²⁶ Norway introduced a clause in their national Immigration Act that allows authorities to deny the right of the unaccompanied minor’s family to migrate to Norway in “cases where family life can be exercised in a safe country which the family is generally more closely connected to, so long as the sponsor (i.e. the unaccompanied minor) can legally reside in that country.”²⁷

The family reunification process can arguably have both positive and negative consequences on UAMs. On one hand, family structures provide emotional and physical support for the child, which, in turn, may result in a more seamless integration process in school or in the community in general. On the other hand, the family tracing process is often drawn out and difficult, and long waiting periods could have a heavy emotional toll on the UAM, causing them a great deal of stress – especially if the process ends in a negative decision. The negative effects of a long procedure for family reunification fall in the high possibility of drops out: it is difficult to have faith in the regular procedure since its lack of effectiveness and efficiency. Minors could consider to take other ways to reunite with families, other than the EU legal procedure, or to abandon the fulfillment of their rights. Recently, the EU Court of Justice ruled that a UAM that attains the age of majority (18 years old) *during* the process of seeking asylum still retains the

²³ [Dublin III Regulation Article 6\(4\)](#)

²⁴ See List A and B of Annex II of the Regulation.

²⁵ [EU Synthesis Report of 2018](#) pg 37

²⁶ Ibidem.

²⁷ Ibidem.

right to family reunification within a reasonable time frame (three months of the UAM's approved refugee status) as long as they entered the country as a minor.²⁸ Considering the already vulnerable conditions for the UAM, the long refugee procedure cannot impose other negative effects on the child migrant's life.

Phenomenon of Missing Unaccompanied Minors in the EU

According to a 2020 Report by the European Migration Network (EMN) entitled "[How Do EU Member States Treat Cases Of Missing Unaccompanied Minors?](#)", the phenomenon of missing unaccompanied minors is not new in itself, but as of 2017, it is finally gaining more media attention, and therefore, more research and awareness on the topic. This is an increasing concern throughout the EU because of the particular vulnerability of UAMs, which has been mentioned throughout this report. These vulnerabilities (exploitation or trafficking) are often the very reasons for which a UAM may go missing. In other circumstances, a child may run away because of lengthy asylum procedures. There is still little available accurate data in individual Member States because measurement practices are not entirely reliable. Additionally, there is no cross-border cooperation or framework between Member States to appropriately track missing UAMs if they travel through several countries.

There is no common definition of a missing UAM in the EU, but there are several common elements that Member States have described when reporting a missing child: a) the child is missing from the reception facility, b) his or her whereabouts are unknown, c) the child is suddenly unreachable, d) the disappearance is out-of-character. The disappearance of a UAM should be treated with the same urgency and attention as a missing child of EU citizenship. Ideally, because of aforementioned vulnerabilities, a missing child should be reported by the last person that was in contact with the child before a 24-hour period passes. Different Member States take slightly different approaches to detect and return the missing children. Some countries simply use the same procedures as they would for a missing adult to find the UAMs, but others use a method specifically for finding children. Alerts are often sent out publicly to the community as well as across borders to make the greater community aware of the missing UAM.

The collection of data regarding UAMs in the EU is difficult to come by for a number of reasons. Some countries do not collect said data and some countries believe that they do not have any cases of missing UAMs. In the report conducted by the EMN, only 15 Member States were able to provide data for the years 2017-2019, and some could only provide data for one of the years in that period. For example, in Germany, there were 6,125 reported missing UAMs in 2017, the highest number of all the Member States that reported missing UAMs.²⁹ They were mostly male and over 15 years of age. Fortunately, it was also reported that out of the 6,125 missing UAMs, 6,004 were either detected or returned. The years 2018 and 2019 saw 3,928 and 2,222 missing UAMs. 3,744 were detected or returned in 2018 and 1,791 were detected or returned in 2019.³⁰

In January 2020, the Parliamentary Assembly of the Council of Europe suggested that the missing children phenomenon is due to multiple factors and States must be proactive in order to avoid the root causes and prevent future cases of disappearance. For example, criminal activities,

²⁸ EU Court of Justice 550/16 – A e S / Staatssecretaris van Veiligheid, 12 April 2018.

²⁹ http://www.emnitalyncp.it/wp-content/uploads/2020/04/Inform_missing-UAM_final.pdfpg 22

³⁰ Ibidem.

sub-standard reception conditions, fear of detention, repatriation or summary *refoulement*, and the absence of guardianship name are common factors explaining the disappearance of children hoping to reach their dream destination either alone or in a small group.³¹

Post-Brexit United Kingdom and UAMs

As of January 2020, the UK Government voted against the Dubs Amendment to the Brexit Bill that would have ensured the UK continues to allow unaccompanied child refugees in Europe to reunite with family members in the UK after Brexit is completed. The Dubs Amendment provided a safe and legal route for UAMs to be reunited with relatives in the UK, which ultimately reduced the risk of trafficking or smugglers, which are harmful to UAMs safety. As of now, there is no clear proposal by the UK government to renegotiate this amendment, or something similar, with the governing bodies of the EU.³² The Dubs Amendment is one the best examples of a bilateral agreement implemented by Member States to facilitate family reunion according to human rights conventions such as the European Convention for Human Rights (see art. 8). In particular, the Dubs Amendment has enabled French-UK cooperation for the relocation and family reunion of UAMs in the emergency situation of Calais³³, but also Greece-UK cooperation in similar difficult conditions. The UK's Independent Anti-Slavery Commissioner has explained that the Dubs Amendment "opened up an important and safe legal route to refuge in the UK for unaccompanied refugee children."

EU Relocation of UAMs in Greece

For several years, the Greek islands have seen an overwhelming number of migrants arriving at their borders, which has led to great overcrowding in reception centers and camps and the exhaustion of essential resources (especially during COVID-19). On May 15, 2020, the E.K.K.A. National Center for Social Solidarity published an update indicating that in Greece there are 5,028 unaccompanied children in the country. Out of this number, 2074 children are currently in long term or temporary accommodation, 21 children are in Emergency UAM accommodation sites, 1431 children are in Reception and Identification Centers, 274 children are in Protective custody, 261 children are in open temporary accommodation facilities, and 967 children live in insecure housing conditions.³⁴ The situation in the islands is particularly critical; out of the almost 40,000 asylum seekers in the Greek island camps, about 1,800 are unaccompanied minors. They have been inhabited dangerous living spaces for too long, which is detrimental to their health. In March of 2020, the European Commission published an action plan to help ease the overcrowding of migrants in Greece and relocate people to other EU Member States. Also in

³¹<http://www.assembly.coe.int/LifeRay/MIG/Pdf/TextesProvisoires/2019/20191203-MissingChildren-FR.pdf>

³²<https://www.rescue-uk.org/article/what-dubs-amendment>

³³<https://refugeesmigrants.un.org/zh/node/100042569>

³⁴E.K.K.A. National Center for Social Solidarity, "Situation Update: Unaccompanied Children (UAC) in Greece," 15 May 2020, available at: http://www.ekka.org.gr/images/ΣΤΑΤΙΣΤΙΚΑ_2020/EKKA%20Dashboard%2015-5-2020.pdf

March, Croatia, Finland, France, Germany, Ireland, Lithuania, Luxembourg, Portugal and Switzerland pledged to allow for the relocation of these children in their own countries.

According to the UNHCR, as of April 15, 2020, 12 children were transferred from Greece to Luxembourg in a humane manner, with proper COVID-19 testing.³⁵ Germany also recently received 58 children this past April. For the sake of these children and their health and safety, it is in the best interest of the other Member States that have pledged to receive UAMs from Greece to take action as quickly and as safely as they can to protect these children in the midst of COVID-19.

Conclusion

Although today's numbers have gone down in comparison to the monumental influx of migrants into the EU about five years ago, it is clear that **the phenomenon of unaccompanied minors in Europe will not come to an end anytime soon**. As this continues, it is absolutely essential for *all* Member States to consider a universal application of a majority of the directives and regulations already proposed by the governing bodies of the EU in a way that does not vary immensely from State to State. Evidently there are gaps between the ensured protection for children seeking asylum and for those who are not, which is dangerous to the safety and health of all UAMs, regardless of status. Although Member States may be divided on the ways in which they will provide certain accommodations to UAMs, it should always be remembered that this specific group of child migrants are especially vulnerable. **Each State's national framework should provide the children with a uniform and concrete set of protections covering all aspects of their lives**. Additionally, **the concept of the best interest of the child should *always* remain the top priority in any situation regarding a UAM**. If that is to happen, there needs to be an updated, universal, and appropriate guide to the assessment of BIC for all Member States to refer to in order to properly assist the individual cases of UAMs. Because of the aforementioned vulnerability of the UAMs, it is important that immediate improvements should be made in processes such as initial identification, integration, and family reunification to prevent more disappearances of UAMs in the future. To fully ensure the protection of the human rights that the UAMs entering the EU are entitled to, **Member States must discuss how to promote universality in legislation in a practical manner to avoid the dangerous perpetuation of current gaps in protection**.

³⁵<https://www.unhcr.org/news/press/2020/4/5e9707ed4/un-agencies-welcome-first-relocation-unaccompanied-children-greece.html>

Fig. 1

Asylum applicants considered unaccompanied minors in the EU Member States, 2019

	Total number 2018	Total number 2019	of which:		Share in all minor applicants (%)	Share in EU total (%)
			Males (%)	Aged below 14 (%)		
EU*	16 785	13 795^o	85.2^o	11.0^o	6.9^o	100.0
Belgium	750	1 220	87.2	12.0	15.6	8.8
Bulgaria	480	525	98.1	6.3	71.8	3.8
Czechia	10	10	-	-	-	-
Denmark	240	195	90.9	17.3	19.4	1.4
Germany	4 085	2 690	77.9	10.7	3.4	19.5
Estonia	0	0	-	-	-	-
Ireland	15	50	71.4	4.1	4.5	0.4
Greece	2 640	3 330	91.8	7.9	13.1	24.1
Spain	75	:	:	:	:	:
France	740	755	72.4	7.0	2.9	5.5
Croatia	25	35	97.3	8.1	7.0	0.3
Italy	3 885	660	85.7	4.4	10.0	4.8
Cyprus	260	:	:	:	:	:
Latvia	5	5	-	-	-	-
Lithuania	0	0	-	-	-	-
Luxembourg	35	35	88.6	0.0	4.5	0.3
Hungary	40	10	-	-	-	-
Malta	5	20	84.2	0.0	3.8	0.1
Netherlands	1 225	1 045	85.6	17.1	18.4	7.6
Austria	390	860	94.6	6.5	14.0	6.2
Poland	125	105	61.9	70.5	5.9	0.8
Portugal	40	45	78.7	2.1	14.5	0.3
Romania	135	185	87.7	5.9	34.5	1.4
Slovenia	555	670	98.4	3.4	80.2	4.9
Slovakia	10	30	96.7	6.7	69.8	0.2
Finland	105	95	57.9	25.3	7.8	0.7
Sweden	900	890	71.1	30.6	9.5	6.4
United Kingdom	3 060	3 650	89.0	2.4	34.8	-
Iceland	5	5	-	-	-	-
Liechtenstein	0	0	-	-	-	-
Norway	145	125	75.8	20.2	20.4	-
Switzerland	0	490	81.8	11.0	7.7	-

Data are rounded to the nearest five. Parts may not add up to total due to rounding.

Provided percentages are based on exact data, excluding the category "unknown" for both sex and age.

* EU represents the European Union with 27 Member States after 1 February 2020. The EU aggregate for 2019 includes 2018 data for Spain and Cyprus.

^o Eurostat estimate

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- Not applicable or not available (no calculations made if rounded number of unaccompanied minors is 10 or less).

Source datasets: migr_asyunaa (by sex) and migr_asyunaa (by age group).

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