



Protection beyond reach

State of play of refugee and migrant children's rights in Europe



Save the Children

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**Save the Children's European Migration
Advocacy Group**

Contact:
Karen Mets
Karen.Mets@savethechildren.org

Designed by
Sabela González

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Save the Children Europe
Rue du Trône 60
1050 Ixelles
Telefon: 02 513 49 03
E-Mail: info@savethechildren.org



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*Cover photo: Unaccompanied boy in the the Bira Temporary Reception
Centre, in Bihac, Bosnia and Herzegovina
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Introduction

Five years ago, on 2 September 2015, three-year-old Alan Kurdi lost his life just off the Turkish coast. Images of his dead body have become a tragic symbol of the so-called ‘refugee crisis’, when over 1 million refugees and migrants, a third of whom were children, entered Europe.¹ His drowning was expected to inspire new measures to protect migrant and refugee children. Instead, as this report shows, five years later refugee and migrant children are often worse off. The place where they continue to be most at risk is on Europe’s external border, where Alan Kurdi tragically lost his life.

In the years that have passed since the number of asylum seekers arriving to Europe peaked, the European Union (EU)² has struggled to find a common response to the so-called ‘refugee crisis’. New policies have been proposed, but very few have come to fruition. The EU-Turkey deal, agreed in March 2016, led to a significant reduction in the number of refugees and migrants arriving in Europe, but tens of thousands of people – including thousands of children – remain stranded on the Greek islands in inhumane conditions. At the same time, arrivals by sea from northern Africa have continued, and children continue to drown on the EU’s watch.

“ I think that the asylum system doesn’t work. Nobody told me much about it, and I haven’t met anyone who asked for asylum.

Abdul*, 17, Egypt, interviewed in Bihac in Bosnia and Herzegovina

The sharp increase in anti-migrant sentiments and radical right-wing populism has had a profound effect on laws and policies, leading to measures of control and security that disproportionately affect children, whether they are travelling alone or with their families. At the same time, the situation in countries of origin, where Save the Children also works, continues to be precarious. As the conflict in Syria enters its tenth year, half of the country’s 8 million children have known only war. The conflict in Afghanistan – where most unaccompanied children in Europe come from – remains one of the most dangerous for children, who comprise 31% of total casualties.

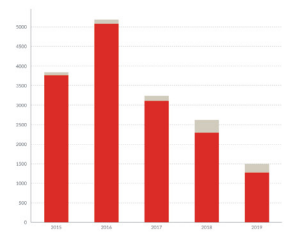
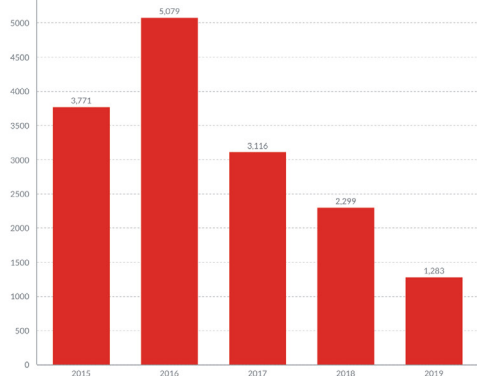
With this report, Save the Children aims to assess how children have been affected since the beginning of the so-called ‘refugee crisis’. We look at five key themes: protection at Europe’s outer borders; immigration detention; access to asylum and residency; family reunification; and guardianship. The report aims to highlight key changes that affect children, rather than provide a comprehensive overview.

We start with an overall assessment of the situation in Europe and then focus on specific measures in countries at Europe’s outer borders, such as Serbia, Bosnia and Herzegovina and Tunisia, and various European countries such as Spain, Italy, Sweden, Finland, Norway and Greece.

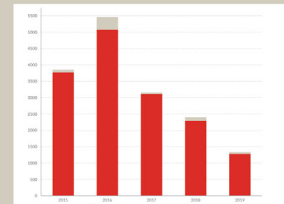
OUR KEY ASKS FOR CHILDREN

- Children to be channelled into proper asylum and protection procedures as soon as they arrive
- A plan to end immigration detention of children
- Children to reunite with their families as soon as possible and within three months of arrival.
- Every unaccompanied child to have access to a guardian within 24 hours
- More and better legal migration pathways for children

15,548 drownings in the Mediterranean Sea

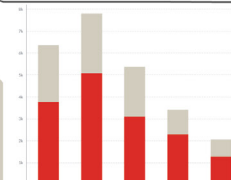


Western Mediterranean



Eastern Mediterranean

Central Mediterranean



Source: IOM

“ I think they [the police] want us to feel afraid to try again. I haven't seen my family for a long time now

Ahmed, 15*, Syria, interviewed in Belgrade in Serbia

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Summary

In 2015, the image of a three-year-old child's lifeless body washed ashore prompted promises from politicians across the globe to better protect refugees and migrants, especially children.³ Alan Kurdi's family was trying to reach safety in Europe by crossing the Mediterranean from Turkey to Greece, after failing to reach Canada through legal channels. Tens of thousands have joined Alan on this journey. Like him, many did not make it. Those who did have struggled to access rights accorded to them by the UN Convention on the Rights of the Child (UNCRC) and European and national laws. Policies and practices deemed unacceptable five years ago have now become commonplace. Violence at Europe's borders passes by unremarked or is even applauded.⁴ Countries fail to agree on responsibility sharing mechanisms for refugees and migrants, both in Europe and globally – an issue that is central to protecting the lives of countless children.

Some positive changes have occurred. The European Commission Communication on the Protection of Children in Migration offers a comprehensive list of proposals to protect both unaccompanied children and those travelling with their families, and the adoption of the so-called 'Zampa law' in Italy provides a comprehensive legal framework to protect unaccompanied migrant children. The recent commitment of the European Commission and several European countries to relocate unaccompanied children from Greece has been promising. However, these positive steps are often overshadowed by harsh border policies, an increase in detention, and obstacles preventing children from getting refugee status or reuniting with their families.

Fewer children manage to access protection in Europe

The EU-Turkey statement, along with a crackdown on search and rescue operations and EU support for the Libyan Coast Guard, has reduced access to protection in Europe for children. This means that children often remain stranded in transit countries – such as Morocco, Libya, Bosnia and Herzegovina and Turkey – where access to international protection is either limited or non-existent in national legislation, and other long-term solutions – such as integration, resettlement to another country or return – are difficult to access.

In Europe, and in Greece particularly, the hotspot approach along with limitations on freedom of movement (the so-called 'geographical restriction') prevents people from leaving the islands while their asylum claims are being processed.

As a result, on any given day since August 2019, on average 10,000 children⁵ were stranded on the Greek islands in inhumane conditions.

Even when children do manage to access asylum systems in Europe, very few are granted refugee status. **Finland, Sweden, Norway and Germany introduced new restrictions making it harder for children to access asylum or renew their permits.** Many receive temporary or tolerated permits, but the length of time they are allowed to stay has been significantly reduced and recognition rates have dropped, even for Syrian, Eritrean and Afghani children. High income or integration requirements make it impossible for many young people to renew their permits. Some countries, such as Spain and Italy, have introduced new permits on humanitarian grounds or granted residency to children turning 18 and 'ageing out' of the protection system. Others have abandoned the issuance of humanitarian permits altogether.

Family reunification has become nearly impossible for children

Under both the Dublin Regulation and as part of regular family reunification procedures with third countries, family reunification has become increasingly challenging for children. In 2019, the German government refused around 70% of requests for family reunification from Greece under the Dublin regulation. In Finland, **only half of the children who are granted protection are reunited with their families.**⁶ Key obstacles include new, shorter deadlines to apply for family reunification and very high income requirements for those who do not meet those deadlines (Sweden, Finland, Norway).

Complicated and costly ways to prove family relations such as DNA testing also prevent children from reuniting with their families. In some countries (Germany, Sweden), people entitled to subsidiary protection have either been restricted or not allowed to apply for family reunification. In Germany, while parents can join an unaccompanied child residing in the country, (minor) siblings are now generally excluded from family reunification. The long waiting periods for family reunification under Dublin, which can take years, often push children underground in countries such as Greece, Italy and Spain as they try to reach their families on their own.

Access to guardianship has – to some extent – improved

At the European level, several legal proposals attempted to strengthen provisions related to access to a guardian or representative for unaccompanied children. A European Guardianship Network was also established.

In Germany, the age of legal independence of unaccompanied children in the asylum procedure was raised from 16 to 18, providing more children with access to guardianship.

In 2017, the 'Zampa' law on the protection of unaccompanied migrant children changed Italian legislation regarding guardianship. As of 31 December 2018, over 3,000 volunteer guardians were enrolled in the lists established at Juvenile Courts.

In Greece, a new guardianship programme was supposed to take effect on 1 March 2020 but has been repeatedly postponed, leaving an important protection gap for children.

It has become easier to detain migrant and refugee children

New measures have been introduced that make it easier to detain children.

At the European level, proposed border procedures risk facilitating long-term detention of children and families.

On the Greek islands and in police stations in Greece, children can be detained as a 'temporary protective custody measure'.

In Spain, new detention facilities allow for the de facto detention of children for 72 hours or more at disembarkation points.

In Norway and Sweden, children are being detained in pre-removal proceedings.

The AnkER-Zentren in Germany (centres for reception, decision and return) are severely limiting children's freedom of movement.

Very few countries have taken concrete steps to operationalise the best interests of the child in asylum and returns procedures

While the best interests of the child as an overall principle is mentioned in most asylum and return legislation, little to no effort has been made to turn this principle into practice.

In countries such as Germany, Sweden, Finland and Norway, where children are more likely to be either voluntarily or forcibly returned, very few concrete steps have been taken to properly assess the best interests of the child prior to return. In most countries, either asylum or police services are involved in asylum or return decisions, with little to no involvement of social services or child welfare agencies.

There is a lack of child-friendly information and proper reintegration plans, and both Finland and Norway have received comments from the Committee on the Rights of the Child related to the implementation of the best interests of the child (Finland) and violation of the principle of non-refoulement (Norway).⁷

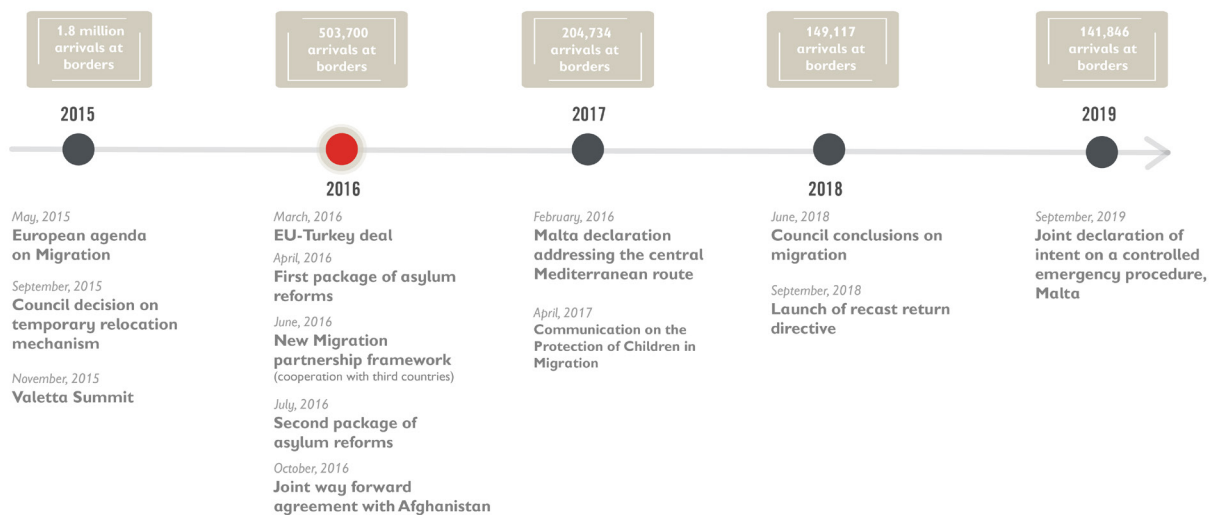


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Notes

1 State of play on children's rights in EU asylum and migration policies



In 2015, the **European Agenda on Migration** provided EU countries with a plan to tackle the 'refugee crisis' by working with countries of origin and transit to address the 'root causes of migration', saving lives at sea, strengthening borders and reforming the EU's common asylum system⁸. Children were mentioned only once in a footnote, even though one in three arrivals in Europe were children and tens of thousands were arriving alone.

While 'saving lives at sea' was one of the key pillars of the European Agenda on Migration, more than 15,000 people have perished trying to cross the Mediterranean in the last five years.⁹ Most Search and Rescue operations run by NGOs have halted due to restrictions and lack of clarity about disembarkation, and Frontex' naval operation, Sophia, was discontinued. However, many people continued to make the crossing. In 2019, the Interior Ministers of Italy, France, Germany, Finland, Malta and the European Commission met in Malta to set out a plan for the redistribution of migrants who arrive to Europe by crossing the Mediterranean.¹⁰ Unfortunately, the mechanism remains slow and offers no structural response, with only 545 relocations carried out by nine EU Member States in 2019.¹¹

To provide immediate protection for those arriving and share responsibility within Europe, a **temporary emergency relocation scheme** was established in 2015 to quickly transfer asylum seekers from Italy and Greece to other European countries.

IMPACT ON CHILDREN

- Out of a total of about 35,000 asylum seekers relocated from Greece and Italy, only 834 were unaccompanied children.
- In the last five years, more than 210,000 unaccompanied children arrived in Europe.
- Over 15,000 people lost their lives at sea in the last five years.
- On average 10,000 children were stranded on the Greek islands on any given day between August 2019 and August 2020, 60% of whom were below the age of 12.
- Only 5% of actions funded by the Trust Fund for Africa (between 2016 and 2018) targeted children directly.
- Sea arrivals to Greece nearly doubled between 2018 and 2019.

Nearly 35,000 people were relocated, a third of the number originally anticipated. **Only 834 of them were unaccompanied children.**¹² A recent voluntary scheme established at the request of the Greek government is currently planning to relocate another 1,600 children.¹³

The story of Alan Kurdi

Alan Kurdi is believed to have been born in 2012 in Kobani, Syria. His story is one of many of Syrian refugees trying to reach Europe. After moving around Syria to escape the horrors of ISIS, his family sought safety in Turkey. In 2015, they attempted to move back home to Kobani but continuous attacks prompted them to return to Turkey later that year. Alan's aunt, who lives in Canada, applied for refugee sponsorship but the family's claim was rejected.

Desperate to find safety for his family, Alan's father paid a smuggler to take them from Bodrum in Turkey to the Greek island of Kos, about 24km across the Mediterranean. But shortly after leaving Turkey, their inflatable dinghy capsized and, along with his mother and brother, Alan drowned. Images of the three-year old's body lying on the beach created international outrage. Today, Alan Kurdi remains a symbol of the so-called 'refugee crisis' and of the many children who died attempting to find safety.

With most refugees and migrants coming through Turkey at that time, a deal between the **EU and Turkey** was announced in March 2016, offering Turkey a total of €6 billion and a promise to negotiate visa facilitation, while Turkey was expected to take back irregular migrants and Syrian refugees from Greece.¹⁴ A geographical restriction was imposed that prevented asylum seekers – with a few exceptions – from leaving the Greek islands for the duration of the asylum process. In both Greece and Italy, 'hotspots' were established – facilities where asylum seekers would be identified, registered, fingerprinted and channelled into procedures for international protection or return.¹⁵

These changes promptly turned the Greek islands into a place of hardship and despair. Today, tens of thousands remain stranded on the islands, living in inhumane conditions in overcrowded camps that are unsafe and lack basic services.

One of the key elements to making the EU-Turkey deal work, according to the European Commission, was an increase in returns from Greece to Turkey. This, however, failed spectacularly. Between March 2016 and March 2020, only 2,140 people had been returned, 5% of whom were children.¹⁶ Since 2017, arrivals in Greece have been increasing again, nearly doubling between 2018 (around 32,000) and 2019 (around 60,000).

Most asylum seekers arriving on the Greek islands are families with (young) children.¹⁷ Various organisations, including Save the Children, have documented how the situation on the Greek islands makes children turn to self-harm, substance abuse and even suicide.¹⁸



In 2016, proposals to reform the **Common European Asylum System** were launched, including new proposals for the Dublin and EURODAC Regulation, Reception Conditions Directive, Qualifications Regulation and Asylum Procedures Regulation. Both the European Border and Coast Guard and the European Asylum Agency were to be reformed to broaden their mandate. Overall, the main aim of the proposals was to restrict and sanction secondary movements of asylum seekers and establish a solidarity mechanism. In 2018, a revised proposal on the Return Directive was launched. **Other than the reform of the European Border and Coast Guard, none of the proposals reached a final agreement.**

In 2017, the **Communication on the Protection of Children in Migration** was issued by the European Commission. It includes important and comprehensive measures to: strengthen child protection systems along

migratory routes; improve registration to prevent children going missing; ensure refugee and migrant children receive appropriate care in accordance with their needs; establish a European Guardianship Network; and ensure access to durable solutions such as integration, resettlement and return based on the child's best interests. Some of these measures have been implemented. For example, a European Guardianship Network was established and investments in alternative care and durable solutions for migrant and refugee children have increased.

However, when it comes to protecting children along migratory routes, various reports and analysis by Save the Children show that, **while over 7 million children are on the move in West and Central Africa each year,¹⁹ only 5% of actions funded by the Trust Fund for Africa (between 2016 and 2018) targeted children directly.²⁰**

“ When we try to cross the borders we get beaten by the police, badly. They are often very rude.

Ahmed, 15*, Syria, interviewed in Belgrade in Serbia

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Source: UNHCR



COVID-19

- The COVID-19 health emergency soon developed into an economic and social crisis, raising concerns about the impact on children and young adults, especially the most vulnerable, such as unaccompanied migrant children.
- The measures taken in response to COVID-19 by EU Member States have in some cases prevented child protection teams accessing reception centres and refugee camps, putting children at risk. In some facilities – such as large centres in Germany, the Greek hotspots and Ceuta and Melilla in Spain, as well as in overcrowded accommodation centres in the Western Balkans – social distancing is impossible. In other cases, such as in Italy, centres have received no clear guidelines on how to act. This has created health risks, along with tensions and violence due to restricted movement, a lack of information and general insecurity.
- During the COVID-19 emergency's most acute phase, asylum and return procedures were suspended in many countries. Some countries, such as Spain, allowed people to leave pre-removal centres and kept providing access to reception.
- In many countries, undocumented migrants have been among the most affected by the pandemic. Many are afraid to seek medical help due to their migration status and many of those working in the informal sector have lost their jobs.
- People whose residency status depends on their ability to find a job are also particularly vulnerable. This includes a group of around 7,400 young adults in Sweden who, having recently turned 18, received a permit based on the 'high school law'. In Italy, the deadline for applications or renewal of residency permits was extended and access to reception, even for those who no longer met the requirements, was extended until the end of August 2020.
- Spain introduced measures to provide work permits for unaccompanied children aged 16 years or over and allowed them to work in the agricultural sector, which needed workers. Time limits for renewals were extended and more flexible financial criteria were introduced for the renewal of all permits, with the aim to facilitate family reunification and safeguard the best interests of the child.
- Remote or online education, as well as training and job-oriented education, has been particularly challenging for refugee and migrant children confronted with the shutdown of schools, work placements and language courses. They often have no access to the resources (computers, TVs, the internet) needed for distance learning programmes, and already face obstacles due to trauma, language, cultural background and poverty.

2 Entering Europe



Western Balkans

Since 2015, the Western Balkans route has been one of the most used for refugees and migrants from the Middle East and increasingly from northern and other African countries trying to reach safety in Europe. The number and demographic composition of the new arrivals changes frequently, depending on many factors – weather conditions, the situation in the countries of origin, the situation in the countries of transit, and restricted access through other routes, such as the Central Mediterranean route. Nevertheless, the migration flow has continued. **It is estimated that more than a million refugees and migrants, including at least 200,000–300,000 children, have passed through the Balkans since 2015.**²¹ Migration through the Balkans continued even after the EU-Turkey deal and the number of new arrivals has increased by 25% in the past two years.²² Four years after the EU-Turkey deal, and five years after the outbreak of the ‘refugee crisis’, hundreds of refugees and migrants arrive in the region daily.²³ **About 30% of these are children and, on average, about 25% of these children are unaccompanied.** Most unaccompanied children in the Balkan countries are boys from Afghanistan and Pakistan, followed by children from Syria and some African countries.

While there have been some attempts to provide legal status for refugees and migrants in the Balkan countries, notable examples being the amended Law on Asylum and Temporary Protection and the Law on Foreigners in Serbia, enforcement is inconsistent and the asylum system remains inefficient. **Among other issues, refugees and migrants do not have access to information on the asylum application submission procedure and rely heavily on professional legal support, provided mostly by NGOs.** The authorities regularly fail to respond within time limits prescribed by law and process the applications made by particularly vulnerable asylum seekers on a priority basis. In addition, asylum recognition rates are decreasing. **In Croatia, refusals went up from 66% to 82% between 2016 and 2019.**²⁴

Over the past five years, as the legal routes to Western Europe have become fewer and less accessible, refugees and migrants have been forced to use more dangerous ‘irregular routes’ run by smugglers and traffickers, putting them – particularly children – at greater risk. For years, entering through the transit zones of Röszke and Tompa and seeking

IMPACT ON CHILDREN

- At least 300,000 children have travelled through the Western Balkans since 2015.
- About 30% of all arrivals to the Western Balkans are children.
- Unaccompanied children make up one in four of those children.
- In 2019, reportedly almost half of all pushbacks of children involved violence.

asylum in Hungary has been the only legal route to the EU for refugees stranded in Serbia. Access to the transit zones has decreased, and the zones have been criticised by human rights organisations. After the European Court of Justice ruled that placement in a transit zone constitutes unlawful detention, the Hungarian authorities announced that the zones would be closed in 2020.²⁵

UNHCR does not have resettlement programmes in Serbia, Bosnia & Herzegovina, Albania and North Macedonia, so the resettlement of very vulnerable cases depends on the final decisions of the receiving countries.²⁶

Although there has been an increase in accommodation for refugees and migrants in the Balkans, including in Serbia and Bosnia & Herzegovina, there are still not enough places.²⁷ Children often have to share accommodation with unrelated adults, stay in informal shelters, or sleep rough.

In some countries, including Serbia and Croatia, units in children’s homes were opened to host unaccompanied and separated children, but provision remains insufficient. The ability to identify vulnerable children, appoint guardians, and provide adequate support varies from one country to another. Although efforts are made to ensure that children are appointed a legal guardian and have access to services, in many countries there are not enough social workers to meet children’s individual needs.

There have been some positive steps to improve access to learning and education in the Balkans. In particular, Serbia and Bosnia & Herzegovina should be recognised for introducing a formal process to ensure that all children, regardless of their immigration status, have access to school.

In recent years, the protection situation at the region’s borders has become much worse, with children frequently exposed to violence and referral and complaint mechanisms non-existent or underdeveloped. **In 2019, according to testimonies collected from refugee and migrant children and their families, more than a third of children travelling the Western Balkans route were pushed back across the borders of the EU and countries in the Western Balkans region.** Almost half of these cases reportedly involved violence inflicted by police or guards at the borders.²⁸

North Africa

Since 2015, children have increasingly made up a significant portion of those travelling to, within, and from the North Africa region.

Arrivals by sea to Europe from North Africa increased dramatically in 2015 and 2016. However, the number of children arriving in Italy by sea decreased from 10,600 in 2016 to 2,232 in 2019.²⁹ **The proportion of unaccompanied and separated children remains high – with over 70,000 unaccompanied children arriving to Italy between 2014 and 2018.**³⁰ In 2019, most unaccompanied children arriving in Italy came from Tunisia, Côte d'Ivoire, Pakistan, Iraq and Bangladesh.³¹

Between January and December 2019, some 3,775 children were estimated to have arrived in Spain by sea from Morocco, including some 2,147 (57%) unaccompanied children. This is half the number that arrived in 2018 (7,800). Official statistics on the nationality of children arriving were not available, but based on estimates and observed trends, most children, including unaccompanied children, originated from Morocco, Syria, Algeria and Côte d'Ivoire.³²

National child protection systems in North Africa are weak, legal frameworks for asylum lacking or discriminatory, and there is a high risk of forcible return. Typically, there is an absence of appropriate best interests procedures for refugee and migrant children.

Algeria

Algeria hosts between 25,000 and 100,000 undocumented migrants, a high number of which are young children, mainly from Mali, Niger and Burkina Faso. Algeria ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in 2004. However, several aspects of the Convention have yet to be reflected in domestic law. **Despite being a party to the 1951 Refugee Convention, Algeria has not adopted any legal framework recognising the asylum-seeking process or the status of refugees. There is therefore no national asylum system in place.**

Tunisia

Although Tunisia is a signatory to the Refugee Convention and its 2014 constitution guarantees the right to seek political asylum, **no national asylum and protection legislation has yet been adopted** (the draft law has been under discussion since 2012). However, in 2016 Tunisia adopted a law against human trafficking, recognising the specific vulnerability of children.³⁵ As of June 2020, there are more than 4,700 refugees and asylum seekers living in Tunisia.³⁶ Although Tunisia is considered a relatively stable place for



refugees and migrants, it may still not be the best option as a 'place of safety' in the context of search and rescue and disembarkation. With limited possibilities for proper housing, livelihoods and access to services, the protective environment, especially for unaccompanied adolescent males placed in overcrowded shelters, is weak.

Libya

In February 2019, over 666,717 migrants of 38 nationalities were recorded to be living in Libya, although the actual number is estimated to be up to 1 million. Of the recorded migrants, **over 60,000 (9%) are children, and of these 33% are unaccompanied.**³³ Since UNHCR is only able to assist refugees and asylum seekers of seven nationalities designated by the Libyan government, a large number of asylum seekers stranded in Libya remain invisible.

Unaccompanied and separated children who arrived irregularly in Italy in 2017 reported that Libya was the most traumatising part of their journey.

Morocco

The majority of unaccompanied children (mostly adolescent boys) on the move in Morocco come from West Africa (particularly Guinea, but also Cameroon and Côte d'Ivoire), while children with their families come mostly from the Middle East. There are also many Moroccan children (especially boys) on the move within the country, looking for employment opportunities in Morocco or in Europe. Along with the search for better opportunities, another main reason for children leaving home is (domestic) violence. Migrant children, young people and women are exposed to sexual abuse and forced labour.³⁴

In September 2014, the **Moroccan Government adopted a National Strategy on Immigration and Asylum** that includes the introduction of a coherent, human rights-based migration policy, and is compliant with Morocco's international obligations. The policy enables migrants and refugees to enjoy protection in Morocco, including access to the national labour market and essential services, such as primary health care and education. In 2014 and 2016, some 50,000 migrants were permitted to legalise their presence in the country with a one-year residence permit, which was extended to three years in 2017. Despite this, **the national child protection system does not offer sufficient protection for child migrants.** It is still weak and discriminatory and there is an absence of appropriate best interests procedures.

3 Protecting children at borders

A. Increasing pushbacks

A worrying trend observed in the last five years has been the **increased use of pushbacks**.

In 2018, Save the Children's partner organisation in Serbia collected 1,262 testimonies from children being pushed back across borders. According to the 860 children who were travelling alone or had been separated from their families, nearly half – 403 – said that force had been used by police or border guards. Most of these violent pushbacks occurred at the border between Croatia and Serbia. **In 2019, more than a third of children travelling the Western Balkans route were reportedly pushed back. Almost half of these cases involved violence inflicted by police or guards at the borders.**³⁷

In Spain, violent pushbacks rose from 51 in total in 2017 to 533 in Ceuta and 125 in Melilla in 2018.³⁸

In 2018, the UN Committee on the Rights of the Child (CRC) condemned the practice and found that Spain's pushbacks are in violation of the best interests of the child, the special protection of children who are unaccompanied, and the prohibition of torture and inhuman or degrading treatment.³⁹ The financial assistance Morocco has received from the EU and Spain has led to the fortification of security checkpoints near Ceuta and Melilla, as well as the deployment of armed forces at the border.⁴⁰ These heightened security measures enabled Morocco to block the passage of 13,721 migrants in 2018.

Controversial new judgment on 'collective expulsions' of migrants

In February 2020, the Grand Chamber of the European Court of Human Rights (ECHR) published its long awaited judgment in the case of *N.D. and N.T. v Spain* concerning the refoulement of two sub-Saharan migrants to Morocco after they attempted to cross the border of the Melilla enclave. The plaintiffs argued that they were unlawfully pushed back, in violation of the prohibition on collective expulsions outlined in the European Convention on Human Rights. In its heavily criticised ruling, the Court concluded that the applicants had placed themselves in jeopardy by assaulting the Spanish border fence rather than using the existing procedures for entering the territory legally. Civil society organisations have rejected the reasoning behind the sentence, as no legal channels to access the territory exist for sub-Saharan people in Morocco.

N.D. & N.T. v. Spain (nos 8675/15 & 8697/15), ECHR, 2020



B. Crackdown on search and rescue

Another harmful practice affecting children's right to protection has been the continuous crackdown on search and rescue operations and measures to prevent the disembarkation of rescue ships. **In 2019, some 80 children died or went missing while crossing the sea to Europe and 780 were stranded on rescue vessels, often for more than a week in poor weather conditions and deteriorating health, running out of water and food before being allowed to disembark.**⁴¹ In 2018 and 2019, the Italian government issued two decrees, known as Security Decrees 1 and 2, which affected search and rescue at sea and disembarkation. Since 2019, the entry, transit or stopping of ships in territorial waters can be limited for reasons of public order and safety, and violations are prosecuted with sanctions of up to €1,000,000 and the confiscation of the ship. This has prevented many children from accessing their right to protection and goes against the non-refoulement principle, which has been reiterated in the Italian Zampa law to protect unaccompanied migrant children.

In January 2019, the Spanish Government announced its intention to reduce irregular migration by stopping active patrols by the Spanish Coast Guards, *Salvamento Marítimo*, on the Mediterranean coasts and placing formal obstacles or giving official orders to go back to the NGO rescue boats. According to information released by *Salvamento Marítimo*, this resulted in a stark reduction in its activities throughout 2019. On the other side of the Mediterranean, the Moroccan government confirmed that its security forces prevented the arrival of 70,000 migrants to Spain in 2019.

C. Border procedures

Several measures have been taken in the last five years to tighten procedures at borders. These include **extra checks to ensure that asylum claims are 'admissible'** when asylum seekers come from a 'first country of asylum', where they were already granted protection, or from a 'safe third country', where their life or liberty is not threatened and there is no risk of refoulement.⁴²

To comply with the EU-Turkey deal and the hotspot approach, the Greek government changed its laws to allow fast-track procedures for incoming asylum seekers on the islands.⁴³ New proposals for the **Dublin Regulation and Asylum Procedures Regulation** included an admissibility check to see whether asylum seekers have another 'first country of asylum' or 'safe third country' they can go to. Claims that may seem unfounded should be examined in an accelerated procedure, which can also take place at the border.⁴⁴

While vulnerable groups – including unaccompanied minors – are sometimes exempt from these procedures, on the Greek islands, authorities often fail to assess their vulnerability,⁴⁵ with many ending up living under inhumane circumstances.⁴⁶



4 Limitation to freedom of movement of children

In the last couple of years, both the EU and various European countries have introduced new measures to facilitate the detention of children.

Immigration detention of unaccompanied children has been one of the most debated issues during recent EU asylum reforms. After the European Commission launched its new proposal for the **Reception Conditions Directive**, the European Parliament added additional safeguards prohibiting the use of child detention. This has been heavily contested by EU Member States, and a final proposal has not yet been approved.⁴⁷

Greece

In Greece, unaccompanied children and families can be detained in pre-removal centres, closed areas in reception centres on the Greek islands, and police stations.

Greek authorities describe the detention of unaccompanied children as a 'protective custody regime' and claim it is a temporary protection measure in the child's best interests.⁴⁹

Under Greek law, unaccompanied children should be transferred to safe accommodation but, due to a chronic shortage of places, children end up being detained for up to nine months.⁵⁰ **According to the database of EKKA – Greece's national centre for social solidarity – there were 331 children in 'protective custody' in the reception centre hotspots in March 2020.**⁵¹

These children face abusive treatment in unsanitary and degrading conditions, including detention with adults and ill-treatment by the police. They are often unable to access medical care and legal aid and have very limited access to educational and recreational activities. Most of them do not know how long they will be detained, which affects their development and mental health. The European Court of Human Rights ruled twice in 2019 that 'Greece is in violation of its human rights obligation by detaining unaccompanied children'.⁵² Despite these rulings, the 'protective custody' regime is still in place.

The Commission's proposal for a revised return directive also aims to facilitate and expand detention. The proposal determines that anyone arriving in the EU irregularly could be potentially at risk of 'absconding' or moving on to another country, which is considered grounds for allowing detention at the border. In short, this would mean that everyone arriving irregularly in the EU could be detained, including families with children.⁴⁸

IMPACT ON CHILDREN

- A new proposal for the EU Return Directive would expand grounds for immigration detention, including for children and families.
- In Greece, unaccompanied children and families are detained in pre-removal centres, closed areas in reception centres on the Greek islands, and police stations. According to EKKA, there were 331 children in 'protective custody' in reception centres in the hotspots in March 2020.
- In Germany, AnkER centres restrict the movement of children. Expedited airport proceedings remain an area of concern in respect to detention of children, as do family separations through migration detention.
- In Sweden, detention capacity has significantly expanded in the last couple of years.
- In Norway, 794 children were detained between 2013 and 2016. In 2016, 50% of forcibly returned accompanied children were detained in the forced returns process. After a legal case, some improvements have been made.
- Finland is making efforts to invest in alternatives to detention.

Germany

In Germany, legal provisions were altered last year as part of an extensive migration pact to **facilitate the detention of rejected asylum seekers prior to their return**. While previously, for example, the authorities needed to prove that an asylum seeker was at risk of absconding, the burden of proof has now shifted to the asylum seeker. By law, children should be detained only as a last resort and, in practice, unaccompanied children and families with children are rarely detained.⁵³ When they are, family members are separated, with one parent awaiting return in detention and the rest of the family in regular accommodation.⁵⁴ In general, best interests assessments are not undertaken to evaluate the proportionality of administrative detention in light of the child's right to family unity or best interests. Although by law alternatives to detention should be favoured, they are rarely considered.

Airport proceedings are carried out when asylum seekers arrive by plane and either do not have proper documentation or are from a safe third country.

When an asylum claim is rejected people, including children, are detained at the airport and subsequent proceedings and detention can last for up to seven months. In 2019, one in five people in airport proceedings was a child.⁵⁵

There are accounts of children witnessing suicide attempts in the closed accommodation in the airport.⁵⁶ Families with children are not housed separately from adults, and there are no child-friendly spaces or adequate opportunities for children to play. In recent years, there have been reports of several children being wrongfully imprisoned because their age was wrongly assessed.⁵⁷

In 2018, the so called AnKER-Zentren (reception, decision and return centres) procedures were introduced to provide facilities where all procedures and services – from arrival to protection or return – can be implemented in one place and speeded up. This exact concept has since been applied to a wide range of reception facilities even though, to avoid controversy, they are not always referred to as AnKER- Zentrum. **AnKER centres have been widely criticised for their dire accommodation conditions, lack of access to social services, lack of access for children to schools, kindergartens and other educational facilities, and insufficient protection measures.** They are said to amount to detention-like facilities due to their remote locations, strict policies on coming and going, and ban on visitors. Residents receive only non-cash benefits and are prohibited from bringing food into the centres.

Since the COVID-19 outbreak, infection rates in the AnKER centres have been extremely high, and one asylum seeker has died.⁵⁸

Facilities at the centres do not allow for effective hygiene and social distancing measures.

On a positive note, last year the government embedded a provision in its asylum law recognising that women and vulnerable people (including children) have special accommodation needs that must be met, although these guarantees are not specified. Together with state and non-state actors, Save the Children is involved in the development of national minimum standards for accommodation and protection in housing as well as access to services for particularly vulnerable asylum seekers.

Spain

In Spain, the government has put in place a **new system for the management and reception of migrants and refugees arriving by sea** on the coasts of Andalusia. A new coordination body, Mando Unico, is now in charge of coordinating all actors involved in the first line reception of sea arrivals, including the Spanish coast guards, Spanish police, FRONTEX and NGOs.

New detention centres (*Centros de Atención Temporal de Extranjeros*, CATE) and humanitarian reception facilities (*Centros de Atención de Emergencia y Derivación*, CAED), have been set up to accommodate the increase in the number of sea arrivals. **All migrants and refugees arriving by sea – including accompanied and unaccompanied children – are hosted in a CATE during the first 72 hours of authorised detention, when identification procedures and age assessments for unaccompanied children are carried out.** After the initial screening, migrants and refugees are then referred to humanitarian, asylum or pre-removal centres. Unaccompanied children are referred to the regional child protection system. **Detention of children, which is prohibited by law, occurs when wrong age assessments are made, which led to 59 children being wrongfully detained during 2019.** The inadequacy of the medical tests used to assess the age of unaccompanied children and the lack of adequate safeguards during the procedure have been repeatedly criticised by the CRC.

Sweden

In Sweden, asylum seekers are not detained on arrival but rejected asylum seekers or others denied the right to stay may be detained prior to return. **In 2017, there were at least 57 children in detention in Sweden.**⁵⁹ Many detention decisions lack a clear legal basis and/or reasons for detention.⁶⁰ In a majority of decisions, the proportionality of the decision has not been assessed and the principle of the best interests of the child is often ignored.

In 2018, authorities decided to expand the capacity in detention centres from 357 places to potentially over 900 in order to increase deportations of those denied permission to stay.⁶¹ Sweden has been criticised for detaining children and also for the limited use of alternatives to detention.⁶²

“The process at the Migration Agency is really bad. It can take one to three years. It’s really unfair. You learn the language, you make friends, you live like a child in Sweden, with rights. And you cannot get safety here”

Unaccompanied girl, Sweden

Finland

In Finland, both unaccompanied and children with families can be detained, usually related to removal.⁶³ In 2015, the government restricted detention of unaccompanied children between 15 and 17 years old to a maximum of 72 hours and detention of children under 15 was prohibited. Children with their families can be detained for up to 12 months, the same as adults. Usually, children with their families stay in the detention centre for around 5–14 days. Attempts to prohibit the detention of unaccompanied children have failed,⁶⁴ but there is a reference to developing alternatives to detention in a new government programme, which has yet to show results.

Italy

In Italy, although it is illegal to detain unaccompanied children for immigration purposes (because their deportation is prohibited) and although families with **children are not usually detained, hotspots are often closed reception facilities or de facto detention centres** and not suitable or safe for children.

Norway

In Norway, children seeking protection can be detained prior to return, and in recent years the National Police Immigration Service (NPIS) has been expected to increase the numbers of forced returns it carries out. Between 2013 and 2016, 794 children were detained. In 2016, 50% of forcibly returned accompanied children were detained in the forced returns process. Children and parents interviewed for a Save the Children and Norwegian Organisation for Asylum Seekers (NOAS) report in 2017 who had experienced (attempted) forced return spoke of the long-term implications for children. Several of the children still fear the police, have sleeping problems, lack concentration in school and cannot forget the experience.

In May 2017, the Court of Appeal in Oslo found that the detention of four children aged 7–14 years during deportation proceedings in 2014 violated their fundamental rights. Before they were deported to Afghanistan, the children had been detained with their parents for 20 days in Norway’s immigration detention centre. The state was convicted of violating the Constitution, the UNCRC, and the European Convention on Human Rights, and for exposing the children to inhumane and degrading treatment.

Since then, there have been some improvements. In 2017, the Ministry of Justice and Public Security proposed adding amendments to the Immigration Act’s rules on coercive measures, and the establishment of a separate immigration detention centre for families with children. In 2018, the Immigration Act was also amended to limit the length of time children can be detained to nine days. In practice, children are normally not detained for longer than 24 hours. Detention of unaccompanied children for the purposes of immigration control is rare.



5 Right to stay

Access to asylum and residency

Obtaining refugee status has become increasingly difficult in many EU Member States. Some countries have made more use of the statute of ‘subsidiary protection’ and attributed fewer rights to it. Others have introduced new, temporary permits that are valid for shorter periods of time and grant fewer rights.

Norway

In Norway, in 2015 the government introduced measures to reduce the number of people seeking protection. These included additional border controls, safe third country transfers, and restricted family reunification.⁷⁰

Following changes to the 2016 Immigration Act and the removal of the ‘reasonability’ criteria from the ‘internal protection alternative’ (IPA), it has been easier for authorities to deny people protection based on the assumption that there is a ‘safe area’ in their country of origin.⁷¹ This has affected unaccompanied children from Afghanistan particularly. In 2016 and 2017, there was a significant decrease in unaccompanied children being granted protection, and an increase in refusals and temporary permits. **The number of unaccompanied children receiving temporary permits – which cannot be renewed and which do not allow for family reunification – until the age of 18 went up from around 5% in 2010–2015 to 45% during 2016 and 2017.**⁷² The number of unaccompanied children disappearing from reception centres also increased significantly over the same period. Many went to other European countries, where they either stayed on the street without any legal status or sought asylum.

This change has been strongly criticised by NGOs and international organisations, prompting a modification to the law that allows for the vulnerability of unaccompanied children to be considered. This has led to some improvements and fewer unaccompanied children received temporary permits in 2019. However, Save the Children is still critical of the current practice.

In 2015, the Norwegian government decided that refugees could lose their residence permits if the situation in their home country has improved and they are deemed to be no longer in need of protection.

IMPACT ON CHILDREN

- Both Sweden and Finland have either restricted or abandoned permits on humanitarian grounds, affecting children profoundly. They have also shortened the validity of residency permits for subsidiary and refugee status.
- In Finland, security assessments deemed Afghanistan, Iraq and Somalia as safe, making it more difficult to access subsidiary protection.
- Norway changed requirements for the ‘internal protection alternative’, leading to a decrease in unaccompanied children from Afghanistan receiving protection.
- Spain has established a one-year renewable permit on humanitarian grounds, which over 40,000 Venezuelans have benefited from.
- Italy has introduced a permit that allows unaccompanied 18-year-olds the right of stay until the age of 21, based on their integration.

Before, cessation of refugee status had hardly ever been practised in Norway. In 2018, Save the Children and NOAS published a report concluding that **Norway’s cessation practice is in breach of the refugee convention.**⁷³

Italy

In Italy, unaccompanied children are granted a permit under the ‘Zampa Law’ and the 1998 Immigration Law, which prohibits them being forcibly returned. The law also provides guarantees and clear procedures for age assessment and identification, but the timeframe for applying for residency, what documentation is required and which type of permit the unaccompanied child will be entitled to remain unclear. **Children turning 18 and ‘ageing out’ of the child protection system are entitled to a residence permit until the age of 21 if they can demonstrate a degree of social inclusion.** However, they still face obstacles when they want to register in the system, obtain an identity card, sign an employment contract, or open a bank account.

Sweden

In Sweden, the 2015 Temporary Aliens Act, which was extended in 2019, limits the possibilities of obtaining a residence permit. The aim was to reduce the number of people seeking asylum and bring legislation in line with the minimum EU level. Instead of permanent residence permits as a standard, this introduced temporary permits of three years for refugees and 13 months for people granted subsidiary protection, including children. **Since a permanent residence permit is granted only if you fulfil certain income requirements, this discriminates against unaccompanied children.** Children who were granted temporary protection based on them being children are put under a great amount of stress when they turn 18 since their protection needs may be interpreted differently when they are considered adults.

In 2014, gaining a residence permit on humanitarian grounds – for ‘distressing circumstances’ – was temporarily facilitated to increase the protection of migrant and refugee children. However, since then the **humanitarian grounds have become heavily restricted.** Now, gaining a residence permit on humanitarian grounds is only permitted if Sweden would otherwise be in violation of international conventions.

In 2015, 35,000 unaccompanied children arrived in Sweden. Some were granted protection, but many aged out before their cases were decided. **Around 7,400 who were not granted protection were granted a study permit based on a temporary ‘high school law’,** which is subject to strict criteria. To secure their stay in Sweden, these young people have to finish their studies and secure employment contracts of at least two years. As a consequence of the COVID-19 crisis, unemployment rates have soared, with youth unemployment reaching 28.7 % in July 2020. This makes the situation for these young people even more precarious.⁶⁶

Spain

In Spain, the Inter-Ministerial Commission for Asylum and Refugees (CIAR) introduced a policy granting one-year renewable residence permits ‘on humanitarian grounds of international protection’ to Venezuelan nationals whose asylum applications were rejected between January 2014 and February 2019. **Under this scheme, humanitarian status was granted to 40,000 Venezuelans,** who make up the majority of asylum applicants in Spain. As for unaccompanied children, a wide reform of existing residence permits has been announced but has not yet taken place.

In 2020, the Secretary of State for Migration introduced changes granting access to work permits for unaccompanied children over 16. A recent Supreme Court ruling also declared that unaccompanied children who turn 18 cannot renew their work permits using funding from NGOs to prove that they have financial means, and increased the amount of money they have to earn each year to renew their permits. **After public protests, the government announced a new reform allowing permission to stay based on their integration path rather than on their participation in the labour market.** Other changes now allow unaccompanied children (including those who are undocumented) easier access to basic social services, including health care, education, and other public resources.

Finland

In Finland, asylum or subsidiary protection is granted for four years. If an unaccompanied child has no grounds to get international protection, he or she usually gets a one-year residence permit on compassionate grounds. This has been the case for many of the children who arrived in 2015–2016. After the first permit runs out, the child must apply for an extended permit.

In 2017, changes were made to the extended permit, reducing the length of time granted to unaccompanied children from what was usually four years to one to two years. Some children who were granted a residence permit on compassionate grounds have been refused an extension after they turn 18, sometimes on the basis that they have not sufficiently integrated into Finnish society.⁶⁷

In 2016, the immigration agency **repealed the provision in the Aliens Act allowing asylum seekers to be granted a residence permit on the grounds of humanitarian protection.** At the same time, **the Immigration Service decided that Afghanistan, Iraq and Somalia** – the countries most people had arrived from in 2015 – **were safe to return** to, making it harder for people arriving from those countries to get international protection in Finland. Most unaccompanied children were from Afghanistan.⁶⁸

A 2019 study by the Migration Institute of Finland found that the tightened aliens legislation has negatively affected the legal status of asylum seekers, increased the number of undocumented migrants, and increased the number of removals.⁶⁹ Organisations working with undocumented people have reported that increasing numbers of undocumented migrants, including families with children, are looking for help.

6 Family reunification procedures

Due to changes in residency permits, higher income requirements, tighter deadlines and other procedural obstacles, it has become more difficult for children to reunite with their families.

Germany

In Germany, the acceptance rate for family reunifications from Greece has dropped significantly since 2015, with nearly **70% of requests under the Dublin regulation being declined in 2019**.⁷⁴ This is one of the highest rejection rates in the EU.⁷⁵

These rejections are based mainly on the passing of deadlines. Germany is one of the only European countries where the deadline for the ‘take charge’ request starts from the first registration (a first notification of the wish to seek asylum) instead of from the formal asylum application (as in most countries).⁷⁶ Given the overburdened Greek asylum system – in particular on the Greek islands – the deadline for ‘take charge’ has in many cases already run out by the time asylum and family reunification are officially applied for. Unlike other countries, Germany does not commonly apply the humanitarian clause under the Dublin regulation in cases where deadlines have run out.⁷⁷ Use of the humanitarian clause in non-deadline related cases is also very restricted in Germany.

Although the Dublin-III-regulation explicitly sets out a low standard of proof, the German asylum authorities pose unduly burdensome requirements on proof of kinship. For example, they do not accept official documentation of family relationships from certain countries such as Afghanistan or alternative forms of proof of kinship. This policy contributes to Germany’s high rejection rate.

Although DNA-testing is usually offered as a way to prove kinship in a re-examination request, family reunifications often fail eventually because DNA testing is expensive, time consuming and cannot be accomplished within the short time frame for re-examination. German authorities also frequently ask for extensive documentation proving that family reunification in Germany is in the best interests of an unaccompanied child, despite this being the case for most children – particularly given the humanitarian situation in Greece

IMPACT ON CHILDREN

- Germany’s acceptance rate for family reunification from Greece under the Dublin regulation has decreased significantly in the past five years. In 2019, the German government declined around 70% of requests for family reunification from Greece. Reasons for refusals are unduly strict adherence to deadlines, limited use of the humanitarian clause, and extensive administrative requirements such as DNA testing.
- In Sweden, Finland and Norway, new income requirements make it very difficult to be granted family reunification.
- In Spain, only 76 Dublin family reunification transfers have been made since 2016.

Concerning family reunification from outside Europe, significant restrictions have been imposed in the past five years. Before 2016, those granted subsidiary protection had a right to family reunification equal to beneficiaries of refugee protection. After the increased influx of asylum seekers in 2016, family reunification for beneficiaries of subsidiary protection was put on hold until 2018. The right to family reunification was not, however, reinstated in 2018. Instead, **a new legal provision was introduced allowing 1,000 family members of beneficiaries of subsidiary protection per month to be reunited with their families in Germany, as long as there are humanitarian grounds that require their reunification**. Moreover, before 2016 it was common practice to allow siblings of unaccompanied children to join their sister or brother in Germany together with the parents. This practice was severely restricted in 2016, with the result that in many cases parents now have to choose whether to join their child in Germany and leave the sibling behind or forego their right to family reunification and stay with the sibling in the home country or a third country.⁷⁸

Sweden

In Sweden, the handling time for family reunification cases increased significantly after 2015 to two to three years. Although this has decreased recently, in general it still takes one year.

The 2015 Temporary Aliens Act restricted the right to family reunification to people with refugee status and **income requirements** were introduced for applications submitted later than three months after a residence permit had been issued to the person residing in Sweden. Since the Temporary Aliens Act was extended for two years in 2019, the right to family reunification has included people granted subsidiary protection. **When people pass the three-month deadline to apply for family reunification, the income requirements are so high that many fail to meet them despite having a full-time job and stable accommodation.**

The definition of eligible family members, for both refugees and those granted subsidiary protection, has also narrowed to close family members (i.e. husband, wife, registered partner or cohabiting partner) and children under the age of 18. Only in exceptional cases is it possible to get a residence permit for other family members, such as children aged over 18. However, a person with a permanent residence permit can reunite with a person he or she is planning to marry and people other than immediate family.

Norway

In Norway, there are similar income requirements if a six-month deadline to apply for family reunification has not been met. Applicants are also required to pay a very high application fee. UNHCR has described this fee – 10,500 Norwegian Kroner or nearly €1,000 – as the highest of its kind in the world. Only applicants under the age of 18 are exempted from the fee.⁸⁵ The fee was recently reduced to 7,800 Norwegian Kroner.

Finland

In Finland, restrictions to family reunification similar to those in Sweden have been introduced, with high income requirements if an application for family reunification has not been submitted within three months after the asylum decision.^{79,80} This also applies to unaccompanied children.⁸¹ **There have been cases where the three-month time limit has been exceeded because the child was not informed about it.** The time limit is also too strict for many families who must travel long distances to submit their application.⁸²

In 2020, the Non-Discrimination Ombudsman reported that children's rights are not being recognised in family reunification decisions and that applications are being refused on grounds not explicitly laid down in legislation.⁸³ **Only half the children granted protection are reunited with their families. In addition, many unaccompanied children get residence permits on compassionate grounds rather than international protection.** The income requirement for these children would be impossible for most Finnish adults to meet.

Family reunification applications can only be submitted by family members outside of Finland and only in certain embassies, meaning that sometimes families have to get travel documents and have enough resources to get to the Finnish embassy in another country, which can be dangerous as well as costly.⁸⁴ Because the fees for submitting an application are substantial, many unaccompanied children are afraid to use the money in case the decision is negative.

There have been also some positive changes. Following an EU ruling in 2018/19, refugee children in Finland now have a right to family reunification even if they turn 18 during the application process. In addition, in 2019 the government promised to remove the income requirement for unaccompanied children.

“ I have not been in contact with my parents in over five years. How can I prove that to the Migration Agency? They don't believe me and want to send me back

”

Unaccompanied boy, Sweden

Spain

In Spain, 216 applications for the transfer of unaccompanied children for family reunification have been received and sent through the Dublin regulation.⁸⁶ Of these, **only 113 were accepted and only 76 transfers actually took place.** The children were from Pakistan (166), Morocco (20), Guinea (5) and Bangladesh (4). Spain requested six transfers to other countries under this scheme, and only two were finally transferred. Applicants were from Guinea (2), Syria (3) and Turkey (1). The main obstacles faced by unaccompanied children and their families (whether under Dublin or not) concern the duration of the process and DNA tests. **Long waiting times have prompted children and parents to move on irregularly without waiting for the results.** Others become so discouraged that they withdraw the reunification application and wait for the child to turn 18.

NEW RULING BY EUROPEAN COURT OF JUSTICE ON FAMILY REUNIFICATION

In 2018, a new ruling by the European Court of Justice stated that an unaccompanied child obtaining the age of majority during the asylum procedure retains the right to family reunification. The case concerned an unaccompanied Eritrean girl who applied for asylum in the Netherlands a few months before turning 18. After turning 18, that same year she applied for family reunification which was denied because she had reached the age of majority. In its judgment, the Court qualifies as 'minors' persons who are below the age of 18 at the moment of their entry into the territory and of the introduction of their asylum application, even if they reach majority during the procedure.

Case C-550/16, 12 April 2018



7 Access to a guardian

Immediate access to a guardian is essential for an unaccompanied child's wellbeing, to safeguard their best interests, and ensure that they get proper legal representation. While there have been some positive steps towards this, such as the establishment of the European Guardianship Network and the roll-out of a guardianship system in some EU countries, essential gaps remain in Greece and Spain.

The tasks and duties of a guardian are roughly defined in the EU Reception Conditions Directive, Dublin Regulation, the Qualifications Directive and the Asylum Procedures Directive. A guardian is referred to in some proposals as a 'representative', a general term to accommodate differences in legislation between EU Member States. A guardian or representative has the responsibility to **assist and represent an unaccompanied child to ensure their best interests and exercise legal capacity where necessary.**

There has been much debate about the timing of the appointment of a guardian, necessary qualifications, the number of children a guardian can be responsible for, and the independence of the role. New proposals from the European Commission and Parliament attempted to expand the definition of guardianship but no final decision has been made. Some proposals included reference to a 'suitable person' who could act as a temporary guardian until a permanent representative has been appointed.

IMPACT ON CHILDREN

- In Germany, unaccompanied children are taken into the care of child services upon arrival and granted the right to a guardian. Changes in the law in 2015 improved their situation, but the increased pressure on asylum services threatens to erode these accomplishments.
- In Italy, a new guardianship system has resulted in more than 3,000 voluntary guardians being enrolled.
- In Spain, there is no coherent guardianship system due to a lack of responsibility sharing and the fragmentation of systems between regions.
- In Sweden, a lack of clarity about the role and responsibilities of a guardian leads to different interpretations by different municipalities.
- In Greece, despite efforts to establish a new guardianship system, this has not been rolled out.

Germany

In Germany, the age of legal independence of unaccompanied children in the asylum process went up from 16 to 18 in 2015.⁸⁷ Previously, foreign children, including asylum seekers, became legally independent at 16 years and German children at 18 years, which went against the UNCRC's principle of non-discrimination.⁸⁸

Upon arrival, unaccompanied children are generally taken into the care of child services and, after an initial screening that includes an age assessment and distribution to the federal states, they are assigned a (formal) guardian by the family court.⁸⁹ Legislative changes in 2015 strengthened the role and authority of child services for unaccompanied children,⁹⁰ but recent legislative changes put more emphasis on swift registration through the asylum authorities.

Previously, only child services could carry out the registration and could take time to ensure that the necessary safeguards and adequate initial age assessments were carried out. Now, the asylum authorities and refugee accommodation staff can also undertake the identification of unaccompanied children as long as child services are notified and present. This reflects a trend in recent years, where the focus seems to have shifted from child protection to security considerations. BUMF (the association for unaccompanied refugee children) reported that over 50% of children who had arrived in Germany had been accommodated in emergency centres, reception centres or hostels, although the law states that unaccompanied children must be taken care of by the youth authorities upon arrival. Since the number of arrivals has dropped, this practice has become less frequent.

Spain

In Spain, each region has its own system of reception and guardianship. **More than 70% of the 12,000 unaccompanied children in the country live in the autonomous community of Andalusia and the autonomous city of Melilla.** The appointment of a guardian only takes place after initial screening by the police, who order an age assessment test when the child's age is doubted, and subsequent referral to the protection centre. During the age assessment, children have no access to a legal representative or guardian, which, as the CRC has concluded on several occasions, violates their right to be heard and to participate in decisions that affect them.

To address this and other issues, the Spanish government initiated a consultation process led by the Ministry of Social Rights, within the Spanish observatory on children. This led to the drafting of a new model that includes mechanisms for responsibility sharing between regions and the introduction of a national referral mechanism. However, the proposal has not yet been adopted due to a lack of consensus between Observatory members.

Italy

In Italy, a law in 2017 set up a system of voluntary guardians for every unaccompanied child. These guardians are meant to provide representation, support to bureaucratic and legal issues at all judicial and administrative proceedings, and also practical and psychological assistance. **As of 31 December 2018, more than 3,000 volunteer guardians had enrolled with the Juvenile Courts.** Unfortunately, it still takes about four months for a guardian to be appointed.

Sweden

In Sweden, many new guardians were appointed to try to cover the needs of the 35,000 unaccompanied children who arrived in 2015/16. Nevertheless, some children still have to wait a long time for a guardian to be appointed and guardians in the municipalities are not always well regulated, which has led to some children getting insufficient or harmful assistance.⁹²

The role of guardian is unclear and interpreted differently from one municipality to another. As well as supporting the child through the asylum process, a guardian is supposed to look after other personal aspects of their lives, such as their schoolwork. This is not guaranteed under the current system. In July 2019, the government decided to establish an investigation to review the legal framework regulating guardianship.⁹³

Greece

In Greece, a new guardianship programme from Metadrasi, UNHCR and the responsible ministries was supposed to take effect on 1 March 2020 but has been repeatedly postponed. This has left a serious gap in the protection of unaccompanied children on both the Greek islands and mainland. **Without a guardian, children are unable to access accommodation, be represented in front of the Asylum Service, or access an array of basic services.** It also complicates unaccompanied children's access to the relocation scheme. In this vacuum, the Public Prosecutor remains the guardian of unaccompanied children and responsible for key decisions on behalf of the child. Some specific responsibilities are also being delegated to child protection actors – but resources are stretched.

“ I had a lot of problems with the interpreter. He didn't speak my language ”

Unaccompanied boy, Sweden

Finland

In Finland, guardianship is decentralised, fee-based and a secondary job for the guardians,⁹⁴ whose task is to ensure that the child's best interests are taken into account and help the child with official matters.⁹⁵ Benefits of the system are the short time it takes to assign a guardian, the commitment of skilled guardians, and the relatively low costs. Challenges include the fact that coordination is shared between two administrative branches and, since guardians are paid by the Finnish Immigration Services, a potential lack of independence. There is also no mandatory training, standard qualifications or external supervision,⁹⁶ so knowledge and skills vary considerably.



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8 The best interests of the child

Overall, the role of child protection actors in assessing the best interests of the child in asylum or returns procedures is limited to non-existent. Clear, multidisciplinary best interests procedures are not being carried out.



IMPACT ON CHILDREN

- In Sweden, social services do not play a formal role in the asylum or return procedure of children. Child-specific information and reintegration plans are limited in return procedures.
- In Finland, Immigration services are fully in charge of asylum and return decisions. There is, however, a hearing of the child where the guardian is present.
- In 2016, Norway accounted for 65% of all forced returns from Europe to Afghanistan. The CRC has expressed concern over Norway's lack of adherence to the principle of non-refoulement.

Germany

In Germany, unaccompanied children are rarely forcibly returned to their home countries until they turn 18, although recently there have been some accounts of forced return. Legally, the return of an unaccompanied child is only permitted when he or she is taken into the immediate care of parents, guardians or adequate alternative care facilities upon arrival in the home country. Accompanied children, however, are frequently returned together with their families.⁹⁸

Before forced return is implemented, a narrow time frame for voluntary return is granted to rejected asylum seekers.⁹⁹ Voluntary return counselling is provided by a number of actors, ranging from governmental agencies to the International Organisation for Migration (IOM) and welfare organisations. Child services do not play a formal role in the process of voluntary or forced returns and **national minimum standards to ensure respect for a child's best interests and rights in the voluntary return process do not exist.** The quality and child-friendliness of return counselling vary considerably and best interests determination procedures are far more common in the counselling by non-state than state actors. Save the Children has been working with governmental and non-governmental actors to promote nationwide standards for child-friendly and children's rights-based return counselling.

Finland

In Finland, when an unaccompanied asylum-seeking child does not receive protection or another permit, he or she is directed to return to the country of origin through the assisted voluntary return programme, which is administered by the Finnish Immigration Services and implemented by IOM. The child's representative (guardian) and a social worker from the reception unit assess the best interests of the child.¹⁰⁰ Forced return of an unaccompanied child is also possible but rare. The best interests assessment happens before an asylum or removal decision. **The child's guardian is involved in the asylum process and a social worker from the unit where the child is accommodated is asked for a statement on the best interests of that child.**¹⁰¹

The CRC has repeatedly commented on the weak status of the rights of children whose asylum application has been declined¹⁰². Rather than considering which solution would be in the best interests of the child, the authorities base their decision on whether a decision would seriously go against the best interests of the child.¹⁰³

In general, there are no comprehensive statistics available on returns from Finland. Many NGOs and the Non-Discrimination Ombudsman have raised concerns about Finland returning people and children into insecure countries and criticised the speed of implementation.¹⁰⁴ In some cases, children have been picked up by the police from school or day-care in the middle of the day without notice. Children, both unaccompanied and those with their families, can also be detained while they are waiting for their return to be carried out.

Norway

In Norway, the 2008 Immigration Act included certain provisions that strengthen the legal position and rights of asylum-seeking children. Asylum assessments must take into account whether the applicant is a child, and for the granting of residence permits on humanitarian grounds the law states that the child's best interests are a primary consideration. The child's right to be heard (UNCRC Article 12) is expressed in the Immigration Act and in more detail in government regulations. However, recent reports by NOAS and Save the Children have documented that the immigration authorities have not conducted proper best interests assessments.¹⁰⁵

Norway has been criticised for returning children to Afghanistan, especially in the last few years. Between 2015 and 2017, 7,506 asylum seekers from Afghanistan sought protection in Norway.¹⁰⁶ Despite the continuing security situation in Afghanistan, **in 2017 only 27% were granted a residence permit, compared with 82% in 2015.**¹⁰⁷ One reason is that in 2016 the Directorate of Immigration (UDI) changed its security assessment, so that far more areas in Afghanistan were considered safe. The second reason is the change to the IPA assessment (described above). This has significantly affected unaccompanied asylum-seeking children from Afghanistan, more than half of whom were either refused residency or given temporary residence until the age of 18 in 2017, which in practice is a deferred refusal.¹⁰⁸

Between 2015 and 2017, 70 children in families, 2 unaccompanied children and 227 young people over the age of 18 (but registered as unaccompanied children when they arrived in Norway) were forcibly returned to Afghanistan.¹⁰⁹ In addition, 54 children in families, 10 unaccompanied children and 64 young people (registered as unaccompanied children when they arrived in Norway) returned with assisted return.¹¹⁰ **In 2016, Norway accounted for 65% of all forced returns from Europe to Afghanistan, and is one of the few countries in Europe that forcibly returned Afghan families with children.**¹¹¹

Norway does not return unaccompanied children under the age of 18 without proper care having been arranged upon their return. However, the government has stated it is working on establishing a return centre in Afghanistan so that it can forcibly return unaccompanied children before they turn 18.¹¹²

In its recent concluding observations, the CRC expresses concern that children are being sent back to countries where there is a high risk of their rights being violated, which contravenes the principle of non-refoulement.¹¹³

The Committee also comments on the increase in the use of temporary residence permits for unaccompanied asylum-seeking children, and the absence of any system to automatically reassess the cases of unaccompanied children with temporary residence permits, 'resulting in the fear that their applications for permanent residency would be denied, which they see as an important reason for the relatively high number of children who have disappeared from reception centres'.

Sweden

In Sweden the Migration Agency, Migration Court and Migration Court of Appeal decide whether a person is granted a residence permit or not. If a person receives a negative decision, they must return voluntarily and if they do not do so within the set timeframe the case is referred to the police. Children are also forcibly returned and if they are unaccompanied authorities must ensure some form of adequate reception before they are returned. Numbers on exactly how many children have been forcibly returned are not available.

Although social services are involved when a child arrives in Sweden, they have no formal authority regarding decisions about an asylum claim. They assist the Migrations Agency with family tracing and are to a limited extent involved in the return procedure, but their opinions regarding issues such as age assessment are not given much weight.

In theory, it is possible to receive child-friendly reintegration plans when a child is to be returned from Sweden but, in general, support is limited and there is a lack of child-friendly information. Children and families are sometimes detained prior to their return and return procedures are not adequately monitored by the Swedish authorities.

“Sweden has invested a lot of money in these young people, for a long time. They get rooted but Sweden does not harvest what it has sown. They are not allowed to pay back

Unaccompanied boy, Sweden

”

9 Conclusion and recommendations

As the EU is about to announce its new pact on migration and asylum, there are important lessons it could draw on from the past. In the last five years, tens of thousands of refugee and migrant children have gone missing, an issue which has alarmed many politicians. From experience, Save the Children knows that children often go missing because family reunification procedures take too long so children seek out their relatives on their own. They disappear because they do not trust police officers at borders. They move underground because there is no legal way to find safety from conflicts and violence. All of this is strengthening networks of smugglers and traffickers, who are glad to 'help' – for a price, and at great cost to children's safety and protection. In the case of Alan Kurdi, at the cost of his life.

Discussions in Europe are no longer about the protection of asylum seekers but about the protection of borders and reducing the number of asylum seekers. The right to asylum is engrained in the EU Charter on Fundamental Rights, along with the obligation to consider the best interests of the child. Moving forward, the EU should not lose sight of its founding and international Treaties, in particular the UNCRC. Save the Children believes that the best guarantee to keep children safe and protected is a continued investment in strong child protection systems, including as part of asylum and migration laws. To ensure that children's rights are properly upheld, Save the Children proposes the following recommendations.

A Migrant and refugee children should be able to access protection in Europe

Safeguards need to be in place to protect them **before entering any formal procedure**. Illegal – and often violent – pushbacks, collective expulsions, and restrictions to the right to rescue at sea prevent children from accessing protection. The European Commission and European countries should ensure, both through the Common European Asylum System and national measures, that:

- Children have access to **child-friendly information**, in a language they understand and shared with them by a person/organisation they can trust. No child should be coerced into providing biometric data.
- Both national border guards and those who are part of the European Border and Coast Guard (EBCG) are **trained in child protection and child safeguarding** and able to refer children to the right protection services.
- **Proper referral mechanisms** are developed to ensure that children (including those travelling with families) can immediately access the right services.
- Children have access to **effective procedural safeguards** – including enough time and resources to access lawyers, mediators and interpreters, and to appeal asylum decisions. **Unaccompanied children should be exempt from border or pre-screening procedures.**
- **Monitoring and accountability** mechanisms for border officers are established through an independent entity, including functioning mechanisms for complaints, reporting, investigation and penalties.

B The European Commission and EU Member States should work together to establish a solidarity mechanism that protects children

Any new relocation or solidarity mechanism should ensure the best interests of the child is properly implemented. This process should include:

- **Formal involvement of local NGOs** and/or other actors that work directly with children as they are best placed to support identification, preparation for and coordination of departure.
 - **Sufficient time to properly identify children**, inform them, and assess their vulnerability and best interests. Child-friendly information should be given about the destination country and should include as much detail as possible about the living situation after arrival.
 - The establishment of **clear eligibility criteria** for relocation, based on **protection needs**.
- These should be communicated in a transparent way to all parties involved, including children themselves and their social workers.
- Mechanisms to ensure **children are properly heard** throughout the process
 - Upon arrival in countries of destination, immediate **transfer to final reception facilities** (avoiding multiple transfers), assessing family and community links to decide on a child's place to stay, and keeping friends or community members together where possible.

C The European Commission should work on a plan to end child immigration detention and invest in alternative forms of care

European countries should take steps towards ending – rather than increasing – child immigration detention. No child should be detained in the context of migration procedures, as this is never in a child's best interests:

- More investments should be made in alternatives to detention, such as case management, foster care, alternative family housing.
- **Alternative, long-term solutions should be found for children who do not have access to protection but cannot be returned.** These could include (temporary) residence permits that allow access to work or education.
- Families should not be detained and/or separated through detention. Various Member States provide alternative family housing or other ways of monitoring families in asylum or return procedures.
- Shorter and less invasive forms of restrictions and limitation of movement also violate the best interests of the child and can affect the mental state and development of children in the same way as prolonged detention. Even when children are detained for only a few hours, their mental health can be affected.¹¹⁴

D Age assessment, as defined in the EU Asylum Procedures Directive and national legislation, should only be used in case of doubt

Child-friendly methods should be applied, using a step-by-step approach that is minimally invasive, together with multidisciplinary investigative methods taking into consideration the physical and psychological development of the child and her/his ethnic and cultural identity. The presumption of minority status during the whole assessment – presuming that all children are children until the age assessment has been conducted – should always be applied. Child protection professionals should be involved in formally assessing the age of the child.

E The European Commission and Member States to ensure that every unaccompanied child arriving to Europe has access to a guardian within 24 hours of arrival

Guardians can play an important role in preventing children from going missing. All new EU legislation should ensure that:

- The tasks and responsibilities of the guardian/representative are clearly defined, including **minimum standards** that apply to all Member States. These should involve ensuring the child's wellbeing and his/her best interests as well as complementing the legal capacity of the child. The UN's General Comment No. 6 also gives clear guidance on the tasks of a guardian.
- As soon as a child is identified as unaccompanied and within 24 hours, a (temporary) guardian/representative should be appointed who has the same tasks and responsibilities as the permanent guardian. **A pool of specialised guardians** could be established in each Member State to ensure that children are adequately and immediately protected after their identification, regardless of whether they have applied for international protection.
- A guardian should have the **required skills and expertise** to protect the best interests of the child and the child's wellbeing. This expertise needs to be combined with appropriate and continuous training provided by the competent authorities. Sufficient funding needs to be foreseen in EU/Member States' budgets to ensure that guardians are properly supported.
- Guardians should be **independent** and able to make impartial decisions that safeguard the best interests of the child. They should be effectively and **systematically monitored** to ensure that they do not act against the best interests of the child. **Effective complaints mechanisms** should be made available to children in a format and language they understand.

F The European Commission and Member States should implement an immediately accessible and flexible framework for family reunification, including fast-track reunification in emergency situations

Children should be allowed to reunite with families in a timely and efficient manner, while ensuring that the child's best interests are being safeguarded. Current limits to family reunification can cause so-called 'secondary movements', where children move on to other countries to find relatives, which can expose them to security and safety risks.

- Unnecessary obstacles – such as DNA testing and burdensome administrative procedures to recognise identification documents – should be removed.
- The passing of deadlines should never be accepted as the sole basis for forfeiting a child's right to family reunification. Deadlines should be applied generously, as should the humanitarian clause.
- A fast-track procedure should enable children to reunite with relatives as soon as possible after arriving to the EU and Norway.
- Any efforts to harmonise different procedures for family reunification between Member States should guarantee the highest level of protection for children.

G Both in EU and national legislation and practice, the best interests of the child principle as provided by the UNCRC should be operationalised

- Child welfare and/or social services should be formally involved as the independent bodies assessing the child's best interests as part of asylum and return procedures.
- Best interests assessments should be clearly defined, formalised and harmonised across Member States in the relevant asylum legislation, starting with the revision of the Dublin III regulation.
- The best interests of the child should be a primary consideration in any decision concerning a child and aim to identify a durable solution for the child, including a plan to implement this solution.
- Any assessment should carefully consider the views of the child throughout.
- During the best interests assessment procedure, a child should have access to child-friendly information, counselling and legal assistance.



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H Ensure that both children and youth turning 18 have access to secure residency, protection and services

- Across Europe, children receive different permits of stay granting different levels of protection. To ensure more security and protection of children, and prevent them from going missing, they should have full access to services, including formal education, health and social services regardless of their migration status, in accordance with the UNCRC.
- **After migrant children turn 18, they often leave the protection system with few safeguards in place.** To prevent them from falling between the cracks of the system they could benefit from:
 1. Transition schemes for young people turning 18 who are 'ageing out' of the protection system, which allows them to access education, traineeships and/or vocational training.
 2. **An upgraded European Youth Guarantee ensuring an increased proportion of funding for employment, education, traineeships and apprenticeships for young migrants in Europe**, including those whose status is insecure, who may have a temporary permit or a pending return decision, or lack proper documentation, in accordance with relevant national legislation.

I In their external cooperation, the EU and European countries should prioritise investments in child protection systems along migratory routes

- Any EU or bilateral agreement with countries of origin and transit related to migration must include references to child protection standards and continued investment in child protection systems (including as part of asylum and other national legislation).
- The EU should **strengthen and promote community- and family-based child protection** systems across borders and in communities of origin, transit and destination, in the spirit of the EU Guidelines for the Promotion and Protection of the Rights of the Child.

J The EU and European countries should strengthen and expand legal pathways for children

These channels should include, among others, resettlement, humanitarian admission and humanitarian visas, worker mobility across skill levels, student visas, and private sponsorship programmes. **For children, family reunification, and the right to family life (Art. 8 ECHR), should be respected and facilitated.** Unnecessary obstacles to family reunification related to validity of documents, proof of kinship, income or other requirements or unreasonable procedural deadlines, should be removed in line with the standard of Art. 10 of the UNCRC, which mandates the processing of family reunification 'in a positive, humane and expeditious manner'.

Notes

1. Eurostat numbers 2015. [Link](#)
2. In this report, we will refer both to the European Union (EU) and Europe depending on the context. As Norway is included in the assessment, the report may refer more frequently to the wider European context.
3. 'French President calls Erdogan over images of drowned Syrian boy, calls for common EU refugee policy'. [Link](#)
4. Greece is 'Europe's shield' in migrant crisis, says EU chief von der Leyen on visit to Turkey border. [Link](#)
5. Aegean Islands weekly snapshots, UNHCR, August 2019 – August 2020
6. Statistical data of the Greek Dublin Unit: [PDF](#). In 2020, the acceptance rate has so far only been an alarming 17 %.
7. In Norway the immigration authority has had a project called "Barn i asylkjeden A-A" with the aim to strengthen the expertise on children and ensure that children's perspective is better safeguarded in the asylum process. A website for children seeking asylum has been developed: <https://asylbarn.no/> and National Immigration Service did issue guidance for the police on how to take care of children and the child's best interests in the process of forced return. Norway did issue guidance for the police on how to take care of children and the child's best interests in the process of forced return: [PDF](#)
8. European Agenda on Migration: [PDF](#)
9. IOM numbers drownings and arrivals 2016. [Link](#)
10. Malta Declaration: [PDF](#)
11. Response to question of the European Parliament. [Link](#)
12. Relocation scheme latest numbers from 2019: [PDF](#)
13. European Commission Press release on first relocation. [Link](#)
14. EU-Turkey statement. [Link](#)
15. Situation Mediterranean. [Link](#)
16. UNHCR Greece: returns from Greece to Turkey: [PDF](#)
17. Aegean Islands weekly snapshots, UNHCR
18. 'A tide of self-harm and depression', Save the Children. [Link](#)
19. See UNICEF: Seven million children are on the move in West and Central Africa each year, 2017. [Link](#)
20. Internal analysis by Save the Children
21. UNHCR update on refugee and migrant sea arrivals in Europe. [Link](#)
22. Around 57,000 new arrivals of refugees and migrants were registered in 2018, and close to 76,000 in 2019. Source: Refugees and Migrants at the Western Balkans Route Overview, [link](#)
23. The registered numbers of arrivals to Greece, Bulgaria, Serbia, Kosovo, Romania, North Macedonia, Albania and Bosnia and Herzegovina (BiH) in the first quarter of 2020 amounted to close to 14,000, mostly coming through Greece and by sea. Although the COVID-19 situation slowed down migration somewhat in late March, these numbers are still almost twice those during the same period in 2019 (8,500). Source: Refugees and Migrants at the Western Balkans Route Overview, [link](#)
24. Source: Eurostat, first instance decisions on applications, quarterly data. [Link](#)
25. The number of people admitted dropped from up to 200 in 2016 to only a few per month in 2019. Some of the asylum seekers have been detained in the zones for 300 or even 400 days. Source: ECRE, [link](#)
26. Due to the lack of a centralised system, only a small number of refugees and migrants are able to access resettlement or family reunification schemes. Since 2016, 64 submissions have been made in Serbia, out of which only 53 people were resettled.
27. In BiH, over 2,500 refugees and migrants, including children, remain outside due to the lack of accommodation and other restrictions related to access to the centres (February 2020). In Greece, housing options and services to cater for 121,000 refugees and migrants remain limited countrywide, while 33,200 people on the islands are packed into spaces meant for fewer than 5,400 (April 2020). Source: UNHCR, [link](#)
28. The outreach team run by Save the Children and local partner Praxis collect the data. In 2019, the outreach team supported 15,123 refugees and migrants in Belgrade, Serbia. 4,377 child beneficiaries testified about 1,887 cases of pushback, out of which 821 were violent. 10,746 adult beneficiaries testified about 7,688 cases of pushback, out of which 3,038 were violent. [Link](#)
29. UNHCR overview refugee and migrant children January-December 2019. [Link](#)
30. Press release UNHCR, IOM, UNICEF: '60,000 young refugees and migrants who arrived in Italy alone need support as they enter adulthood', November 2019
31. UNHCR, UNICEF and IOM January - December 2019 Refugee and Migrant Children in Europe accompanied, Unaccompanied and Separated Overview of Trends January to December 2019.
32. UNHCR, UNICEF and IOM January - December 2019 Refugee and Migrant Children in Europe accompanied, Unaccompanied and Separated Overview of Trends January to December 2019.
33. IOM DTM, February 2019 report. [Link](#)
34. Loi No 2016-61, 3 August 2016: [PDF](#)
35. UNHCR operational portal, Tunisia. [Link](#)
36. MDM Belgique, Caritas Maroc : mineurs non accompagnées en recherche d'avenir. [Link](#)
37. Reports about pushbacks and violence against children at the Western Balkans borders in 2018 and 2019. [Link](#)
38. "El Gobierno llevo a cabo 533 devoluciones en caliente por la frontera de Ceuta en 2018," Ceutaldia, January 14, 2019. [Link](#)
39. See: CRC/C/80/D/4/2016: Dictamen aprobado por el Comité en relación con el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a un procedimiento de comunicaciones respecto de la Comunicación Núm. 4/2016
40. The EU has provided a €140 million support package to Spain and Morocco to support migration management. [Link](#)
41. FRA report, children in migration in 2019: [PDF](#)
42. AIDA contribution by Greek Council of Refugees. [Link](#)
43. The Greek law did not apply to vulnerable persons or those who fall within the family provisions of the Dublin III regulation.
44. An EU safe country of origin list: [PDF](#)
45. 'Vulnerable and abandoned, how the Greek reception system is failing to protect the most vulnerable people seeking asylum', briefing by Oxfam, 9 January 2019
46. See eg. Submission by the Office of the United Nations High Commissioner for Refugees in the case of International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece (Complaint No. 173/2018) before the European Committee of Social Rights. [Link](#)
47. European Parliament report on the proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast): [PDF](#)
48. Proposal for a Directive of the European Parliament and Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast): [PDF](#)
49. See also H.A. and Others v. Greece (19951/16), ECHR, 28.02.2019
50. Human Rights Watch: <https://www.hrw.org/news/2020/05/20/greece-move-migrant-children-safety>
51. See EKKA situation update unaccompanied children in Greece, March 2020. [Link](#)
52. ECHR 14165/16
53. Answer to Parliamentary Question, Germany: [PDF](#)
54. UNICEF report. [Link](#)
55. 86 of 489 persons, where files were opened in expedited transit proceedings were children. [Link, p.44](#)

56. Rechtswidrige Abschiebungshaft: »Es geht um uns. Darum, wie wir unsere Verfassung leben« ProAsyl. [Link](#)
57. Unaccompanied minor refugee for 13 days in detention, Germany. [Link](#)
58. Inhabitant Ankerzentrum died of coronavirus infection. [Link](#)
59. According to a report by the Swedish Red Cross: [PDF](#)
60. See the study here: [PDF](#)
61. Persons without a valid permit of stay can be placed in detention. [Link](#)
62. Reports [Committee Against Torture](#) and [Human Rights Committee](#)
63. NOAS, Redd Barna (2017) Jeg har ikke gjort noe galt; barn og foreldres opplevelse av transretur. [Link](#)
64. Information on detention by the Finnish government. [Link](#)
65. Statement of the Finnish federation of child welfare: [PDF](#)
66. 'Unemployment in Sweden at 9,8%': Aftonbladet, 2020-07-23: [Link](#)
67. On Finnish permits for unaccompanied minors: [PDF](#)
68. 'Humanitarian protection no longer granted: new guidelines issued on Afghanistan, Iraq, Somalia. [Link](#)
69. Study by Migration Institute: [PDF](#)
70. 'Measures to manage the refugee crisis'. [Link](#)
71. Jessica Schultz (2017) The Internal Flight Alternative in Norway: the law and practice with respect to Afghan families and unaccompanied asylum-seeking children; A mini-assessment commissioned by UNHCR: [PDF](#)
72. An overview of temporary residence for unaccompanied minors: [PDF](#)
73. 'Life full of insecurity': [PDF](#)
74. Statistical data of the Greek Dublin Unit: [PDF](#). In 2020, the acceptance rate has so far only been an alarming 17%
75. Statistical data of the Greek Dublin Unit: [PDF](#)
76. Based on EJC, Judgment of 26.07.2017, No. C-670/16.
77. A large number of German courts are now overturning the German asylum authority's decision to decline family reunification under the Dublin humanitarian clause. They maintain that the right to family unity narrows the margin for the German government to decline the use of the humanitarian clause to such an extent that there is an obligation to allow family reunification despite the passing of one of the deadlines.
78. See Hörich, Die vergessenen Kinder: Gutachten zum Geschwisternachzug im Auftrag von Save the Children Deutschland e. V., 2. Aufl. 2019.
79. 'Family reunification of unaccompanied minors very difficult in Finland. [Link](#) & [Link](#)
80. Expert criticises panic induced family reunification law changes. [Link](#)
81. Expert criticises panic induced family reunification law changes. [Link](#)
82. Report on asylum process: [PDF](#)
83. Report of the Non-Discrimination Ombudsman: the rights of a child are not realised in family reunification decisions. [Link](#)
84. Family reunification exceptionally difficult in Finland. [Link](#)
85. See report by UNHCR and NOAS: [PDF](#)
86. Information provided by the Spanish Office for Asylum and Refugees.
87. Asylverfahrensbeschleunigungsgesetz v. 20.10.2015 und Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher v. 28.10.2015.
88. See Schmahl, Kinderrechtskonvention, Handkommentar, 2. Aufl. 2017, Art. 1 KRK, Rn. 12.
89. See also <https://b-umf.de/p/vormundschaft/>
90. Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher v. 28.10.2015.
91. The reception of unaccompanied minors in Germany: [PDF](#), S. 9.
92. Experiences of unaccompanied minors in Sweden. [Link](#)
93. Review of guardianship: [PDF](#)
94. Representatives and the best interests of the child: [PDF](#)
95. Representative of an unaccompanied minor asylum-seeker. [Link](#)
96. Necessary safeguards for representatives: [Link](#)
97. Child-sensitive return, UNICEF: [PDF](#), p.50
98. In 2019, a total of 3.806 children were forcibly returned from Germany. BT-Drs 19/18201, p. 9.
99. Seven to 30 days depending on the type of rejection. In 2019, 3,948 children – accompanied (3,897) and unaccompanied (51) – returned voluntarily from Germany. BT-Drs 19/18201, p. 40.
100. Unaccompanied minors following status determination: approaches in EU member states and Norway, national report of Finland, EMN: [PDF](#)
101. Unaccompanied minors following status determination: approaches in EU member states and Norway, national report of Finland, EMN: [PDF](#)
102. Report of the Child Ombudsman 2020, Finland: [PDF](#)
103. Ending immigration detention of children, Amnesty International: [PDF](#)
104. Asylum Process: [PDF](#)
105. An overview of temporary residence of unaccompanied minor asylum-seekers: [PDF](#) and [PDF](#)
106. Statistics from the Norwegian Directorate of Immigration (UDI) webpage [link](#), [link](#) and [link](#)
107. Statistics from the Norwegian Directorate of Immigration (UDI) webpage, [link](#) and [link](#)
108. New rules for the treatment of unaccompanied minors and instructions from the government on internal flight to Kabul in 2018, have contributed to more Afghan asylum seekers being granted a residence permit in Norway in 2018 and 2019.
109. Epost fra PU, 21.02.2018
110. Epost fra UDI, 21.02.2018
111. A survey of Afghanistan practises in western European countries: the strictest of the class? [PDF](#)
112. Norway and Denmark close agreement on centres for asylum-seekers; an experiment with children's lives. [Link](#)
113. Concluding observations on the combined fifth and sixth periodic reports of Norway, CRC. [Link](#)
114. Report on children in forced return proceedings, Save the Children Norway/NOAS. [Link](#)
115. General Comment No 6: [PDF](#)

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