



TURNING 18 AND UNDOCUMENTED: SUPPORTING CHILDREN IN THEIR TRANSITION INTO ADULTHOOD



PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

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i <https://melaniameessina.photoshelter.com/>

ii From January to June 2020, ninety five percent of unaccompanied children arriving in Italy were boys. Ninety five of all unaccompanied children arriving in Italy were older than 15. Source: Unicef, *Latest statistics and graphics on refugee and migrant children* [checked on 17 December 2021]

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EXECUTIVE SUMMARY

Across Europe, thousands of migrant children dread their eighteenth birthday. The normal order of things is for children to grow up, gain autonomy and agency, and gradually take up the roles and responsibilities expected of adults. But, while most children and young people in European societies are allowed to gradually try out the freedom and responsibility that comes with being an adult,¹ undocumented children and young people are not allowed the privilege of time. They face an accelerated, compressed transition into adulthood. Unaccompanied children are particularly expected to become independent at a much faster pace than their peers, and with fewer resources at their disposal.

This report reviews the support undocumented migrant children and young people need and receive, and how governments treat them when they become of age. The relevant residence procedures and return policies in six countries (Belgium, Germany, Greece, Spain, Sweden and the United Kingdom) are examined in detail in the annex.

An ill-prepared transition

Two distinct yet interconnected processes are at play in this stage of life: the abrupt 'ageing out' and the slower 'transition into adulthood'. Transition into adulthood can be understood as *"the assumption of new roles and tasks related to the acquisition of autonomy and social integration, that culminates in the achievement of education, training, work, mature relationships, financial and housing independence."*² 'Ageing out' refers to the loss of rights children experience when turning 18.³ Here, ageing out includes the fact that children become (or remain) undocumented on their 18th birthday. Turning 18 means losing access to essential support and services like health care, specialised social workers or a guardian. This has far-reaching consequences for children's and young people's lives, as most adult pursuits require a residence permit (e.g., studying, working, getting a driver's license, etc).⁴ Turning 18 also means losing the little respite undocumented children may have from the full force of migration enforcement policies.

- 1 Arnett J.J., 2000, *Emerging Adulthood. A theory of development from the late teens through the twenties*, American Psychologist Vol. 55, no.5, 469-480
- 2 López, M.L., Santos, I., Bravo, A. and del Valle, J.F., 2013, *The process of transition to adulthood of young people fostered by the child welfare system*. An. Psicol., 29, 187-196; cited in Gullo, F., García-Alba, L., Bravo, A., del Valle, J.F., 2021, *Crossing Countries and Crossing Ages: The Difficult Transition to Adulthood of Unaccompanied Migrant Care Leavers*, International Journal of Environmental Research and Public Health, 18, 6935
- 3 What rights exactly are lost depends on the country and the specific situation of the child. For unaccompanied children (whether undocumented before the 18th birthday or having become undocumented at 18), this often means losing preferential access to education, health care, housing, their guardian or legal representative, other psycho-social support and losing the protection against forced return/deportation. For undocumented children in families, this generally means losing preferential access to education and health care 'only', as they enjoy fewer child protection safeguards than unaccompanied children in Europe to begin with.
- 4 Gonzales R.G., 2016, *Lives in limbo. Undocumented and coming of age in America*, University of California Press

Ageing out into undocumented adulthood comes as a shock to most children with irregular migration status. Their mental health suffers because of it, as they are rarely properly prepared for the many changes it entails and may have to depend on insecure residence permits.⁵ Most initiatives that assist undocumented young people ageing out are local and small-scale, so many children and young people fall by the wayside. Most of the existing initiatives also focus on (former) unaccompanied children who are either seeking asylum or are recognized refugees. Nonetheless, this report highlights good practices supporting unaccompanied children and/or children in families transitioning into undocumented adulthood in Belgium, Germany, Ireland, and The Netherlands.

Lack of protection at a precarious phase in life

Several issues recur across Europe. For instance, most EU member states protect unaccompanied children from deportation, either by issuing a temporary residence permit until they turn 18 or by not implementing return orders while they are underage.⁶ Yet these same temporary statuses may

not give access to longer term residence permits. The ‘UASC’ leave⁷ in the UK, for instance, cannot be extended or renewed into adulthood and is not a route to settlement.

Crucially, access to services and any protection from harmful migration enforcement policies ends at 18 and is not extended to young people, despite their vulnerability.

Even when residence procedures exist, undocumented young people often cannot access them. They may not be able to meet the conditions of longer-term residence permits (e.g., finding full-time work in an economic downturn, having spent at least half of their life in the country), or the procedure may be too expensive. As a result, these children age out into undocumented adulthood and social exclusion.

Of the six countries⁸ under review, only Spain and Germany have residence procedures that prevent children from becoming undocumented at 18. Unaccompanied children and young people who age out in Greece or Sweden cannot in practice or in law regularise their stay outside of the asylum system.

5 What rights exactly are lost depends on the country and the specific situation of the child. For unaccompanied children (whether undocumented before the 18th birthday or having become undocumented at 18), this often means losing preferential access to education, health care, housing, their guardian or legal representative, other psycho-social support and losing the protection against forced return/deportation. For undocumented children in families, this generally means losing preferential access to education and health care ‘only’, as they enjoy fewer child protection safeguards than unaccompanied children in Europe to begin with.

6 Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Portugal, Slovakia, and Spain. Self-reported data. See annex 1. Source: EMN, 2021, *Children in Migration: Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration*.

7 The official name is ‘limited leave to remain as an asylum seeking unaccompanied child’ although children with an ongoing asylum claim cannot receive it. See annex 2.

8 Belgium, Germany, Greece, Spain, Sweden, and the UK.

This is also the case for aged out unaccompanied children in the UK, unless they spent half of their lives in the UK. However, recent changes to the Immigration Rules will facilitate access to a secure residence permit for children who have lived in the UK for seven years and for young people who spent half of their lives in the country.⁹ The sixth country under review, Belgium, does have a residence procedure aiming to identify a durable solution for unaccompanied children, but they risk ageing out before a durable solution is identified. And, once aged out, their integration and time spent in Belgium is not necessarily sufficient grounds for another residence permit.

Some governments try to deport former unaccompanied children close to their 18th birthday without reassessing the original return decision – a practice which was recently condemned by the EU Court of Justice.¹⁰

The initial return order itself is often issued without a proper assessment of whether a return would be in the best interests of the child, even though half of EU member states and Norway report¹¹ having legal or policy provisions requiring such an assessment

where unaccompanied children are concerned. And, although some notable practices regarding unaccompanied children do exist,¹² no EU member state has included an in-depth, formalised procedure assessing the best interests and identifying a durable solution for all undocumented migrant children – both those who are accompanied as well as those who are unaccompanied – in their migration laws.

Childhood and adulthood are generally seen as two wholly distinct policy fields, causing a patchwork of practices and harm to children and young people transitioning into adulthood – including at the EU level.¹³ Although the Council of Europe has recognized the precarity that ageing out brings for young migrants and refugees¹⁴ and issued guidance, it only concerns unaccompanied asylum-seeking or refugee children.¹⁵

Creating a stable launching pad

Transitioning into adulthood, especially undocumented adulthood, can create a perfect storm exacerbating children's and young people's vulnerability to harm, exploitation, and mental ill-health.

- 9 See annex 2. Home Office, 15 March 2022, *Statement of changes in Immigration Rules*; Home Office, 15 March 2022, *Explanatory memorandum to the statement of changes in Immigration Rules presented to Parliament on 15 March 2022 (HC 1118)*.
- 10 CJEU, 14 January 2021, *Case of TQ v Staatssecretaris van Justitie en Veiligheid*, Press Release no. 5/21.
- 11 EMN, 2021, *Children in Migration. Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration*.
- 12 For instance, the Belgian 'durable solutions' procedure for unaccompanied children (in annex 2) and the establishment of an advisory committee proposing a durable solution for unaccompanied children in the Grand Duchy of Luxembourg (see Strada lex Luxembourg, *Une commission consultative pour évaluer l'intérêt supérieur des mineurs non accompagnés* [checked on 20 September 2021]).
- 13 Relevant EU legislation and policies concerning migrant children and young people include the EU Return Directive and wider EU migration law; the Comprehensive Child Rights Strategy, the Child Guarantee, the Youth Guarantee and the 2017 Communication on the Protection of Children in Migration.
- 14 Parliamentary Assembly Resolution [1996 \(2014\) Migrant children: What Rights at 18?](#) Other relevant Council of Europe texts include Resolution [1509 \(2006\) Human rights of irregular migrants](#) and Recommendation [1985 \(2011\) Undocumented migrant children in an irregular situation: a real cause for concern](#).
- 15 Committee of Ministers Recommendation [CM/Rec\(2019\)4](#) on supporting young refugees in transition to adulthood

To create a better present and future for everyone, children and young people must receive holistic, tailored support in their transition to adulthood, which helps them reflect on the future and works towards case resolution. Children's and young people's needs should be met, including the needs for support, stability, predictability, agency and having options (including ways to regularize).

The EU and governments should prevent children from ageing out as undocumented adults by developing regularization mechanisms based on childhood spent in the country and identifying a durable solution before a return decision is issued to a child, before the 18th birthday.¹⁶



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16 For more on durable solutions, see PICUM, *Doing What's best for Children* and PICUM, IOM, UNICEF, UN Human Rights, ECRE, Save the Children, and Child Circle, 2019, *Guidance to respect children's rights in return policies and practices. Focus on the EU legal framework*; and PICUM, Child Circle, DBI, European Network on Statelessness, Missing Children Europe, DRC, World Organization for early Childhood Education, Terre des Hommes International Federation, Destination Unknown and Save the Children, 2019, *Durable Solutions and the Best Interests of the Child in the Context of Return Processes*

INTRODUCTION

Across Europe, thousands of children in migration dread their eighteenth birthday. Instead of ushering in a time of exploration and self-development, this milestone in their lives marks the beginning of a time of uncertainty, stagnation, and unmet potential.

The normal order of things is that children grow up, gain autonomy and agency, and gradually take up the roles and responsibilities expected of adults. Throughout that slow transition from childhood into adulthood, they also integrate into adult social life. But, while children and young people in European societies are allowed to gradually try out the freedom and responsibility that comes with being an adult,¹⁷ children with irregular or insecure residence status are not allowed the same privilege of time. Unaccompanied and undocumented children living with their families face an accelerated, compressed transition to adulthood. They are expected to become independent at a much faster pace than their peers, and with fewer resources at their disposal, because they are treated as fully formed adults the moment they turn 18.

This report focuses on the transition into undocumented adulthood, specifically, where children remain or become undocumented when they turn 18. We review the support children and young people need and receive, and governments' treatment of them. The age of majority brings with it the issue of 'ageing out' of the protected status

children enjoy, both losing access to essential support and services like health care and losing the little respite they may have had from facing the full force of migration enforcement policies. For unaccompanied children transitioning into undocumented adulthood, it often means homelessness, exploitation, detention and/or deportation.

This report begins with a social and legal analysis, followed by an overview of how countries hinder or facilitate their access to a secure residence status and the policies and practices that support children in their transition into undocumented adulthood. An in-depth description of policies protecting children from return and residence procedures undocumented children or young people can access in six countries (Belgium, Germany, Greece, Spain, Sweden, and the UK) is included in Annex 2. For each of these countries, we researched three elements:

- whether children were protected from deportation or not
- whether the country had a policy of suspending returns on certain grounds or not, and
- what residence procedures were available to children or young people once aged out.

The report does not cover asylum procedures or how these impact or are impacted by children ageing out.

17 Arnett J.J., 2000, *Emerging Adulthood. A theory of development from the late teens through the twenties*, American Psychologist Vol. 55, no.5, 469-480

A COMPLEX ISSUE WITH FAR-REACHING CONSEQUENCES

Transition into adulthood can be understood as “the assumption of new roles and tasks related to the acquisition of autonomy and social integration, that culminates in the achievement of education, training, work, mature relationships, financial and housing independence.”¹⁸ As with any transition, it is a time of change, of trial and error and – importantly – it should be a time for an individual to find their footing and direction in life. In industrialised societies the transition to adulthood has been prolonging, with young people acquiring skills and independence at a more gradual rate than before and only expected to take up full adult responsibilities when they reach their mid-to-late twenties.¹⁹ Not so for children turning 18 and becoming undocumented. On the one hand, they are forced to grow up and become independent quicker than their documented peers, and with less support and resources at their disposal. On the other hand, their irregular residence status prevents them from taking up adult roles and contributing to society as they could.

‘Ageing out’, then, refers to the loss of rights children experience when turning 18. What rights are lost depends on the laws in place in the specific country and the specific situation of the child. For

unaccompanied children (whether undocumented before the 18th birthday or becoming undocumented at 18), this often means losing preferential access to education, health care, housing, their guardian or legal representative, other psychosocial support and losing safeguards against deportation. For undocumented children living with their families, this generally means losing access to education and health care, as they enjoy fewer child protection safeguards than unaccompanied children to begin with.²⁰

Ageing out often comes as a shock to children, as they are rarely properly prepared for the many changes it entails. When undocumented, their 18th birthday also kicks off a period during which they will experience discrimination compared to their peers concerning most of the markers of adulthood – studying, working, financial independence, finding one’s own place, voting, learning how to drive – since most of these areas are formally inaccessible to them.

To fully understand the issue of transition into undocumented adulthood, we begin with an analysis of some recurring realities across Europe, before looking at what ageing out means on a personal level. Then we will consider some demographic data.

18 López, M.L., Santos, I., Bravo, A. and del Valle, J.F., 2013, *The process of transition to adulthood of young people fostered by the child welfare system*. An. Psicol., 29, 187–196; cited in Gullo, F., García-Alba, L., Bravo, A., del Valle, J.F., 2021, *Crossing Countries and Crossing Ages: The Difficult Transition to Adulthood of Unaccompanied Migrant Care Leavers*, International Journal of Environmental Research and Public Health, 18, 6935.

19 This trend started in the second half of the 20th century, with more young adults studying for longer, leaving the family home and entering the labour market later, and pushing back marriage and/or founding their own families. Mann-Feder, V. *How Can I Be a Real Adult? Developmental Theory as a Framework for Practice, Policy and Research on Care Leaving*. In *Leaving Care and the Transition to Adulthood: International Contributions to Theory, Research, and Practice*; cited in Gullo, F., García-Alba, L., Bravo, A., del Valle, J.F., 2021, *Crossing Countries and Crossing Ages: The Difficult Transition to Adulthood of Unaccompanied Migrant Care Leavers*, International Journal of Environmental Research and Public Health, 18, 6935.

20 For more on growing up undocumented, see PICUM, 2021, *Navigating Irregularity. The Impact of growing up undocumented in Europe*; PICUM, 2020, *FAQ Undocumented children*; PICUM, 2018 [2015], *Protecting undocumented children: Promising policies and practices from governments*

The legal framework surrounding transition to adulthood

Under **international law**, all children²¹ are ensured fundamental rights and a higher degree of protection because they are underage. Children develop mentally and physically but do not have the same agency as adults and need safeguarding. Once the child turns 18, child rights no longer apply. While the UN Committee on the Rights of the Child has issued guidance that could be applicable here,²² it does not mention transition into adulthood of migrant children.

The 2010 UN Guidelines for the Alternative Care of Children²³ cover aftercare,²⁴ recommending that: there should be clear policies and procedures when children or young people leave care; children leaving care should be encouraged to take part in planning their aftercare life; a reference person should be allocated to facilitate their independence after leaving care; social, legal and health services and financial support should be provided during aftercare; and aftercare should be prepared well before the child leaves the care setting.

The **European Union** legal framework does not encompass transition into adulthood as a whole. In fact, transition into adulthood of children in migration is only mentioned in two policy documents: the 2017 European Commission Communication on the Protection of Children in Migration and the 2021-2027 Action Plan on Integration and Inclusion.

The 2017 Communication on the Protection of Children in Migration²⁵ includes the following:

“Given that recently arrived children may not yet have been able to acquire sufficient skills and competences to fully and actively integrate in society, in particular for transition into further study or the labour market, children in this transitional phase should be provided with guidance, support and opportunities for continuing education and training. Furthermore, as is the case for children in State care who are EU nationals, mechanisms and processes need to be in place to help prepare children in migration in State care for the transition to adulthood/leaving care. The Commission promotes cooperation between Member States in this area, facilitating exchanges of good practices²⁶ and providing financial support to pilot integration projects for all migrant children, including those who are unaccompanied.”

The European Commission also encourages member states to “provide support to enable children in the transition to adulthood (or leaving care) to access necessary education and training.”

The 2021-2027 Action Plan on Integration and Inclusion²⁷ underscores that

“The transition into adulthood and from school to work can be particularly challenging for recently arrived migrant children, in particular unaccompanied young people, not least because support measures often stop when a child reaches 18 years of age. Preparing for such a transition in advance – through supporting their educational achievement, including them in vocational education and training and in the Youth Guarantee, and providing coaching and mentoring – can be particularly effective.”

21 United Nations, 1989, *Convention on the Rights of the Child*: “Article 1 - For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” The UNCRC is the most widely ratified UN human rights convention, with 196 ratifications to date.

22 *General Comment no. 6* on the treatment of unaccompanied children outside of their country of origin (2005), and *General Comment no. 20* on the implementation of the rights of the child during adolescence (2016)

23 United Nation General Assembly, 2010, *Guidelines for the Alternative Care of Children*, Resolution 64/142

24 Aftercare is the care, treatment, help, or supervision given to someone discharged from an institution.

25 Communication from the Commission to the European Parliament and the Council, *The protection of children in migration*, COM(2017) 211 final

26 Here, the text refers to the European Commission, *European Website on Integration*

27 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Action plan on Integration and Inclusion 2021-2027*, COM(2020) 758 final

Member states are also encouraged to “develop support programmes that are specific to unaccompanied minors who arrive past the age of compulsory schooling and programmes for unaccompanied minors on the transition to adulthood.”

These two policy documents indicate that the European Commission sees ageing out of unaccompanied migrant children as an issue to be addressed by both the Commission as well as member states. Yet numerous challenges remain in the implementation of any of the recommendations and the recommendations themselves fall short of addressing the situation faced by all undocumented children, since they only concern those who are unaccompanied. To implement them properly, several Directorate Generals (DGs) across the European Commission should be involved (such as DG Home, DG Justice and Consumers, and DG Education, Youth, Sport and Culture) which would require close coordination amongst different institutional mandates.

The **Council of Europe**²⁸ recognizes the precariousness of transition into adulthood of unaccompanied migrant children. The 2014 resolution ‘Migrant children: what rights at 18?’ calls for a transition period between the ages of 18 and 25 and the adoption of “political measures geared to: welfare assistance and education; access to information on the relevant administrative procedures; extensions of housing assistance; [and] access to health care.”²⁹

The Committee of Ministers issued general guidance regarding young people³⁰ and specific guidance on the transition into adulthood of unaccompanied refugee and asylum-seeking children and young people. The 2019 Recommendation³¹ on young refugees transitioning to adulthood mentions the “abrupt change” that comes with ageing out and recommends member states improve the legal framework and provide the young people with the “support and protection they require” and a continuity of care (including housing and mental health care). It also underlines the role the youth sector can play in integrating and meeting the needs of children and young people transitioning into adulthood. The recommendation does not focus on undocumented children and young people though.

For years, the Council of Europe has promoted the concept of ‘life projects’ for unaccompanied children. These aim to “develop the capacities of minors allowing them to acquire and strengthen the skills necessary to become independent, responsible and active in society. In order to achieve this, life projects (...) pursue objectives relating to the social integration of minors, personal development, cultural development, housing, health, education and vocational training, and employment.”³² Some of the projects presented in this report reflect – by design or inadvertently – this approach.

28 Other relevant Council of Europe texts include Resolution [1509 \(2006\) Human rights of irregular migrants](#) and Recommendation [1985 \(2011\) Undocumented migrant children in an irregular situation: a real cause for concern](#)

29 Parliamentary Assembly Resolution [1996 \(2014\) Migrant children: What Rights at 18?](#)

30 Recommendation [CM/Rec\(2016\)7](#) of the Committee of Ministers to member States on young people’s access to rights

31 Recommendation [CM/Rec\(2019\)4](#) of the Committee of Ministers to member States on supporting young refugees in transition to adulthood

32 Recommendation [CM/Rec\(2007\)9](#) of the Committee of Ministers to member states on life projects for unaccompanied migrant minors

Recurring issues across Europe

Although each European country has different rules and regulations and children and young people live and grow up in different contexts, several issues are recurring across the continent.

The invisible children and young people in families

The transition into adulthood of undocumented children who live with their families is largely ignored. The few policies that exist, whether support programmes or residence permits, largely target (former) unaccompanied children. As unaccompanied children are in a highly vulnerable situation, governmental bodies have generally prioritised their protection by specifically designing policies in the areas of guardianship programmes, adapted reception facilities, and specialised child protection initiatives.

The absence of relevant policies and projects targeting undocumented children living with their families should not be understood as an absence of need, but as a policy gap. Children in families and undocumented young people who have grown up in the country are very much in need of psychosocial and material support and pathways to regularise their stay. This is also the reason why the Dutch non-profit organisation *Vluchteling in de Knel* stopped having a separate programme only addressing aged out unaccompanied children, and extended their support to include young people in undocumented families (as

well as young undocumented people who arrived in the Netherlands after their 18th birthday (see chapter on positive practices).³³

Protecting unaccompanied children from return without issuing a secure residence status

International and EU law stipulates that where returning unaccompanied is allowed by law, their return should be preconditioned on several elements being in place.³⁴

Sixteen out of the 27 EU member states (slightly more than half) declare that they do not deport unaccompanied children³⁵ (see table in annex 1, first column). Either they made it illegal or adopted a policy not to forcibly return them.

However, EU member states that do not deport unaccompanied children do not necessarily issue them with a residence permit until their 18th birthday. For instance, Belgium, The Netherlands and Sweden do not issue a residence permit to unaccompanied children who saw their asylum or other residence claim rejected, but they do provide housing, food and clothing until their 18th birthday.³⁶

Eight EU member states (Bulgaria, Czech Republic, France, Germany, Italy, Slovakia, Spain and Sweden) and Norway reported granting unaccompanied children a residence status³⁷ because they are unaccompanied children.³⁸ The status expires at 18,³⁹ as they are no longer children. Nonetheless, the security of the

33 Interview with Vluchteling in de Knel coordinator, 18 November 2021.

34 A key text is the [EU Return Directive](#), which states that “Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return” (art. 10). The international and EU legal framework surrounding the return of children, including unaccompanied children, is detailed in the following reports: IOM, UNICEF, UN Human Rights, ECRE, Save the Children, PICUM and Child Circle, 2019, [Guidance to respect children’s rights in return policies and practices. Focus on the EU legal framework](#); Fundamental Rights Agency, 2019, [Returning unaccompanied children: fundamental rights considerations](#). See also EMN, 2021, [Children in Migration: Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration](#), pp. 33-34

35 Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Portugal, Slovakia, and Spain. Self-reported data. See annex 1.

36 See annex 2 for more information on Belgium and Sweden. For The Netherlands, see for instance Kulu-Glasgow, I, van der Meer, M, Smit, M., Noyon, S.M., 2021, [Een onzekere toekomst. Kwalitatief onderzoek naar de ervaringen van afgewezen \(ex-\)alleenstaande minderjarige vreemdelingen en opvangouders met toekomstgerichte begeleiding](#), Wetenschappelijk Onderzoek- en Documentatiecentrum.

37 The term ‘residence status’ is used here as not all of these amount to residence permits in a technical sense. For instance, children are not required to have a permit in France, and the German *Duldung* status is not a right to reside in as much as it is a temporary suspension of deportation with people having access to a set of services during the suspension (see annex 2).

38 Note that France and Italy issue a secure residence status to children in families until their 18th birthday. See PICUM, 2018, [Manual on regularisations for children, young people and families](#).

39 EMN, 2021, [Children in Migration: Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration](#)

status varies from country to country, with France not requiring that children have a residence permit at all,⁴⁰ and Germany issuing 'Duldung' statuses (i.e., based on a suspension of deportation). Other countries, like the UK, issue a temporary residence permit to (unaccompanied) children who have not received asylum or humanitarian protection and who cannot return (called 'UASC'-leave, see annex 2).

In some countries, the temporary permit can be converted into another permit if the now-adult meets additional conditions. For example, in Germany and Belgium, the temporary permit can be transposed into another permit if the now-adult meets additional conditions. However, meeting the conditions of other residence permits can be nearly impossible, like in the UK⁴¹ or in Belgium,⁴² and few countries have developed adequate pathways (see further).

Moral acrobatics: deporting unaccompanied children once they are 18

International and EU law requires several safeguards to be met before an unaccompanied child is issued a return decision and/or is deported.⁴³ These conditions can rarely be met according to the countries themselves,⁴⁴ resulting in a low number of voluntary and forced returns of unaccompanied children.

However, the return safeguards for children no longer apply once an unaccompanied child has aged out, and some governments see no issue in protecting them one week to deport them the next. For instance, The Netherlands and Sweden have underlined that the condition of safe reception in the country of return no longer applies once an unaccompanied child has turned 18.⁴⁵ The UK has a similar policy:

"Caseworkers must bear in mind that [unaccompanied children who have not received asylum or humanitarian protection] cannot be removed if they are under 18 years of age unless adequate reception arrangements have been identified and section 55 has been considered. It is therefore in the best interests of the child to maintain the lawfulness of their leave. However, if the applicant is approaching 18 this must not prevent caseworkers from completing any preliminary work necessary to ensure that removal can go ahead as soon as possible after the applicant turns 18."⁴⁶

In Romania, the deportation is timed: police arrest undocumented young people in care (i.e., former unaccompanied children) on the 21st day after their 18th birthday.⁴⁷

40 Ministère de l'Intérieur, *Le séjour des mineurs étrangers*; Adate, *L'entrée et le séjour des mineurs*. For more on residence permits available to children and young people in France, see PICUM, 2018, *Manual on regularisations for children, young people and families*.

41 As explained above and in annex, children with 'UASC leave' do not usually meet the conditions of residence permits available to undocumented adults in the UK, like having spent half of their life in the country, or having lived in the UK for seven years.

42 Many aged out young people's requests for a permit on humanitarian grounds are deemed inadmissible and never get analysed on their merit. The decision on the merits is also highly discretionary and integration is considered insufficient grounds for a residence permit. For more on this, see annex 2.

43 Based on several texts and case law, including the EU Return Directive and the *Twenty Guidelines of the Committee of Ministers of Europe on forced return*. The safeguards include but are not limited to: that the return is decided on the basis of a "reasonable and objective examination" of the specific child's situation (Council of Europe Guidelines), that the return is in the best interests of the child and that an unaccompanied child is returned to either a family member, a guardian or to 'adequate reception facilities' that would take care of them (art 10. Return Directive). The CJEU has repeatedly underlined that voluntary return must be preferred over deportation (e.g., CJEU, *C-554/13*). For more on child rights compliant returns, see IOM, UNICEF, UN Human Rights, ECRE, Save the Children, PICUM and Child Circle, 2019, *Guidance to respect children's rights in return policies and practices. Focus on the EU legal framework*; Fundamental Rights Agency, 2019, *Returning unaccompanied children: fundamental rights considerations*

44 Because a forced return is not in the best interests of the child and/or specific conditions cannot be met (no adequate person or facility to hand over guardianship to). European Migration Network, 2018, *Approaches to unaccompanied minors following status determination in the EU plus Norway*, EMN Inform

45 EMN, 2021, *Children in Migration: Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration*

46 Home Office, 31 December 2020, *Children's asylum claims v 4.0*, guidance, p. 84

47 Lost in Migration Conference 2021, *Workshop on transition to adulthood*, 10 December 2021. Lost in Migration Conference website: www.lostinmigration.eu

The logic behind this loss of protection and safeguards at the age of 18 is based on the idea that adults do not need additional support or protection, disregarding both the fact that young people are vulnerable because of their age and what is happening to them,⁴⁸ as well as the fact that adults can be vulnerable too.

The deportation of young people immediately after their 18th birthday was condemned by the EU Court of Justice in 2021. In *TQ v Staatssecretaris van Justitie en Veiligheid*, which concerned an unaccompanied child who was to be deported from The Netherlands to Guinea on his 18th birthday, the Court underlined that EU member states must refrain from keeping children in limbo until their 18th birthday, and then forcibly return them, because that is at odds with the child's best interests.⁴⁹

Linked to this is the assessment and reassessment of return decisions. Half of EU member states and Norway report⁵⁰ having legal or policy provisions requiring the assessment of the best interests of the child before issuing a return decision for unaccompanied children. However, as far as we are aware, no EU member state has included an in-depth, formalised procedure assessing the best interests and identifying a durable solution for all undocumented migrant children – both those who are accompanied as well as those who are unaccompanied – in their migration laws.⁵¹ And, crucially, the return decisions issued to children are not reviewed or reassessed if the return was postponed, for instance until the 18th birthday.

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Barriers to return

National courts have confirmed that some children and young people who should, according to national law, be returned can nonetheless not be returned or reintegrated in the country of origin or in a third country. The children may have spent most of their life in an EU member state, making a 'return' to a country they have no ties with disproportionate.⁵² Other case law has found that children may have become so 'westernized' that their values, lifestyle or looks endanger them if they were to return to their country of origin: Belgian case law shows that this can create a risk of persecution as understood by the Geneva Refugee Convention.⁵³

For more on the protection of people with barriers to return, see PICUM, 2022, *Barriers to return: protection in international, EU and national frameworks*.



- 48 Living and growing up without a secure residence status impacts all facets of a child or young person's life, including their housing, family dynamics, socio-economic status, physical and mental health and development. The impact of these last beyond childhood and into adulthood. For more on the impact of growing up undocumented, see PICUM, 2021, *Navigating irregularity. The impact of growing up undocumented in Europe*.
- 49 CJEU, 14 January 2021, *Case of TQ v Staatssecretaris van Justitie en Veiligheid*, Press Release no. 5/21.
- 50 EMN, 2021, *Children in Migration. Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration*
- 51 Some notable practices do exist for unaccompanied children, such as the Belgian 'durable solutions' procedure for unaccompanied children (in annex 2) and the establishment of an advisory committee proposing a durable solution for unaccompanied children in the Grand Duchy of Luxembourg (see Strada lex Luxembourg, *Une commission consultative pour évaluer l'intérêt supérieur des mineurs non accompagnés* [checked on 20 September 2021]).
- 52 For instance Danish case law U 2016.2783/1)
- 53 Belgium: RVV 30 november 2017, nr 196.024 (Afghanistan); RVV 30 november 2017, nr. 196.023 (Afghanistan); RVV 17 maart 2017, nr. 183.934 (Iraq)

Loss of rights at 18

Once they turn 18, the child loses their child-specific rights enshrined in the UN Convention on the Rights of the Child, in EU and in national law. This means that unaccompanied children are no longer assisted by a guardian and any support given to them because they were children (including housing, access to formal education, higher degree of access to health care and other services) comes to an end. This is the case for all children, including those who have a secure residence permit,⁵⁴ but the transition is especially jarring for those who age out as undocumented adults.

Unaccompanied children who age out with an irregular residence status not only lose the support of their guardian, but they may also be forced to leave the reception facility they lived in. They then either become homeless or are transferred to adult reception or detention centres.⁵⁵ They would then usually be forced to rely on the people they know (friends, acquaintances), informal support networks, charity organisations, homeless shelters, informal housing and the informal economy to survive and make ends meet.⁵⁶ Dependence on others makes them vulnerable to exploitation and to accumulating debts, and can impact their physical and mental health.

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Migrant children disappearing from reception facilities around their 18th birthday

Different factors including the loss of rights at 18, the risk of detention and/or deportation, and not being able to secure a residence permit can push unaccompanied children to leave the reception facilities or host family⁵⁷ they had been living in, leave their guardians, friends and classmates behind and disappear before their 18th birthday. Some leave out of fear of detention and deportation, others because they believe they can secure a residence status in another country, and yet others because they had wanted to start a family reunification process but failed to do so before 18.⁵⁸

In depth qualitative research based on interviews with 83 undocumented former unaccompanied children in The Netherlands found that 73 had left the reception facilities before or around their 18th birthday, many because they knew their reception would not be extended beyond 18 and/or feared being apprehended and detained.⁵⁹

54 See for instance, Oxfam and Greek Council for Refugees, 2021, *Teach us for what is coming. The transition into adulthood of foreign unaccompanied minors in Europe: case studies from France, Greece, Ireland, Italy, and the Netherlands*

55 Ibid.

56 Vuilleumier L., 2021, *Lost in transition to adulthood? Illegalized male migrants navigating temporal dispossession*, Social Sciences 10, 250-264; Staring R & Aarts J., 2010, *Jong en illegaal in Nederland. Een beschrijvende studie naar de komst en het verblijf van onrechtmatig verblijvende (voormalige) alleenstaande minderjarige vreemdelingen en hun visie op de toekomst*; PICUM, 2021, *Navigating Irregularity. The impact of growing up undocumented in Europe*

57 Kulu-Glasgow, I, van der Meer, M, Smit, M., Noyon, S.M., 2021, *Een onzekere toekomst. Kwalitatief onderzoek naar de ervaringen van afgewezen (ex-)alleenstaande minderjarige vreemdelingen en opvangouders met toekomstgerichte begeleiding*, Wetenschappelijk Onderzoek- en Documentatiecentrum

58 Missing Children Europe & The Malta Foundation for the Wellbeing of Society, 2021, *Key challenges faced by children in migration. Outcomes of the Lost in Migration Conference Local Hubs 2021*; Pharos, 2019, *Factsheet Alleenstaande Minderjarige Vreemdelingen (amv's)*

59 Staring R. & Aarts J., 2010, *Jong en illegaal in Nederland. Een beschrijvende studie naar de komst en het verblijf van onrechtmatig verblijvende (voormalige) alleenstaande minderjarige vreemdelingen en hun visie op de toekomst*. Similar findings in Kulu-Glasgow, I, van der Meer, M, Smit, M., Noyon, S.M., 2021, *Een onzekere toekomst. Kwalitatief onderzoek naar de ervaringen van afgewezen (ex-)alleenstaande minderjarige vreemdelingen en opvangouders met toekomstgerichte begeleiding*, Wetenschappelijk Onderzoek- en Documentatiecentrum

Difficult access to a secure residence status before and after the 18th birthday

What residence procedures are accessible can depend on the applicant's age. And, given that many of the temporary residence statuses issued to unaccompanied children lapse on their 18th birthday,⁶⁰ children must seek to secure a residence permit on other grounds before or after their coming of age. However, this proves very difficult.

Just one third of EU member states reported that, in 2019, unaccompanied children were offered alternative ways to regularise their status after they turn 18 (Belgium, Bulgaria, Finland, France, Germany, Italy, Spain, and Sweden; see annex 1). And, when comparing column 4 and 3 in the table in annex 1, we conclude that the majority of EU member states that issue temporary residence permits to unaccompanied children until their 18th birthday do not foresee ways for them to regularise their stay or convert this

temporary status in a more durable one before or after their 18th birthday. And the mere existence of procedures does not guarantee access to a secure, or even temporary, residence permit.

Children and young people in families may be able to access different regularisation mechanisms or programmes than unaccompanied children.⁶¹ Yet few EU member states give children and young people who may have spent years living in Europe the possibility to regularise their status on those grounds.

We reviewed the residence permits children and young people may apply for in five EU member states (Belgium, Germany, Greece, Spain, Sweden) and the UK. We included procedures accessible to unaccompanied children, former unaccompanied children and children or young people in families. Detailed accounts and references can be found in annex 2. Here, we draw general conclusions from that research and identify trends.



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60 If the unaccompanied child acquired a long-term residence status on other grounds than being a child (for instance, refugee status, humanitarian reasons, training, etc), the residence permit does not usually lapse on the 18th birthday. Belgium, Bulgaria and Portugal reported that unaccompanied children's temporary residence status ends once they turn 18 (excl. if in an ongoing asylum procedure or refugee status). And France requires children have a valid residence permit the moment they turn 18. Self-reported data. See annex 1.

61 See also PICUM, 2018, *Manual on regularisations of children, families and youth*

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Key take-aways regarding residence procedures for undocumented children and young people in the six countries under review

- › Residence procedures to prevent children from becoming undocumented at 18 exist in Spain and Germany.
- › Belgium has a separate residence procedure for unaccompanied children whose purpose is to identify a durable solution⁶² that is in the best interest of the child. But if no durable solution is identified before the 18th birthday, their chances of accessing a secure residence permit shrinks dramatically.
- › 18-to-24-year-olds who have lived continuously in the UK for half of their lives can apply for a five-year route to settlement, but the process is expensive.
- › Undocumented children can apply for a residence permit after seven years of continuously living in the UK, but the process is especially expensive for those not born in the UK and it is unlikely unaccompanied children meet the criteria.
- › Temporary residence permits for education or vocational training exist (or existed) in Germany, Spain, and Sweden. These can be converted into a more secure residence permit if work is found in time. Most of these are only available to (former) unaccompanied children.
- › In Spain, all unaccompanied children in the care of the state (e.g., under guardianship) are considered regularly residing.
- › In the UK, unaccompanied children who cannot return to the country of origin are issued a temporary residence permit, but it is not a route to settlement (long-term stay).
- › Both Germany and Greece have '*Duldung*' statuses (suspensions of deportation), with the German ones giving access to services and the possibility to convert it into a residence permit.
- › Children and young people in families transitioning into adulthood cannot regularize their stay in Greece or Sweden outside of the asylum system (in practice or in law).
- › Unaccompanied children ageing out without a secure residence status cannot regularize their stay in the UK, Greece or Sweden outside of the asylum system (in law or in practice).

62 For unaccompanied children, durable solutions are either integration in country of stay or family reunification in the country of origin or a third country. However, Belgian law defines them as family reunification in the country where the family lives; return to family, a guardian or reception facilities in the country of origin; or residence in Belgium. See 'durable solutions procedure' in annex.

While **Belgium's** 'durable solutions procedure' for unaccompanied children⁶³ is quasi unique in the European Union, the fact that the procedure simply ends on the 18th birthday is highly problematic. Belgium's residence procedures do not adequately prevent or respond to a transition into undocumented adulthood. The procedures they can access once adult (exceptional residence on humanitarian or medical grounds) give little hope that they can be regularised, as many applications are deemed inadmissible and local anchoring is insufficient grounds for it to be awarded. In addition, the type of temporary residence permit given to children during the 'durable solutions' procedure prevents many from benefiting from it. Unaccompanied children older than 17.5 years old cannot effectively benefit from the procedure.⁶⁴ In reality, the procedure must be started before the child is 14.5 years old for them to have a secure residence status before they turn 18 (see annex). This can cause children or guardians not to start the procedure, even though the child's durable solution is in Belgium.

Children and young people can access several regularisation mechanisms in **Germany**, some of which have been specifically designed with young people in mind. For instance, the 'residence permit for qualified employees' and the 'residence permit through integration of young people and their parents' are based on having completed respectively two and four years of training. The latter can only be applied for by people younger than 21.

Germany's widespread use of '*Duldung*' status does not protect from a (forced) return and does not provide safety or long-term perspectives. Germany's new government has announced that

the *Ausbildungsduldung*, a suspension of return for vocational training purposes that benefits children and young people, will be converted into a (more secure) residence permit, thus creating more security for them.⁶⁵

Some federal states in Germany have passed decrees that facilitate the regularisation of young adults (with a *Duldung* status) through general mechanisms. For instance, Bremen and North Rhine-Westphalia require young adults over 21 to have spent four years (and not six-to-eight years) in Germany to qualify for the permit.⁶⁶

In **Greece**, recent changes to the immigration law have made it virtually impossible for children and aged out young people to regularize their stay outside of the asylum system. Since 2020, people who have seen their asylum application rejected cannot receive a residence permit on humanitarian grounds.⁶⁷ And, although Greek law does have a naturalisation mechanism for anyone who has continuously lived in Greece for seven years, it seldom results in residence permits (citizenship). Because they cannot in reality access a secure residence status, thousands of children and young people remain in limbo and at risk of indefinite social exclusion.

Sweden's regularization mechanism for aged out unaccompanied children who study is being phased out. The mechanism was introduced in 2018, but new applications have not been accepted since July 2021. Existing permits can be renewed. The mechanism gave 7,500 young people the chance to study in Sweden and included a six-month period after graduation to find work. However, this ended up being a too short

63 This procedure, established in 2011, aims to determine a durable solution for unaccompanied children from outside of the European Economic Area. The law defines a durable solution as (in order of priority) either (i) family reunification in the country where the parents reside regularly; (ii) return to the country of origin or to a country where the unaccompanied child can reside regularly, with guarantees of adequate care and attendance, either by their parents or other adults who will take care of them, or by public authorities or non-governmental bodies; or (iii) regularly residing in Belgium. See annex 2 for a full description.

64 Fournier K, 2019, *Hoofdstuk 16. Duurzame oplossingen voor niet-begeleide minderjarige vreemdelingen: pistes voor de toekomst*, in Desmet E, Verhellen J, and Bouckaert S (eds.), 2019, *Rechten van niet-begeleide minderjarige vreemdelingen in België*, Die Keure

65 Coalition government agreement of 24 November 2021, *Mehr Fortschritt Wagen. Bündnis Für Freiheit, Gerechtigkeit und Nachhaltigkeit*; For a full review of the changes, see PROASYL, 25 November 2021, *Koalitionsvertrag 2021–2025: Wichtige Erfolge, aber auch gravierende Lücken* [checked on 15 December 2021]

66 *Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory 1) Residence Act*, 2008, Section 25b.

67 The access was abolished by Law 4636/2019, as amended by Law 4686/2020. See annex for more details.

period for many,⁶⁸ and many people will have ended up undocumented again. With the phasing out of the mechanism, children and young people may no longer have a way to regularize their stay in Sweden.

The **UK** adopted ways for undocumented children and young people in families to regularise their stay – if they can afford the high administrative fees.⁶⁹ Several changes to the UK's Immigration Rules will come into effect in June 2022,⁷⁰ and we include both the current and future situation here.

Currently, adults younger than 25 who have spent half of their life in the UK can apply for a 'limited leave to remain' based on article 8 of the European Convention of Human Rights (incl. post-Brexit).⁷¹ Several conditions must be met for the young person to receive the 30-month temporary residence permit, which must be renewed several times until they can access an 'indefinite leave to remain'. Until October 2021, young people would only be able to access this secure residence permit after ten years with the temporary status. After nearly a decade of lobbying by civil society and young people themselves, young people can now access a 5-year route to indefinite leave.⁷² As of June 2022, this concession by the

Home Office will be permanently integrated in the Immigration Rules. Young people will also be able to choose between a 30-month or a 60-month temporary residence status,⁷³ possibly creating more stability.

Today, children who have lived continuously in the UK for at least seven years and "for whom it would not be reasonable to expect them to leave the UK" also enter the 'ten-year route'.⁷⁴ As of June 2022, they will also enter a 'five-year route' to settlement.⁷⁵ Children in families are the most likely group of people applying for a permit on this ground, as most unaccompanied children will not have lived in the UK for seven years.⁷⁶

Unaccompanied children who age out without a secure residence permit have no real prospects of regularising their stay under current UK law, as it is highly unlikely they will meet these conditions (having spent half of their life or seven years in the UK). The changes presented in March 2022 do not change this fact.

The **Spanish** Ministry of Inclusion, Social Security and Migration,⁷⁷ pushed to amend⁷⁸ the law and make it easier for unaccompanied children to access

- 68 Scott, H, 29 June 2020, *Calling out the law with a lie: Community perspectives on precarity, welfare and law in times of Covid-19 in Sweden*, University of Oxford Faculty of Law; ARTE.tv Documentary, 14 May 2021, *Sweden: Migrants at Point Zero*
- 69 For an exhaustive overview of all residence procedures, see Coram Children's Legal Centre, 2017, *Securing permanent status: Existing legal routes for children and young people without leave to remain in the UK*. See below and annex 2 for more on the administrative fees the UK government levies.
- 70 Home Office, 15 March 2022, *Statement of changes in Immigration Rules*; Home Office, 15 March 2022, *Explanatory memorandum to the statement of changes in Immigration Rules presented to Parliament on 15 March 2022 (HC 1118)*
- 71 Home Office, 25 February 2016, *Immigration Rules part 7: other categories. Other Categories (paragraphs A246 to 276BVI)*, paragraph 276ADE (1)
- 72 Home Office, 21 October 2021, *Concession to the family Immigration Rules for granting longer periods of leave and early indefinite leave to remain*
- 73 Home Office, 15 March 2022, *Explanatory memorandum to the statement of changes in Immigration Rules presented to Parliament on 15 March 2022 (HC 1118)*, paragraph 7.34, p.8
- 74 Home Office, 25 February 2016, *Immigration Rules part 7: other categories. Other Categories (paragraphs A246 to 276BVI)*, paragraph 276ADE (1)
- 75 Home Office, 15 March 2022, *Statement of changes in Immigration Rules*; Home Office, 15 March 2022, *Explanatory memorandum to the statement of changes in Immigration Rules presented to Parliament on 15 March 2022 (HC 1118)*, PL 3.1., p. 174
- 76 As of June 2022, undocumented children who were born in the UK will be able to apply for indefinite leave to remain after having lived in the UK for seven years (irrespective of whether they had any previous residence status). However, children must still show that it is 'unreasonable' to expect them to leave the UK, and the Immigration Office and UK courts apply a high threshold. See annex 2.
- 77 Ministerio de Inclusión, Seguridad Social y Migraciones, 19 October 2021, *El Gobierno aprueba la reforma del Reglamento de Extranjería para favorecer la integración de menores extranjeros y jóvenes extutelados*
- 78 Reforming articles 196, 197 and 198 of the *Organic Foreigner's Law* of 2000. The *Royal Decree 903/2021* of 19 October, modifies the *Organic Law 4/2000* of 11 January 2000 on rights and liberties of foreigners in Spain and their social integration, after its reform through the *Organic Law 2/2009* on the Rights, passed by the *Royal Decree 557/2011* of 20 April.

a temporary residence permit before 18, preventing they age out undocumented, and introducing a programme regularising 'extutelados' – former unaccompanied children. Since November 2021:

- Autonomous Communities now have 90 days to issue an unaccompanied child with a residence permit, while previously they had nine months. The long amount of time left scores of children in uncertainty and many aged out before acquiring a residence permit.⁷⁹ Although the new time frame will not resolve all the reasons why residence permits are not issued, it will surely help.⁸⁰
- Young people who are documented on their 18th birthday will receive a six-month extension of the permit they had as a child. Given that all unaccompanied children under the guardianship have a right to residence by law, this prevents them from ageing out into undocumented adulthood.
- Former unaccompanied children who had already aged out, were undocumented and were between 18- and 23-years old at the time of the reform (November 2021) can apply for a temporary residence permit for exceptional circumstances, if they meet several conditions.⁸¹

Young undocumented people who grew up with their families in Spain can access other residence

procedures. The 'arraigos' are based on social ties ('arraigo social'), work ('arraigo laboral') or parental ties ('arraigo familiar') and give access to one-year temporary residence permits which can be renewed.

The prohibitive use of administrative fees

Where residence procedures do exist, their cost may be an additional barrier. A clear example of this is the UK, where people must pay £2,612.20 when applying for and renewing a limited leave to remain based on private life – the most likely option for young people who have grown up in the UK.⁸² In Belgium, young people must pay 366 euros when applying for an exceptional residence permit on humanitarian grounds.⁸³ In contrast, the applications under the Spanish 'arraigo'-system cost 38 euros.

Fees – especially high fees – are a political choice. The UK's fees must be understood within the broader 'hostile environment' policy, which tries to make life for the undocumented as difficult as possible in hopes that they will leave.⁸⁴ Fees have more than tripled since 2014.⁸⁵ Following extensive advocacy by civil society and young people themselves,⁸⁶ the British government is halving the time (and thus the cost) it would take children and young people to regularize their stay.⁸⁷ However, the fees themselves were not lowered.⁸⁸

79 Spanish law considers all unaccompanied children under the guardianship of a Spanish public administration or any other entity, as regularly residing. Regulation of the Foreigner's Law (Reglamento de la Ley de Extranjería), Article 35; reform of article 196

80 The Public Prosecutor's office writes that, in 2019, "[t]here are numerous prosecutors that report the difficulties for undocumented foreign minors to obtain residence authorization for various reasons (Tenerife, oversaturation of the centers; Castellón, processing and documentation errors; A Coruña, refusal of the consulates to issue passports to the minors due to lack of prior documentation; Pontevedra, refusal to grant registration cards by the competent administrative authority; Zaragoza, refers to the sometimes exasperating slowness of procedures at the consulate; etc." Own translation. Fiscalía General del Estado, Capítulo III. Fiscales Coordinadores y Delegados para Materias Específicas - 4. Extranjería. 4.7 Menores no Acompañados [checked on 2 December 2021]

81 Based on Organic Law 4/2000 on the Rights and Freedoms of Foreign Nationals in Spain and their Social Integration, article 31.3

82 This is a combination of three fees: £1033 application fee + £1560 Immigration Health Charge + £19.20 biometric information enrolment fee. Sources : UK Visas and Regulations, 11 October 2021, Home Office immigration and nationality fees: 11 October 2021; UK Visas and Immigration, UK Visa and Citizenship Application Services; NRP Network, Immigration application fees

83 Immigration Office, Redevance

84 The Joint Council for the Welfare of Immigrants, The Hostile Environment explained [checked on 10 Dec 2021]

85 We Belong, 2020, Mental Health Check

86 We Belong, 2020, Mental Health Check; Gardner Z and Patel C, 2021, We are here. Routes to regularisation for the UK's undocumented population, The Joint Council for the Welfare of Immigrants; Let us learn, 2019, 'Normality is a luxury': How 'limited leave to remain' is blighting young lives

87 Free Movement, 17 March 2022, Statement of changes HC 1118: new family and private life rules [checked on 22 March 2022]

88 Home Office, Home Office immigration and nationality fees: 26 February 2022 [checked on 24 March 2022]



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Belgium argued that the administrative fees, introduced in 2015, were meant to cover processing costs, but the then-State Secretary mentioned in the media that the revenue could be used to fund detention centres and forced returns. In 2017, he noted the “dissuasive effect” resulting in a decrease of the number of applications.⁸⁹

A lower number of applications does not mean that applications were previously made thoughtlessly. Administrative fees throw up real barriers for people who live in or at risk of poverty, like many undocumented children, young people and families do.⁹⁰ If they have several children, including some over the age of 18, parents may have to choose whose

application they support financially, as paying for all of them may be too expensive. Debts are incurred, and families rent cramped housing in order to save up for fees.⁹¹ The impact this has on families must not be underestimated.

Some countries have introduced fee waivers, but these may be conditional. In the UK, for example, people must prove they are destitute, faced with exceptional financial circumstances or cannot meet their child’s particular and additional needs.⁹² Other countries have introduced fee waivers for certain groups of people: Belgium exempts children or stateless people, for instance.⁹³

89 EMN Belgium, 2020, *Comparative overview of national protection statuses in Belgium 2010-2019*

90 See PICUM, 2021, *Navigating Irregularity. The Impact of growing up undocumented*

91 We Belong, 2020, *Mental Health Check*

92 NRPF Network, *Immigration application fees*; Home Office, 5 March 2021, *Fee waiver: Human Rights-based and other specified applications*

93 Immigration Office, *Redevance*

The impact of age assessments

Age is one of the elements which determines the protection and assistance a person is granted, with children in general being better protected from harm than adults. Therefore, how age assessments are done has a substantial impact on a person's life and future⁹⁴ and can force an abrupt ageing out.

When unaccompanied children are wrongly identified as adults, they are housed with adults, are not appointed a guardian, risk detention,⁹⁵ are more likely not to go to school,⁹⁶ have more limited access to services and no access at all to child protection systems. It also influences the residence procedures they can access (e.g. in Belgium, Spain) and the criteria applied in other procedures, like family reunification. It can also lead to homelessness and destitution (e.g., France⁹⁷). State actors disputing a person's age, and children wrongly being assessed as adults undermines the trust children and their families have in the institutions around them and can exacerbate pre-existing mental health problems.⁹⁸

It is crucial that a person's age is assessed well⁹⁹ but determining a person's exact chronological age through medical means such as X-rays is impossible. Children grow and age at widely different rates, influenced by their genetics, the environment, and their experiences,¹⁰⁰ and skeletal maturity doesn't necessarily match chronological age. "Teenagers can have adult bone structure as early as 15 or later than 20," according to scientists, with dental or wrist scans giving the wrong answer about whether someone is under or over 18 up to a third of the time.¹⁰¹

94 EASO, 2018, *EASO Practical Guide on Age Assessment*

95 ECRE, 2015, *Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking*

96 Since the child is presumed to be an adult, social workers would not guide them to (secondary) school and their access to school is not guaranteed by law or policy. For more on access to education by undocumented children, see PICUM, 2018 [2015], *Protecting undocumented children: Promising policies and practices from governments* (2nd edition)

97 French law stipulates that unaccompanied children must be taken care of by child protective services, but countless find themselves homeless and without any help, either because the relevant department says there is no room, or because the child is determined to be an adult by an often-arbitrary age assessment. In the latter case, they find themselves in a 'neither-nor-situation': they can neither access the housing, support and guardian they are entitled to as children, nor can they access services as adults when they have either lost or been deprived of their identity documents or because the documents state they are children and (adult-only) services refuse them assistance. For more on this, see PICUM, 2021, *Navigating Irregularity: The impact of growing up undocumented in Europe*

98 Platform Kinderen op de Vlucht, 2017, *Leeftijdsschatting van niet-begeleide minderjarigen (NBMV) in vraag: Probleemstelling, analyse en aanbevelingen*

99 Difficulties when establishing someone's age include: when the child's behaviour appears older, possibly in line with their cultural background or experiences during their journey; people may reach puberty at different ages which can make them look older for the authorities in the receiving state; communication skills can be affected by traumatic experiences or illiteracy; the existence of different calendar systems which conversions may not be used and prompt mistakes. Source: Coram Children's Legal Centre, 2017, *The age assessment process*

100 Z. Solomon, A. Ohry, 2010, *The Toll of War Captivity: Vulnerability, Resilience and Premature Aging*, in E. Martz (eds.), *Trauma Rehabilitation After War and Conflict*, Springer; K-H. Ladwig, AC. Brockhaus, J. Baumert, K. Lukaschek, RT. Emeny, et al., 2013, *Posttraumatic Stress Disorder and Not Depression Is Associated with Shorter Leukocyte Telomere Length. Findings from 3,000 participants in the Population-Based KORA F4 Study*

101 New Scientist, 9 May 2012, *With no paper trail, can science determine age?*

Still, many countries revert to medical age assessment methods,¹⁰² including methods using radiation like X-rays of the carpal bones, collar bones or teeth and radiation-free examinations of the teeth, physical development and MRIs. Non-medical procedures like interviews, the collection of documents as evidence, observation of the child's behaviour and psychological reviews are also used, but to a far lesser degree.¹⁰³

Unaccompanied children, guardians, medical associations and civil society organisations have raised serious concerns about age assessment policies and methods used in European countries. For example, in Germany¹⁰⁴ and Greece,¹⁰⁵ age has been determined only based on the person's appearance. Delays in age assessments have been reported in Greece¹⁰⁶ and Spain.¹⁰⁷ Doubt may be cast (Greece¹⁰⁸) before official documents can be procured from the country of origin. In Belgium, the Immigration office is accused of systematically casting doubts for certain nationalities.¹⁰⁹ Sweden,¹¹⁰ Spain¹¹¹ and Greece¹¹² have been criticized for not applying the benefit of the doubt. Spain's age assessment policies have, in fact, been thoroughly criticised by the UN Committee on the Rights of the Child in fourteen separate decisions.¹¹³

102 European Migration Network, 2011, *Unaccompanied Minors – an EU comparative study*

103 EASO, 2018, *EASO Practical Guide on Age Assessment*; Wenke D., September 2017, *Age Assessment: Council of Europe member states' policies, procedures and practices respectful of children's in the context of migration*, Council of Europe; ECRE, 2015, *Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking*

104 ECRE, 2019, *Country Report: Germany*

105 HIAS Greece, Refugee Support Aegean [RSA], Greek Council for Refugees, DIOTIMA, Legal Centre Lesbos, European Lawyers in Lesbos [ELIL], FENIX Humanitarian Legal Aid and PRAKSIS, May 2020, *Observations on the Implementation of Law 4636/2019 "on International Protection and other Provisions" at the "Hotspot" of Lesbos*

106 ECRE, 2021, *Country Report: Greece*

107 ECRE, 2020, *Country Report: Spain*

108 HumanRights360, 2021, *The Doctrine of the 'instrumentalisation' of refugees. The borders of Evros in the area of border securitization*

109 Platform Kinderen op de Vlucht, 2017, *Leeftijdsschatting van niet-begeleide minderjarigen (NBMV) in vraag: Probleemstelling, analyse en aanbevelingen*

110 ECRE, 2020, *Country Report: Sweden*

111 ECRE, 2020, *Country Report: Spain*

112 HIAS Greece, Refugee Support Aegean [RSA], Greek Council for Refugees, DIOTIMA, Legal Centre Lesbos, European Lawyers in Lesbos [ELIL], FENIX Humanitarian Legal Aid and PRAKSIS, May 2020, *Observations on the Implementation of Law 4636/2019 "on International Protection and other Provisions" at the "Hotspot" of Lesbos*

113 OHCHR, 13 October 2020, *Spain's age assessment procedures violate migrant children's rights, UN committee finds*

The social and mental health impact of ageing out into undocumented adulthood

Ageing out into undocumented adulthood not only means losing the rights and protections awarded to children and regularly residing people. It also means the start of an extended youth, as most of the markers of adulthood – financial independence, tertiary studies, work, paying taxes, being self-sufficient, financially taking care of younger family members – are outside an undocumented person's grasp. Simply put: most aspects of participating in society as a child do not require a secure residence status but most adult pursuits do.¹¹⁴

Especially for those who have grown up in the country, “youthful feelings of belonging give way to new understandings of the ways that they are excluded from possibilities they believed were theirs.”¹¹⁵ And, because of the stigma around not having the right paperwork, they may “find themselves increasingly associated with the common perceptions of criminality and outsidership, pushing them further out onto the margins [socially].”¹¹⁶

The gap between an undocumented person's chronological age and their ‘social age’ widens the longer they stay undocumented, with people further ‘falling behind’ their peers who are the same age.¹¹⁷ Not being able to access the formal labour market also thwarts any prospects of upwards social mobility. In fact, people may feel they are on a downward trajectory, the longer their undocumented situation endures, progressively readjusting their expectations downwards.¹¹⁸

Undocumented children and young people are acutely aware of the uncertainty of their future.¹¹⁹ Undocumented young adults who were formerly unaccompanied as children in the Netherlands, for instance, indicated that they missed the carefreeness that having a secure residence status brings, and the frustration knowing that they would become undocumented at 18.¹²⁰

Temporary residence permits provide little reprieve from this stress. Fifteen young people on temporary residence permits in the UK testified that they and their family members worried about their residence status every day.¹²¹ Having to meet the conditions for residence permits – securing a job within a certain timeframe, for instance, or having to pay high administrative fees – is a heavy burden for children and young people.¹²²

Mental health can deteriorate when young people cannot settle their life or work towards achieving their long-term goals.¹²³ The pressure can become too much, and if no adequate support is given and the future made more certain, children and young people can resort to substance abuse or suicide. In the UK, at least a dozen (former) unaccompanied children have committed suicide around their 18th birthday.¹²⁴ Similar suicides have been recorded in Sweden.¹²⁵ Temporary residence permits that cannot be renewed or converted after the 18th birthday (like the ‘UASC leave’ in the UK, see annex) distress young people. One young man, a 19-year-old Afghan who had arrived in the UK when he was 13 and who was given temporary leave, committed suicide because he was so scared of being deported.¹²⁶

114 Gonzales R.G., 2016, *Lives in limbo. Undocumented and coming of age in America*, University of California Press

115 Ibid., p. 12

116 Ibid., p. 15

117 Vuilleumier L., 2021, *Lost in transition to adulthood? Illegalized male migrants navigating temporal dispossession*, *Social Sciences* 10, 250-264

118 Ibid.

119 See also PICUM, 2021, *Navigating Irregularity. The Impact of growing up undocumented*; PICUM, 2022, *Insecure Residence Status, Mental Health and Resilience*

120 Staring R & Aarts J, 2010, *Jong en illegaal in Nederland. Een beschrijvende studie naar de komst en het verblijf van onrechtmatig verblijvende (voormalige) alleenstaande minderjarige vreemdelingen en hun visie op de toekomst*

121 We Belong, 2020, *Mental Health Check*

122 ARTE Documentary, 2021, *Sweden: Migrants at Point Zero*; We Belong, 2020, *Mental Health Check*; see also PICUM, 2021, *Navigating Irregularity. The Impact of growing up undocumented*

123 The Children's Society, 2018, *Distress Signals: Unaccompanied young people's struggle for mental health care*

124 The Guardian, July 2021, *Charities raise alarm over suicides of young asylum seekers in UK* [checked 11 Dec 2021]

125 ARTE Documentary, 2021, *Sweden: Migrants at Point Zero*

126 The Guardian, 8 September 2021, *Teenage Afghan who feared UK would deport him killed himself* [checked on 11 Dec 2021]

Thousands of children and young people are affected

While various governmental and non-governmental bodies deal daily with the many children and young people aging out in Europe without a secure residence status, data is difficult to find on country and EU-level. At the time of writing, Eurostat data does not include the number of children in reception centres turning 18 in any given year, or how many lose their residence permit when they turn 18. Due to the emphasis in policymaking on assistance to unaccompanied children, data on the number of children in families on national or regional level is particularly difficult to find. However, the data below does show that a significant number of children and young people are affected.

A 2020 parliamentary report provides data on the number of persons, including children, who were living in **Germany** with a 'Duldung' status. This status is based on a 'suspension of deportation' and is given to people who have barriers to return,¹²⁷ including unaccompanied children who are not returned before their 18th birthday since safeguards are not met (see annex 2). On 30 July 2020, 669 children had a

Duldung status because they were unaccompanied children.¹²⁸

While there is no data on the number or age of undocumented children or young people living in **Greece**, 91.9% of the estimated 4,028 unaccompanied children living in Greece in 2020 declared being older than 14.¹²⁹

Spain's 2021 law reform facilitating access to a secure residence status for unaccompanied children and aged out unaccompanied children (see earlier and annex) is projected to benefit 7,000 young people between 18 and 23 years old.¹³⁰ And approximately 40,700 people between 15 and 19 years old were living in Spain without a residence permit in 2019 (slightly more than one fourth of all undocumented people younger than 19).¹³¹

A study estimated that around 215,000 undocumented children and 117,000 undocumented young people aged between 18-25 years old lived in the **United Kingdom** in 2017. The study also estimated that at city level, 107,000 undocumented children and 26,000 undocumented young people lived in London in 2017.¹³²

127 For more on residence permits for people with barriers to return, see PICUM, 2022, *Barriers to return: protection in international, EU and national frameworks*

128 Federal Government of Germany, 2020, *Answer of the Federal Government of Germany to the Small Inquiry (Kleine Anfrage) of various members of parliament of the Leftist Party, Question 18, p. 28f*

129 Oxfam International and Greek Council for Refugees, 2021, *Teach us for what is coming. The transition into adulthood of foreign unaccompanied minors in Europe: case studies from France, Greece, Ireland, Italy, and the Netherlands*

130 InfoMigrants, 21 October 2021, *Migrants in Spain: 15,000 youths to benefit from stay permit reform*; European Commission, 1 November 2021, *Spain: New regulation for unaccompanied foreign minors* [checked on 3 December 2021]

131 Fanjul G., Gálvez I., and Zuppiroli J., 2021, *Creecer sin papeles en España*, por Causa and Save the Children, p. 18

132 Jolly, A., Thomas, S. and Stanyer, J., 2020, *London's children and young people who are not British citizens: A profile*, London: Greater London Authority.

PREPARING FOR ADULTHOOD

In this chapter, we focus on the needs of children and young people transitioning into adulthood and/or ageing out of care. We also highlight programmes that support children and young people who age out without a secure residence status in Belgium, Ireland, Germany, and The Netherlands.

The needs of children and young people in their transition to adulthood

During transition to adulthood, children and young people may find themselves in one of two critical developmental stages: adolescence or emerging adulthood. Adolescence (the teenage years) carries with it physical, cognitive and social changes.¹³³ It is also a period with relatively few social expectations, especially compared to adulthood. Emerging adulthood, then, is the phase from approximately the end of secondary school to the mid-to-late twenties dedicated to exploration and trying out 'adult things'.

"Emerging adults do not see themselves as adolescents, but many of them also do not see themselves entirely as adults," either.¹³⁴ Research in the United States¹³⁵ identified five characteristics as common to emerging adults: identity exploration (answering the question

who you are and trying out what that may be); instability (in love, work, where you live); self-focus (as there are fewer obligations towards others compared to other stages of life); a feeling of being 'in-between' childhood and adulthood; and a sense of possibility and optimism (as emerging adults usually have more opportunities to transform their lives in this stage of life compared to others). Although ageing out into undocumented adulthood limits the available possibilities and opportunities to shape one's life, undocumented young people most likely recognize themselves in many of these characteristics as well.

For a smooth transition into adulthood, a stable launching pad that meets children's and young people's needs is necessary. Although these differ from person to person, we highlight six common needs here.

Support – All children and young people benefit from a network that supports them in *"gradually taking on more responsibility while still having the emotional, financial, and social supports needed to learn and grow; support and guide them as they make and learn from mistakes (an essential element of growing up); and help them get the education, skills, and experience needed to access high-quality employment and economic stability."*¹³⁶

133 Walinga J. & Stangor C., 2014 *Chapter 7.3. Adolescence: Developing independence and identity*, in Walinga J. & Stangor C., 2014, Introduction to psychology – 1st Canadian Edition

134 Arnett J.J., 2000, *Emerging Adulthood. A theory of development from the late teens through the twenties*, American Psychologist Vol. 55, no.5, 469-480, p. 471, BCCAMPUS

135 University of New Hampshire, *What is Emerging Adulthood*

136 Urban Institute, 2021, *Stabilizing Young People Transitioning to Adulthood. Opportunities and Challenges with Key Safety Net Programs.*

Being and feeling supported is key, as it helps navigate the challenges that come with adulthood. Professional support must be tailored to the person's needs yet be holistic, multidisciplinary, unconditional¹³⁷ and knowledgeable. Support can come from non-professional or semi-professional actors too, including social workers, mentors, volunteer guardians, locals, etc.¹³⁸

A Belgian study identified four essential elements to ensure accurate counselling that is in line with the future orientation model: a broad perspective; autonomy and empowerment of the person; focus on the (long-term) process; and building trust in counsellors, while being realistic about the expectations.¹³⁹

Support includes family support. An adolescent's sense of independence, self-reliance, educational and occupational achievements benefit from strong relationships with parents.¹⁴⁰ In other words, the family of (former) unaccompanied children should be involved too, for instance by discussing the child's options with the child and them.

Support should include material and/or financial support too.

Stability – As emerging adulthood is defined by instability it is important to create stability for them. Continuity is a stabilising factor. Having a stable place to live and the support of reference people one has known since childhood helps face the challenges of life. Unsurprisingly, young migrants have recommended that the transition from child to adult is made smoother, and support and services continued irrespective of their status change.¹⁴¹

Predictability – One must know what is coming to prepare for it. This is connected to information provision, but also to the management of expectations, making of decisions (agency), etc.

Information – Correct, clear, honest information that is adapted to the person's age and capacities helps children and young people make choices. Information also helps manage expectations and prepare for the future.

Agency – Children and young people must be supported in their agency. This includes taking their choices seriously, even if they have negative consequences, because it includes allowing young people to make mistakes and learn from them.

Having options – Transitioning into and shaping adulthood requires having options and trying them out. However, the options at one's disposal are defined by residence and broader socio-economic status. Being able to apply for a secure residence permit in the country where one lives should be part of the options. Even so, the options one has (training, support, housing), should not depend on having a secure residence status but rather on the person's need.

A study interviewing 29 former unaccompanied children in The Netherlands found that, while some young people said they were less willing or able to think about their future before their 18th birthday, on reflection they would have liked to have had more future-oriented discussions with their guardian and mentors as children. They also explicitly asked their guardian and mentors to be more involved and proactively broach the topic.¹⁴²

137 Not conditional on the child or young person's residence status or future residence status, or the presence of parents.

138 Velos Youth, HumanRights360, Babel Day Centre, EPIM, 2019, *Transitioning to Adulthood. A Pathway to Autonomy & Self-reliance*; Oxfam International and Greek Council for Refugees, 2021, *Teach us for what is coming. The transition into adulthood of foreign unaccompanied minors in Europe: case studies from France, Greece, Ireland, Italy, and the Netherlands*

139 Kruispunt Migratie & Integratie, 2014, *Toekomstoriëntering; met precare verblijvers werken aan een zinvol toekomstperspectief*, p. 11-13.

140 Bell et al. 1996; O'Connor et al. 1996 cited in Keller T., Cusick G.R., and Courtney M., 2007, *Approaching the Transition to Adulthood: Distinctive Profiles of Adolescents Aging out of the Child Welfare System*

141 Missing Children Europe & The Malta Foundation for the Wellbeing of Society, 2021, *Key challenges faced by children in migration. Outcomes of the Lost in Migration Conference Local Hubs 2021*

142 Kulu-Glasgow, I, van der Meer, M, Smit, M., Noyon, S.M., 2021, *Een onzekere toekomst. Kwalitatief onderzoek naar de ervaringen van afgewezen (ex-)alleenstaande minderjarige vreemdelingen en opvangouders met toekomstgerichte begeleiding*, Wetenschappelijk Onderzoek- en Documentatiecentrum

Positive practices

Although few and far between, good practices supporting migrant children and young people in their transition to adulthood exist in Europe. We looked for projects benefitting undocumented children and/or young people, specifically, and identified positive practices in Belgium, Germany, Ireland, and The Netherlands, although others are sure to exist elsewhere.

From our research we find that (i) these supporting services are generally organized at the local level, creating a variety of practices both within countries and between countries. Furthermore, (ii) the assistance appears to be mostly available to (former) unaccompanied children, leaving other undocumented children and young people with few support options.¹⁴³ And (iii) creating stability and safety were identified as a precondition for the child or young person to reflect on their goals and options, and take steps to achieve them (this includes having a safe, secure place to live).

As the focus of this report is on undocumented children and young people, projects exclusively supporting asylum-seeking or refugee children in their transition to adulthood were not included. However, there are some notable examples targeting these specific groups of children in the areas of: supported semi-independent living (Greece¹⁴⁴), holistic support (in Athens, Greece¹⁴⁵), specialized all-round support to aged out refugees (Tilburg, the Netherlands¹⁴⁶), or orientation courses (Ghent, Belgium¹⁴⁷).

Belgium

Unaccompanied children who will age out with irregular migration status who live in the reception centres at Bovigny or Arendonk can enroll in the **My Future programme**. The programme is designed to help them explore their options: regular and irregular stay in Belgium, return to the country of origin or migrating to a third country. Additionally, the children may be able to follow some vocational training and several of the exercises are meant to increase resilience and empower them. Because the programme is only available in these specific centres, they can no longer access it once they turn 18 and are transferred to another reception centre (if their asylum procedure is ongoing) or turn 18 and become undocumented and have to leave the reception system. Unaccompanied children living with family ('separated children') do not have access to My Future either.¹⁴⁸

The Flemish organization **Minor-Ndako**¹⁴⁹ supports about 200 unaccompanied children per year, all living in small, supported housing in Flanders and Brussels. Some of the homes are considered specialised youth care ('bijzondere jeugdzorg'), meaning that support can be extended up until the young person's 25th birthday. Because of this and the fact that ageing out has become more of an issue for the children Minor-Ndako supports, they have started extending their support into adulthood.¹⁵⁰

Because turning 18 is such an important moment for unaccompanied children, Minor-Ndako starts discussing the future and all it entails with the child

143 Twenty member states and Norway reported supporting unaccompanied asylum-seeking children. Thirteen reported supporting regularly residing unaccompanied children (in other migration procedures). This support most often included help to find accommodation, educational assistance, psychosocial support and financial assistance. Source: EMN, 2021, *Children in Migration. Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration*

144 For more on SIL and other programmes supporting refugee and asylum-seeking unaccompanied children in their transition to adulthood, see for example Oxfam International and Greek Council for Refugees, 2021, *Teach us for what is coming. The transition into adulthood of foreign unaccompanied minors in Europe: case studies from France, Greece, Ireland, Italy, and the Netherlands*

145 See for instance Velos Youth, HumanRights360, Babel Day Centre, 2019, *Transitioning to Adulthood. A Pathway to Autonomy & Self-reliance*

146 Workshop 2 "Tilburg's integrated approach to supporting unaccompanied minors in their transition to adulthood" at Eurocities online mutual learning on "Migrant children in cities: inclusion and rights on the local level" on 20 and 21 October 2021

147 In-Gent organises 'Parkoer' thrice a year. It is a ten-day programme for young third country nationals who are 17 to 19 years old and live in or around the city of Ghent. It consists of activities on social orientation and individual counselling to better connect the young people to education and training structures or the workplace. Because of funding constraints, it is not accessible for undocumented young people. Source: Interview with In-Gent staff, 15 March 2021.

148 Fedasil, *Niet-begeleide minderjarige vreemdelingen (NBMV)*

149 www.minor-ndako.be

150 Minor-Ndako developed a pedagogical guide called 'Begeleiding van jongeren in precair verblijf' which is constantly updated and revised.

well before their 18th birthday. As for all children placed in care in Flanders, a 'growth plan' ('groeiplan') is developed with children older than 16. The growth plan looks at all facets of life, including resolving their residence status, and is developed with the unaccompanied child, their guardian, and (if possible) the child's family. Then, six months before the 18th birthday, Minor-Ndako starts making the upcoming transition more palpable for the child (irrespective of residence status). They discuss where they will sleep and how much that would cost, whether the support the child receives needs to be extended or whether they can stand on their own two feet, etc.

Up until a few years ago, Flemish youth care ended at 18 and could only be extended in exceptional circumstances. This changed in 2017, after the 19-year-old Belgian Jordi Brouillard died of hunger and thirst mere months after leaving youth care in 2016.¹⁵¹ Since then, Flanders has broadened the possibilities to extend youth care beyond the 18th birthday¹⁵² and made it possible for the financial support given to children in specialised youth care to be extended beyond the 18th birthday (approximately 1,000 euros per month).¹⁵³ It is this financial support that Minor-Ndako now helps young people to manage.¹⁵⁴

Minor-Ndako currently has twenty spots for aged out unaccompanied children. Because there are so many undocumented former unaccompanied children

who need support, and because Minor-Ndako does not want to make them too dependent on them (as their housing and basic needs are covered for as long as the support lasts), the organisation decided to cap the financial support to undocumented young people at 12 months after the 18th birthday. Social and psychosocial support are provided for longer if the young person needs it.¹⁵⁵

Minor-Ndako's goal is to make the children and young people self-reliant and conscious of their options and choices. Their support to undocumented young people is based on three pedagogical principles: (i) avoiding dependency and nurturing self-sufficiency, (ii) limiting the support in time (max. 12 months) and focusing on supporting the young person in achieving the goals they have set for themselves, and (iii) helping the young people prepare for their life after leaving Minor-Ndako (budgeting, saving up, etc).¹⁵⁶

The Brussels' non-profit called SAAMO (formerly *Samenlevingsopbouw Brussel vzw*)¹⁵⁷ offers a support program to adults which aged out young people can also attend. The programme, called **Toekomst-oriëntering** ('future orientation'), is available to any migrant, regardless of socio-cultural background or residence status. The future orientation model aims to provide participants with accurate information about their rights, access to services and the migration legal framework. Additionally, the model tries to

151 De Standaard, 2 September 2016, *Het tragische levenseinde van instellingenkind Jordy*, [checked on 24 November 2021]

152 Jeugdhulp, 2017, *Actieplan jongvolwassenen*; website *Jeugdhulp* [checked on 24 November 2021]; Jeugdhulp, April 2019, *Het actieplan jongvolwassenen: een stand van zaken*

153 This financial support, called 'verblijfssubsidie', is a daily allowance equal to the living wage ('leefloon') and equals about 33,02 euro per day as of 1 October 2021 (~1000 euro/month). Source: Jeugdhulp, 10 September 2021, *Indexering augustus 2021 – indexering salarisschalen vanaf oktober 2021*

154 Presentation "Minor Ndako: niet-begeleide minderjarige vreemdelingen die meerderjarig worden" on 26 October 2021, as part of CESSMIR lecture series "*Toekomstgericht werken met en voor mensen zonder wettig verblijf*". Minor Ndako is currently developing a small-scale housing project that will use this money to house and support undocumented aged out young people.

155 Ibid.

156 Minor Ndako, 1 April 2021, *Pedagogisch handboek: Begeleiding van jongeren in precair verblijf*

157 See Samenlevingsopbouw Brussels, *Toekomstoriëntering voor migranten in een precaire verblijfsituatie*

help participants shift their mindset from survival-mode to more long-term thinking. To enable a shift in mindset, the programme focuses on three aspects: the motivation for migration, the current situation as well as one's future.¹⁵⁸

Prior to the Covid-19 pandemic, the three-day course was taught three times a year. The course was in high demand and had eight to ten spots. The course was taught in French, since participants are mostly from French-speaking African countries. Prior to the course's start, candidates are invited for an interview to assess their circumstances and their ability to successfully partake in the course. During the interview, the counsellors analyse whether one has a sufficient level of French, the right expectations of what the course entails and (obvious) mental health challenges. This allows the counsellors to see whether one is mentally in a position to reflect and think about their long-term plans.¹⁵⁹ During the course, the morning sessions are used to provide the participants with information about Belgium (day 1), opportunities for regularization (day 2) and access to social rights and services (day 3). The afternoon sessions are used to reflect on one's past, present and future. The reflections sessions are mostly done in group sessions, in order to share experiences and learn from each other.

Ireland

The Irish policy of providing after care to former unaccompanied children helps them navigate their transition to adulthood and reduce anxiety. Unaccompanied children are usually placed in Ireland's mainstream child protection system, Tusla, which has a specialized department.¹⁶⁰ Once taken into care by Tusla, an unaccompanied child is assigned a social worker, who develops a care plan in line with the child's needs. Before the child turns 18, an aftercare social worker is assigned who will assist the child until they turn 21 or, if the child is in full-time education, until the age of 23. The aftercare worker, who is assigned regardless of the child's residence status,¹⁶¹ plans their aftercare and assesses the child's/young person's needs, necessary psychosocial, education and employment support, and helps with family reunification.¹⁶² Former unaccompanied children themselves have testified that the aftercare social worker is an important figure, who often keeps in touch after they have fully aged out.¹⁶³

However, other elements of Ireland's policies towards unaccompanied children and undocumented children placed in care cause anxiety. This includes the fact that the Tusla social worker oversees the steps towards regularizing the child's residence status,

158 Kruispunt Migratie & Integratie, 2014, *Toekomstoriëntering; met precaire verblijvers werken aan een zinvol toekomstperspectief*, p. 25

159 Interview Meeting (Samenlevingsopbouw), 16 July 2019.

160 At the end of 2018, 67 unaccompanied children were in the care of Tusla. Of these, 52% were in residential care, 33% were in SIL and 15% were in foster care (Source: Tusla, 2019, *Annual Review on the Adequacy of Child Care and Family Support Services Available 2018*). In July 2020, 59 unaccompanied children were in the care of Tusla (Source: Houses of the Oireachtas, 2020, *Seanad Éireann Debate – Thursday, 24 September 2020: Unaccompanied Minors and Separated Children*). The child's social worker is responsible for residence status (international protection), which may lead to delays. Tusla personnel have testified that they expect all unaccompanied children in care to be recognized as refugees, although this does not always happen before they turn 18. Source: Children's Rights Alliance, September 2019, *Safe haven. The Needs of Refugee Children Arriving in Ireland through the Irish Refugee Protection Programme: An Exploratory Study*

161 Oxfam International and Greek Council for Refugees, 2021, *Teach us for what is coming. The transition into adulthood of foreign unaccompanied minors in Europe: case studies from France, Greece, Ireland, Italy, and the Netherlands*

162 Children's Rights Alliance, September 2019, *Safe haven. The Needs of Refugee Children Arriving in Ireland through the Irish Refugee Protection Programme: An Exploratory Study*

163 Oxfam and Greek Council for Refugees, 2021, *Teach us for what is coming. The transition into adulthood of foreign unaccompanied minors in Europe: case studies from France, Greece, Ireland, Italy, and the Netherlands*



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causing delays in applications or applications not being made.¹⁶⁴ If a child ages out without a secure residence status, they are transferred to standard reception facilities (Direct Provision) for the remainder of the residence procedure. The transition from the 'wrap-around' approach of childcare to the 'hands-off' approach of Direct Provision is jarring and produces anxiety.¹⁶⁵

Germany

In Germany, unaccompanied children or their guardian can apply for *Hilfen für Junge Volljährige* ('assistance to your adults') at their local Youth Welfare Office before the child's 18th birthday.¹⁶⁶ Young adults not yet 21 and children in families who are about to turn 18 can also apply. An application is also possible for former care leavers who have left the system and realise they still

need support.¹⁶⁷ However, most seem unaware of this option, possibly because they are accommodated in mass reception centers for adults, where information about the Youth Welfare System is rarely passed on to families with children or young single adults.

Young adults are entitled to *Hilfen für junge Volljährige*, unless the Youth Welfare Office deems them fully independent and in no need of further assistance.¹⁶⁸ The support can last until the age of 21,¹⁶⁹ although the duration and type of support depends on the nature of the child's needs and is commonly extended for a few months at a time. Even after support has ended, young adults have the right to access counselling and support, from their former care worker within a determined timeframe (for instance to find housing or vocational training).¹⁷⁰

164 Arnold S, 2020, *Pathways to Irish citizenship. Separated, stateless, asylum seeking and undocumented children*, Ombudsman for children

165 Oxfam and Greek Council for Refugees, 2021, *Teach us for what is coming. The transition into adulthood of foreign unaccompanied minors in Europe: case studies from France, Greece, Ireland, Italy, and the Netherlands*

166 § 41 Book VIII of the Social Code

167 Referred to as the 'coming back option', (§ 41 Abs. 1 S. 3 SGB VIII).

168 § 41 Abs. 1 S. 1 Book VIII of the Social Code

169 Handbook Germany, *Unaccompanied minor refugees in Germany*

170 § 41a Book VIII of the Social Code

All children staying in Youth Care are entitled to a regular support plan conversation with their supervisor and the Youth Welfare Office. This '*Hilfeplangespräch*' is carried out to assess the child's needs and to talk about its personal development, perspectives and plans for the future. These support plan conversations are held every six months or whenever necessary and should also be held in time before the child leaves the youth care system. If required, an interpreter is involved. If other institutions are involved in the planned future of the child or young adult, these institutions should – in theory – also be present or included during the *Hilfeplangespräch*.¹⁷¹

There are however strong variations in how these sessions are conducted and which information is given to the child. Often young adults are not well-informed of their rights, changes in residence status after turning 18, and whom to turn to for counselling or information after the Youth Care has ended.

A German and Farsi checklist exists for young people to verify if they have been shown all their options and given all relevant information to enable their independent life.

There is no similar system for children or young adults who are accompanied by their families, even though they are equally eligible for support from the Youth Care System, including '*Hilfen für Junge Volljährige*.'

In addition, some welfare organizations offer counselling specifically for young migrants and refugees. Nearly 500 Youth Migration Services

(*Jugendmigrationsdienste*) exist across Germany offering counselling on issues regarding ageing-out, access to tertiary education and vocational training, access to housing, among others. They target 12-to-27-year-olds.¹⁷²

The Netherlands

Certain cities in the Netherlands have or fund services for aged out unaccompanied children, called 'ex-ama teams', with 'ama' referring to the Dutch term for unaccompanied child. For instance, the city of **Utrecht** financially supports the local ex-ama team of the Dutch Council for Refugees.¹⁷³ The team was set up in 2003 in response to homeless, undocumented aged out unaccompanied children living in the city. The team's primary goal is to support unaccompanied children in their journey towards independence regardless of their residence status. This is achieved through the building of a support network, intensive guidance (incl. regarding residence status) and creating some form of stability for the aged out unaccompanied children. The service, provided by professionals with legal training, starts incrementally six months before the child turns 18, when Nidos, the government service in charge of housing and guardianship of unaccompanied children, starts sharing information with the Utrecht ex-ama team. There is no end date for the help or guidance the young people can receive.

In the city of **Eindhoven**, the organization *Vluchteling in de Knel*¹⁷⁴ ('VIDK') supports undocumented people, including young people, to achieve sustainable perspectives for the future.¹⁷⁵ A specific project for

171 A recent reform of the Youth Welfare System requires social institutions to define the steps of the transition from one care system to another in a written agreement (§ 41 Abs. 3 in combination with § 36b of Book VIII of the Social Code).

172 www.jugendmigrationsdienste.de

173 For more info, see Oxfam and Greek Council for Refugees, 2021, *Teach us for what is coming. The transition into adulthood of foreign unaccompanied minors in Europe: case studies from France, Greece, Ireland, Italy, and the Netherlands*

174 www.vidk.nl

175 Interview with Vluchteling in de Knel coordinator, 18 November 2021

aged out unaccompanied children called 'Future Perspective' ('Toekomstperspectief') ran from 2006 to 2015 and supported 128 young people.¹⁷⁶ Since then, the youth-specific programme was absorbed in the organisation's wider functioning, partly to allow young undocumented people who arrived after their 18th birthday and those who grew up in The Netherlands with their family to participate. At least a third to half of the participants have been in one of these two situations in recent years.¹⁷⁷ VIDK finds that these young people share many doubts, questions, and challenges because of their stage in life and undocumented status. The support and coaching VIDK provides is grounded in the young person's goals and ambitions and focuses on becoming self-sufficient,¹⁷⁸ including how to achieve that if they remain undocumented in The Netherlands. Together with the young person, VIDK researches and helps prepare residence applications and, if the young person wishes to leave the Netherlands and return to their country of origin, they are assisted and prepared for that too.

VIDK houses and supports people for a year. In 2020, ten of the 28 people they supported were younger than 25, including six former unaccompanied children.¹⁷⁹ The first three months are focused on creating safety and stability and snapping the young person out of survival mode ('How will I eat today? Where will I sleep tonight?'). The young person's talents, skills, aspirations, and goals become the focus of the following six to seven months. VIDK supports them in achieving their goals and developing their skills through vocational training, setting personal goals, being held accountable, network building, etc. The last three months focus on becoming increasingly independent. If, after one year – or two, if the young person is not self-reliant enough yet – the person is still undocumented, they leave VIDK's housing and integrate into the local BBB+ facility for undocumented adults, where they are less-closely supported.¹⁸⁰

176 Information received from Vluchteling in de Knel, 6 December 2021.

177 In 2020, VIDK assisted 10 people under 25, 4 of which were aged out unaccompanied children and 6 other young undocumented people. In 2019, VIDK assisted 16 people under 25, 11 of which were aged out unaccompanied children and 5 other young undocumented people. In 2018, VIDK assisted 21 people under 25, 15 of which were aged out unaccompanied children and 6 other young undocumented people. The number of former unaccompanied children is decreasing in part because there no longer is a reception center for unaccompanied children in the area and people need 'local anchoring' for them to be assisted by VIDK. Information received from Vluchteling in de Knel, 6 December 2021.

178 Vluchteling in de Knel uses the term 'verzelfstandiging'.

179 Information received from Vluchteling in de Knel, 6 December 2021.

180 Several villages and cities of the Netherlands have BBB + facilities ('bed-bath-bread(+assistance)') where undocumented people receive basic accommodation and/or support in regularising their residence status. These facilities were set up following a 2014 judgement by the Centrale Raad van Beroep (14-5507 WMO-VV). For more on BBB + and a social-work approach to case management, see PICUM, IDC and European Alternatives to Detention Network, 2020, *Implementing Case Management based Alternatives to Detention in Europe*

CONCLUSION

Ageing out and the wider transition to adulthood is a time of vulnerability, especially for those children ageing out into undocumented adulthood. Many children and young people have testified of the stress, fear and anxiety surrounding their ageing out. And for good reason.

On a structural level, their increased vulnerability to harm is caused by at least five factors:

1 Access to services and protection from harmful migration enforcement policies ends at 18 and is not extended to young people, despite their vulnerability

Fundamentally, the policies towards eighteen-year-olds change because the principle of the best interests of the child no longer applies. This impacts the support they receive, the services they can access and the safeguards in place – all developed because they were children. Consequently, aged out young people lose their access to much of mainstream society and risk being pushed to the margins as their undocumented status prevents them from participating in most aspects of adult life (working, getting a driver's license, renting, opening a bank account, studying, etc). In addition, the safeguards to protect children from harm no longer apply. They also lose much of the professional support they previously had access to, and the support they receive is more hands-off. For former unaccompanied children this may appear especially harsh, as they are no longer supported by their guardian and other professionals and must fend for themselves.

This loss of access and protection, in combination with their insecure residence status and their young age, puts them in a situation of heightened vulnerability to harm, exploitation, social exclusion and mental ill-health. Despite this vulnerability, few services and protections are extended beyond 18 or even see the need for additional support.

2 There are not enough initiatives that support children and young people transitioning into undocumented adulthood, especially for young people in families. Initiatives that exist are often small-scale and could benefit from additional funding.

As we saw in this report, the projects that support children in their transition into undocumented adulthood are few and far between.¹⁸¹ Those that do exist are often local, small-scale projects that try to do much with little funding.

Local governments, who are more directly confronted with realities on the ground than national governments, often step in when national or EU funding is lacking. In The Netherlands, for example, several cities have funded projects for former unaccompanied children, including some projects assisting undocumented young people (e.g., Eindhoven).

¹⁸¹ Twenty member states and Norway reported supporting unaccompanied asylum-seeking children. Thirteen reported supporting regularly residing unaccompanied children (in other migration procedures). This support most often included help to find accommodation, educational assistance, psychosocial support and financial assistance. Source: EMN, 2021, *Children in Migration. Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration*

Children and young people need more, and more consistent support while they come of age. They need practical, material, and financial support, but also time and space to reflect on their goals and how to achieve them. Programmes that begin well before the 18th birthday¹⁸² and include some type of reflection on the future should be promoted.¹⁸³ Creating stability and safety are preconditions for the child or young person to reflect on their goals and options and take steps to achieve them. A safe and secure place to live should be part of that support.

The impact on children and young people's mental health should not be underestimated. Their needs should be duly met through quality mental health care, but rarely are.

3 In many countries, children and young people cannot access residence procedures to regularise their stay, either because they don't exist, are too expensive or they cannot meet the criteria. With no way to regularise their stay, they remain undocumented.

While at least 60 national protection mechanisms can be found across the EU,¹⁸⁴ an analysis of the mechanisms in Belgium, Greece, Germany, Spain, Sweden and the UK shows that the mere presence of mechanisms is insufficient. When permits do not follow one another, children end up homeless and vulnerable (i.e., permit until 18 but no way to regularise after 18). When the application procedure is expensive, people may not be able to regularise because cost is a barrier. When regularisation criteria are very hard to meet (e.g., finding work in an economic downturn), governments should take that into account and readjust expectations. When highly discretionary or only few, no or very expensive procedures exist, children and young people remain undocumented, at high cost to both society and themselves.¹⁸⁵

4 Return orders are issued without a proper assessment of whether the return would be in the best interests of the child. Postponed return decisions are not re-evaluated before being executed.

Half of EU member states¹⁸⁶ plus Norway have legal or policy provisions mandating the obligation to assess the best interests of the child before issuing a return decision for unaccompanied children.¹⁸⁷ But, as far as we know, no EU member state has included an in-depth, formalised assessment process in their migration procedures.¹⁸⁸ Plus, return decisions issued to children are not reviewed or reassessed if the return was postponed for several years, for instance until the 18th birthday.

182 In line with the United Nations, 2010, *Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly*

183 A study from 2014 identified the following key elements as essential to ensure accurate counselling that is in line with the future orientation model: a broad perspective, autonomy and empowerment of the client, focus on the (long-term) process and building trust in counsellors, while being realistic about the expectations. Source: Kruispunt Migratie & Integratie, 2014, *Toekomstoriëntering: met precare verblijvers werken aan een zinvol toekomstperspectief*, p. 11-13.

184 EMN, 2020, *Comparative overview of national protection statuses in the EU and Norway. EU Synthesis Report of the EMN Study 2019*

185 See also PICUM, 2022, FAQ Regularisation and access to a secure residence status

186 Austria, Belgium, Czech Republic, Estonia, Spain, Finland, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Slovenia, Sweden, and Poland.

187 European Migration Network, 2018, *Approaches to Unaccompanied Minors Following Status Determination in the EU plus Norway*.

188 Notable practices do exist, like the Belgian 'durable solutions' procedure for unaccompanied children (in annex 2) and the establishment of an advisory committee proposing a durable solution for unaccompanied children in the Grand Duchy of Luxembourg (see Strada lex Luxembourg, *Une commission consultative pour évaluer l'intérêt supérieur des mineurs non accompagnés* [checked on 20 September 2021]).

Under the UN Convention on the Rights of the Child¹⁸⁹ and the EU Charter on Fundamental Rights,¹⁹⁰ before issuing a decision on return, states are required to consider, as a primary consideration, the best interests of each child affected by the decision.¹⁹¹ This means including a formal, individual and fully-documented procedure examining all aspects of a child's situation and considering all options in order to identify which durable solution is in the best interests of the child.¹⁹² It must be undertaken by a multi-disciplinary, independent, and impartial team that duly hears and considers the views of that child and provides or ensures the provision of child-friendly information, counselling, and support. It must lead to a reasoned, documented decision that can be appealed with suspensive effect. A fully-fledged best interests procedure should always precede a return decision for it to be in line with international standards and children's needs.¹⁹³

5 Childhood and adulthood are generally seen as two wholly distinct policy fields, causing harm to children and young people transitioning into adulthood

The absence of an EU policy framework on the transition to adulthood of children in migration contributes to the patchwork of policies and practices across Europe. Because many local, national and regional actors are still exploring how they can support migrant children in their transition into adulthood, including into undocumented adulthood, now is the time to create common understanding and pilot projects that try new methodologies and replicate good practices, like the ones in this report.

Migration and social inclusion policies should consider migrant children and young people transitioning into adulthood as a group in their own right, with specific support and safeguarding needs.¹⁹⁴

189 Please see: Committee on the Rights of the Child, 2005, *General Comments 6*; Committee on the Rights of the Child, 2009 *General Comment 12*; Committee on the Rights of the Child, 2011, *General Comment 13*, Committee on the Rights of the Child, 2013, *General Comment 14*, Committee on the Rights of the Child, 2017, *General Comment 22* and Committee on the Rights of the Child, 2017, *General Comment 23*.

190 Official Journal of the European Union, 26 October 2012, *Charter of Fundamental Rights of the European Union* (CFEU), art. 24. For more information, see: PICUM, IOM, UNICEF, UN Human Rights, ECRE, Save the Children, and Child Circle, 2019, *Guidance to respect children's rights in return policies and practices. Focus on the EU legal framework*.

191 The best interests of children should also be taken into account when issuing and implementing a return decision against a parent. ECtHR, 18 October 2006, *Case of M Üner v. the Netherlands*, App. no. 46410/99, para. 58; ECtHR, 7 June 2018, *Case of Kolonja v. Greece*, App. No. 49441/12, Eur. Ct. H.R (2016); ECtHR, 31 January 2006, *Case of Rodrigues de Silva and Hoogkamer v. The Netherlands*, App. no. 50435/99.

192 Three durable solutions are possible: integration in the country of residence, integration in the country of return or integration in a third country (e.g. family reunification). For more on durable solutions and how to identify them, please see: PICUM, *Doing What's Best of Children*.

193 For more information, see: PICUM, IOM, UNICEF, UN Human Rights, ECRE, Save the Children, and Child Circle, 2019, *Guidance to respect children's rights in return policies and practices. Focus on the EU legal framework*.

194 The Council of Europe and UNHCR share this position: Council of Europe, European Youth Centre Strasbourg and UNHCR, 2011, *Report on the Consultative meeting on Challenges Faced by Young Refugees and Asylum Seekers in Accessing their Social Rights and their Integration, while in Transition to Adulthood*



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RECOMMENDATIONS

To the European Union institutions:

- **Improving residence procedures** – to prevent children from becoming undocumented adults:
 - Develop guidance for member states on policies supporting a smooth transition into adulthood of migrant children, including undocumented adulthood, and focusing on unaccompanied children, former unaccompanied children and children and young people in families.
 - Design migration law and policy that safeguard children from harm,¹⁹⁵ including clarifying and strengthening in law the requirement that member states assess whether return is in the best interests of a child before issuing and implementing a return decision.¹⁹⁶
 - Ensure that EU law guarantees that children and young people can access national-level residence procedures. This includes refraining from adopting provisions which could in practice limit access to these permits, such as provisions which exempt member states from implementing their national legal framework on part of their territory based on the so-called ‘fiction of non-entry’.¹⁹⁷

- **Building an evidence base** – to increase understanding of the reality faced by children transitioning into undocumented adulthood:
 - Foster connection of actors working with children and young people transitioning into adulthood and promote information sharing amongst them, for instance through the EU Network for Children’s Rights, the European Migration Network or the organization of dedicated events.
 - Support research projects that explore transition into adulthood, including undocumented adulthood, through funding.

- **Providing support, services and funding** – to enable a smooth transition of children and young people transitioning into undocumented adulthood:
 - Allocate EU funding to strengthen child protection and care systems, including those that support migrant children and young people who age out without a secure residence status, as well as pilot projects that support children and young people in transition to adulthood, including undocumented adulthood.

195 See PICUM, 2021, *PICUM Recommendations on Safeguarding Children’s rights in the Migration and Asylum Pact Proposals*; PICUM, IOM, UNICEF, UN Human Rights, ECRE, Save the Children, and Child Circle, 2019, *Guidance to respect children’s rights in return policies and practices. Focus on the EU legal framework*

196 Ibid.

197 For more on this, see PICUM, 2021, *Why is the Commission’s push to link asylum and return procedures problematic and harmful?*

To national and local governments:

- **Improving residence procedures** – to prevent children from becoming undocumented adults:
 - Design migration policy and residence procedures that safeguard children from harm, including mental ill-health. This includes:
 - guaranteeing children have access to a secure residence status before their 18th birthday,
 - ensuring temporary permits can be converted into long-term residence permits,
 - integrating a best interests procedure¹⁹⁸ in national law,
 - establishing or strengthening residence permits on the grounds of time of childhood spent in the country,
 - refraining from deporting children on or around their 18th birthday solely on the basis that safeguards for children no longer apply.
 - Provide training for governmental and non-governmental staff assisting children and young people, including those placed in care, on the relevant residence procedures and take the necessary steps to ensure appropriate applications are made.
 - Ensure administrative fees are affordable for people applying for a residence permit who do not have the right to work. Include fee waivers, especially for children.
 - Consult children and young people on their experiences and needs to develop effective and adapted policies and procedures.
- **Building an evidence base** – to increase understanding of the reality faced by children transitioning into undocumented adulthood:
 - Foster connection of actors working with children and young people transitioning into adulthood and nurture the sharing of information amongst them, for instance through the creation of a dedicated task force on national and/or local level.
 - Fund research projects that explore transition into adulthood, including undocumented adulthood.
- **Providing support, services and funding** – to support children and young people transitioning into undocumented adulthood:
 - Develop, fund and support programmes that support migrant children in their transition into adulthood, including undocumented adulthood.
 - Ensure undocumented young people can access services, including housing and mental health care, based on need.
 - Develop and provide tailored support to children and young people ageing out:
 - Ensure that such support starts well before their 18th birthday
 - Provide support to all in need: unaccompanied children, former unaccompanied children, children and young people in families and young people who arrived shortly after their 18th birthday
 - Ensure that support is provided irrespective of their residence status.

198 PICUM, IOM, UNICEF, UN Human Rights, ECRE, Save the Children, and Child Circle, 2019, *Guidance to respect children's rights in return policies and practices. Focus on the EU legal framework*;

ANNEX 1

Overview of policies on deportation and residence procedures in EU member states, Norway and the United Kingdom

The table opposite shows the policies of the EU member states, Norway and the UK in 2019. The table is based on a recent publication¹⁹⁹ by the European Migration Network (self-reported data) for all countries, except for Denmark, Romania and the UK who did not participate in the report.²⁰⁰ The policies in the countries in blue are detailed in Annex 2.

199 EMN, 2021, *Children in Migration: Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration*

200 The data on Denmark and Romania is based on desk research done for PICUM by DLA Piper. The data on the UK is based on desk research done by PICUM.

	CHILDREN < 18 YEARS			YOUNG PEOPLE ≥ 18 YEARS	
	Does not remove unaccompanied children (law or policy)	Forced returns of unaccompanied children allowed in law ²⁰¹	Provide unaccompanied children with a residence status until 18 th birthday	Access to residence status possible after 18	Possible to deport if 18 and undocumented ²⁰²
EU MEMBER STATES					
Austria		X	X		X
Belgium	X			X	X
Bulgaria	X			X	X
Croatia			X		X
Cyprus	X		X		X
Czech Republic	X		X		X
Denmark	X		X ²⁰³	X	X
Estonia	X		X	X	X
Finland		X	X	X	X
France	X ²⁰⁴		X	X	X
Germany		X	X	X	X
Greece	X		X		X
Hungary		X	X		X

201 With safeguards embedded in EU law, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Some member states reported additional safeguards. For more info, see EMN, 2021, *Children in Migration: Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration*

202 Certain safeguards do apply for adults. For instance, the international legal principle of *non-refoulement* prevents governments from removing people from their jurisdiction to a place where they would be at risk of persecution, torture, ill-treatment or other fundamental rights violations, or of further transfer to a third State where there would be a real risk of such violations. For more on this and other human rights grounds preventing deportations, see PICUM, 2022, *Barriers to return: protection in international, EU and national frameworks*

203 Section 9c subsection 3 of the *Danish Foreigner's Law* provides for the issuing of a temporary residence permit to unaccompanied children who saw their asylum claim rejected but who cannot be assisted by either a family member or a reception family upon return and would therefore be placed in a situation of "genuine emergency." The section provides the same for unaccompanied children who, based on the information provided by them, "should not undergo an asylum procedure." (own translation)

204 France does not require children have a residence permit, meaning that children cannot be undocumented in France (see Code de l'entrée et du séjour des étrangers et du droit d'asile, 2016, Article L.511-4 1° CESEDA). Also, France did not transpose article 10 of the EU Return Directive relating to the return and removal of unaccompanied children into national law. However, a children's judge may order a child leave France if it's deemed in their best interest to reunite with their family in the country of origin or a third country (source: DLA Piper legal brief France).

	CHILDREN < 18 YEARS			YOUNG PEOPLE ≥ 18 YEARS	
	Does not remove unaccompanied children (law or policy)	Forced returns of unaccompanied children allowed in law ²⁰¹	Provide unaccompanied children with a residence status until 18 th birthday	Access to residence status possible after 18	Possible to deport if 18 and undocumented ²⁰²
Ireland	X		X		X
Italy	X		X		X
Latvia		X	X		X
Lithuania	X		X		X
Luxembourg		X	X		X
Malta	X		X		X
Netherlands		X	X		X
Poland		X	X		X
Portugal	X				X
Romania		X	X ²⁰⁵	<i>No data</i>	X
Slovakia	X		X		X
Slovenia					X
Spain	X ²⁰⁶			X ²⁰⁷	X
Sweden		X	X	X	X
NON-EU MEMBER STATES					
Norway		X	X		X
UK	X		X	X ²⁰⁸	X

205 The conditions in the Return Directive apply. If the parents or other family members cannot be identified in the country of origin or if the child is not accepted by the country of origin, they are issued a temporary residence permit. Source: DLA Piper brief on Romania.

206 Possibility to carry out forced return of unaccompanied minors, but only where in the best interest of the child and ensuring that the minor can be received by family members or adequate social institutions in the country of return (see further).

207 The European Migration Network report did not indicate that accessing a residence status after 18 is possible in Spain. However, PICUM research found that young people could apply for a temporary residence permit under the 'arraigo' system in 2019. Since then, Spain adopted measures to prevent unaccompanied children from ageing out undocumented (see annex 2).

208 The European Migration Network report did not indicate that accessing a residence status after 18 is possible in the UK. However, PICUM research found that young people who meet certain conditions (namely having spent half of their life in the UK, which is highly unlikely for an unaccompanied child) could apply for a temporary residence permit in 2019 (see annex 2).

ANNEX 2

Residence procedures available to children or young people

Belgium

Belgium does not have specific residence procedures for people who have aged out. Once an unaccompanied or accompanied child turns 18, they must access the residence procedures available to all undocumented people in Belgium: exceptional residence status on humanitarian grounds or exceptional residence status on medical grounds.²⁰⁹ If there is a risk of persecution or the child (now-adult) is a victim of trafficking, they may apply for asylum or protection as a trafficking victim.

Before they turn 18, unaccompanied children from non-EEA²¹⁰ countries can apply for a residence status based on their best interests. This procedure is commonly called 'durable solutions procedure', 'NBMV-procedure' or 'procédure MENA'.

Protection from forced return

While residence procedures are ongoing, whether the 'durable solutions', '9ter', or '9bis',²¹¹ the applicant cannot be deported from the Belgian territory. Although the applicant is protected from forced return during a 9bis or 9ter procedure, they receive no additional support or access to services or rights.

The person has the same access to services as any other undocumented person (i.e., only access to urgent medical care if the person is an adult).²¹²

Undocumented children are treated differently depending on whether they are unaccompanied or accompanied by their parents/caregivers. Several safeguards are in place to protect unaccompanied children from the trauma of a forced return, as the following must be fulfilled:²¹³

- guarantees of reception and care in the country of return, either by parents, relatives or a governmental or non-governmental body, taking account of the child's needs in terms of age and level of independence, [transposition of the Return Directive]
- no danger of smuggling or trafficking,
- the family situation is such that the minor can be re-absorbed into it, and that a return to a parent or relative is desirable and appropriate in light of the family's capacity to support, educate and protect the child, or

209 For aged out young people who are seriously ill, the exceptional residence status on medical grounds may be an option. It is only awarded in cases of 'serious illness', i.e., an illness creating either a real risk to the applicant's life or physical integrity or a real risk of inhuman or degrading treatment when there is no adequate treatment in the country of return. However, because it would only benefit a very limited number of children or young people, we will not cover this procedure.

210 European Economic Area, consisting of the EU member states and three countries of the European Free Trade Agreement (Iceland, Liechtenstein and Norway).

211 The 'durable solutions' procedure is accessible to unaccompanied children only. The '9ter' and '9bis' procedures are named after their respective articles in the Belgian Foreigner's law, with '9ter' referring to a regularisation on medical grounds and '9bis' to regularisation on humanitarian grounds.

212 Art. 57, §2, 1° Organic Law of 8 July 1976 regarding the Public Social Welfare Centres (PSWC), *Belgian Official Gazette*, 5 August 1976. Urgent medical care can be preventive or curative in nature and can be provided by health care institutions or by outpatient care services. It does not include financial support, housing or other social aid in kind (Art. 1 Royal Decree of 12 December 1996 regarding the urgent medical care provided by Public Social Welfare Centres to foreign nationals in irregular stay, *Belgian Official Gazette*, 31 December 1996).

213 Art. 74/16 of the [Belgian Foreigner's law](#)

- that the reception structure is appropriate and that it is in the child's best interests to place the child in that reception structure upon their return.

The government will issue an 'order to bring back'²¹⁴ to the child's guardian, effectively ordering them to escort the child to the Belgian border in the frame of a return. In practice, these are rarely enforced,²¹⁵ but it does mean that these unaccompanied children continue living in Belgium without a regular residence status.

The government does not usually automatically issue an 'order to leave the territory' once the unaccompanied child turns 18. The now-adult will receive the order if their irregular stay is established by a governmental instance (e.g. during a police check).²¹⁶

Children in families are not protected from return, with no return conditions anchored in law. Families with children are routinely ordered to leave the territory, can be forcibly returned and detained prior to return.²¹⁷ Some data exists: in 2018, at least 13 children were deported when six families were forcibly deported outside the EU and seven families were forcibly removed from the territory in the framework of a Dublin transfer within the EU. How many children were concerned was not made public, but as a 'family' must have at least one underage child, it can be inferred that at least 13 children were deported.²¹⁸ In 2019, a total of 305 children were returned from Belgium following an order to leave (although the data does not specify if they were unaccompanied or not).²¹⁹

Residence permits

Unaccompanied children who turn 18 are informed of the different procedures that are available to them by letter. They are sometimes given a temporary residence permit that allows them to stay for another 6 to 12 months. This temporary permit might be granted under the condition that the person provides proof of, for example, their identity, are at school or that they are looking for a job. If this permit is extended three times, the person has the right to obtain a permanent residence permit.²²⁰

There are three relevant procedures: the 'durable solutions' procedure accessible to unaccompanied children only, and two other regularisation mechanisms, the first based on 'humanitarian grounds', the second on 'medical grounds.' These are usually referred to as '9bis' and '9ter', respectively, named after the articles in the Belgian Foreigner's Law.²²¹

The 'durable solutions' procedure ('NBMV-procedure'/'procédure MENA')

This procedure, established in law in 2011, aims to determine a durable solution for unaccompanied children from non-EEA²²² countries. The law²²³ defines a durable solution as (in order of priority):

1. Family reunification, in accordance with Articles 9 and 10 of the United Nations Convention on the Rights of the Child of 20 November 1989, in the country where the parents are regularly residing; or

214 'Bevel tot terugbrenging' also called 'annex/bijlage 38'. Article 118 of [Royal Decree of 8 October 1981](#)

215 De Vylder H., 2019, Hoofdstuk 18. Niet-begeleide minderjarige vreemdelingen: wat na 18 jaar?, in Desmet E., Verhellen J., and Bouckaert S. (eds.), 2019, *Rechten van niet-begeleide minderjarige vreemdelingen in België*, Die Keure

216 PICUM member survey ageing out – Belgium.

217 For more on this, visit the website of our member [Platform Minors in Exile](#) or Van der Vennet L., 2015, *Detentie van kinderen in gezinnen in België: analyse van de theorie en de praktijk*, Platform Kinderen op de Vlucht

218 Myria, January 2020, *Terugkeer, detentie en verwijdering van vreemdelingen in 2018*

219 EUROSTAT, July 2021, *Third country nationals returned following an order to leave - annual data (rounded) statistics*.

220 European Migration Network, 2011, *Unaccompanied Minors – an EU comparative study*, p. 54.

221 [Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreign nationals](#), *Belgian Official Gazette*, 31 December 1980

222 European Economic Area, consisting of the EU member states and three countries of the European Free Trade Agreement (Iceland, Liechtenstein and Norway).

223 Article 61/14 of the Law of 15 December 1980 regarding the entry, residence, settlement and removal of foreign nationals, *Belgian Official Gazette*, 31 December 1980.

2. Return to the country of origin or to a country where the unaccompanied child is authorised or permitted to reside, with guarantees of adequate care and attendance, according to their age and degree of independence, either by their parents or other adults who will take care of them, or by public authorities or non-governmental bodies; or
 3. Staying in Belgium, in accordance with the provisions of the law.
- A copy of the child's national passport or equivalent travel document;²²⁶
 - Any document that proves the veracity of the elements referred to in the application;
 - The steps the guardian has taken to contact relatives and acquaintances outside of Belgium and the results;
 - If an interpreter is required, and if so, the language.

Previously, unaccompanied children and their guardians had to choose between applying for asylum or the 'durable solution' procedure, but as of February 2015 the procedures can be combined.²²⁴ This is important, as unaccompanied children may not be aware of the procedure and may apply for asylum without realising the durable solutions procedure is better aligned with their situation. Although the law has changed, in practice the Immigration Office may only start looking into the durable solutions after an asylum application was rejected, as government instances are forbidden from contacting authorities in the country of origin during an asylum procedure.²²⁵

It is up to the guardian to propose a durable solution to the Immigration Office; the child or their lawyer cannot. The following elements must be included in the application:

- The guardian's contact details;
- The unaccompanied child's surname, first name, place and date of birth, nationality, possibly their file number and place of residence;

The unaccompanied child receives a temporary residence permit for the duration of the procedure.

A specialized department of the Immigration Office, Bureau Minteh, analyses the application and identifies a durable solution, keeping in mind the above hierarchy.

Bureau Minteh's evaluation of the durable solution usually takes more than a year,²²⁷ which is highly problematic for the many unaccompanied children who apply for it when they're 17. If no decision is taken before the 18th birthday, they age out as undocumented adults, as the procedure stops the moment they stop being a child. Due to the sequence of permits that can be delivered by law, unaccompanied children older than 17.5 years old cannot effectively benefit from the procedure.²²⁸ In reality, the procedure must be started before the child is 14.5 years old for them to have a secure residence status before they turn 18.²²⁹

If a return to a third country (either to the family or to an institution) is found to be in the child's best

224 Article 61/15 of the Belgian Foreigner's Law

225 To protect the child from harm in case there is a risk of persecution. De Vylder H., 2019, *Hoofdstuk 18. Niet-begeleide minderjarige vreemdelingen: wat na 18 jaar?*, in Desmet E., Verhellen J., and Bouckaert S. (eds.), 2019, *Rechten van niet-begeleide minderjarige vreemdelingen in België*, Die Keure; Fournier K., 2019, *Hoofdstuk 16. Duurzame oplossingen voor niet-begeleide minderjarige vreemdelingen: pistes voor de toekomst*, in Desmet E., Verhellen J., and Bouckaert S. (eds.), 2019, *Rechten van niet-begeleide minderjarige vreemdelingen in België*, Die Keure

226 If the unaccompanied child does not have a passport, the guardian must undertake the required steps to obtain it.

227 De Vylder, H., 2019, *Hoofdstuk 18. Niet-begeleide minderjarige vreemdelingen: wat na 18 jaar?*, in Desmet E., Verhellen J., and Bouckaert S. (eds.), 2019, *Rechten van niet-begeleide minderjarige vreemdelingen in België*, Die Keure

228 Fournier K., 2019, *Hoofdstuk 16. Duurzame oplossingen voor niet-begeleide minderjarige vreemdelingen: pistes voor de toekomst*, in Desmet E., Verhellen J., and Bouckaert S. (eds.), 2019, *Rechten van niet-begeleide minderjarige vreemdelingen in België*

229 Because of the sequence of permits that they can receive (6 month (attest van immatriculatie) + one-year temporary residence permit (A-kaart) + two renewals before an indefinite residence permit (B-card) can be issued.

interests, the guardian receives an 'order to bring back' the child within 30 days,²³⁰ although these are not enforced.²³¹ Even if they continue receiving the same support as other unaccompanied children, they remain undocumented until their 18th birthday (and beyond). The durable solution is not reassessed at a later date, even when a voluntary return was deemed impossible.²³²

If a stay in Belgium is identified as the durable solution, the unaccompanied child receives a one-year temporary residence permit which can be renewed twice. After these renewals, the child can apply for a durable residence permit.

If, however, the child turns 18 before having received this durable residence permit, their file is transferred within the Immigration Office and treated as an exceptional residence status on humanitarian grounds ('9bis', see below).²³³ This can have important consequences, as the Immigration Office has full discretion in the evaluation and the conditions connected to this permit and its renewals. Practice shows that the Immigration Office emphasises self-sufficiency and education when making their decisions. And, because up until September 2018, unaccompanied children whose durable solution was to stay in Belgium could not receive a work permit, many of them dropped out of school to fulfil this requirement.²³⁴ Since the adoption of a new Royal Decree, both holders of a 'durable solution' permit and an exceptional residence permit on humanitarian grounds can work without requiring an additional work permit.²³⁵

Exceptional residence permit on humanitarian grounds ('9bis')

Article 9 of the Belgian Foreigner's Law gives the government the possibility to grant authorisation to stay to foreign nationals on a discretionary basis. This includes both the regularisation on humanitarian grounds ('9is') and on medical grounds ('9ter'). In principle, the application needs to be made at a diplomatic or a consular post abroad, but by way of exception, someone already staying in Belgium can apply for it if 'exceptional circumstances' justify that they cannot file the application at the Belgian embassy or consulate. In addition, the person must put forward reasons why they should be authorised to stay in Belgium.

This means that the procedure involves two rounds: the Immigration Office will first analyse whether the request is admissible, followed by an analysis of the merits. To be admissible, the aged out young person must:

- submit identity documents
- prove that exceptional circumstances made it impossible to apply from a third country / the country of origin
- pay a fee (366 euro at the time of writing)²³⁶

According to the Immigration Office,²³⁷ the Council for Alien Law Litigation and the Council of State, having lived in Belgium for many years, going to school and being well-integrated in Belgium, do not prevent the former unaccompanied child from submitting the

230 'Bevel tot terugbrenging' also called 'annex/bijlage 38'. Article 118 of Royal Decree of 8 October 1981.

231 De Vylder H., 2019, *Hoofdstuk 18. Niet-begeleide minderjarige vreemdelingen: wat na 18 jaar?*, in Desmet E., Verhellen J., and Bouckaert S. (eds.), 2019, *Rechten van niet-begeleide minderjarige vreemdelingen in België*, Die Keure

232 Fournier K, 2015, *Solutions durables pour les mineurs étrangers non accompagnés en Europe. Rapport: Belgique*

233 Article 61/24 and article 9bis the Belgian Foreigner's Law.

234 De Vylder H., 2019, *Hoofdstuk 18. Niet-begeleide minderjarige vreemdelingen: wat na 18 jaar?*, in Desmet E., Verhellen J., and Bouckaert S. (eds.), 2019, *Rechten van niet-begeleide minderjarige vreemdelingen in België*, Die Keure

235 Federale Overheidsdienst Werkgelegenheid, Arbeid en Sociaal Overleg, 2018, *Koninklijk besluit van 2 september 2018 houdende de uitvoering van de wet van 9 mei 2018 betreffende de tewerkstelling van buitenlandse onderdanen die zich in een specifieke verblijfssituatie bevinden*,

236 Children and stateless people are exempted from the fee. No fee is required for a permit on medical grounds ('9ter'). Immigration Office, *Redevance*

237 Circular, 21 June 2007, *Omzendbrief betreffende de wijzigingen in de reglementering betreffende het verblijf van vreemdelingen tengevolge van de inwerkingstreding van de wetten van 15 september 2006*

request from outside of Belgium.²³⁸ This means that many aged out young people's requests are declared inadmissible and never get analysed on their merit.

The decision on the merits is highly discretionary by law, as the law does not include criteria or even a timeline within which the decision must be made. Although criteria on the merits were established in an instruction in 2009²³⁹, the instruction was later annulled by the Council of State because it would render inoperative the legal admissibility condition that there must be 'exceptional circumstances'.²⁴⁰ Even so, government officials confirmed later that year that the instruction would be used as a basis.²⁴¹ The Immigration Office must analyse every application individually and may apply other criteria than those in the annulled instruction. One of the instruction's criteria related to 'sustained local anchoring', but only for applications submitted during Belgium's 2009 regularisation initiative (Sept-Dec 2009).

While local anchoring and ties with society should be considered to be a decisive element, especially for children and young people who grew up in Belgium, case law backs up the Immigration Office's position that integration is not sufficient grounds to receive a residence permit.²⁴² Case law of the Council of State allows the Immigration Office to consider the fact that the person's anchoring is a consequence of their 'choice' to stay in Belgium without a residence permit.²⁴³ It is however highly questionable whether that argumentation holds for young people who stayed regularly up until their 18th birthday.

To receive an exceptional residence status on humanitarian grounds, the young person must prove a 'dire humanitarian situation'. This is to be understood as a situation where deportation would constitute a violation of a fundamental right, so that further residence in Belgium is the only way to prevent the violation.²⁴⁴

If the person gets a positive reply to their application on humanitarian grounds, they will most likely be granted a temporary residence permit (A-card) for one year. The permit's renewal involves a (more limited) re-evaluation of the grounds for stay, including the person's efforts to integrate.²⁴⁵ The government has the discretion to immediately grant a durable/unlimited residence permit (B-card), although they are usually granted after at least five years after the first authorisation to stay (which was then subsequently renewed).²⁴⁶ After at least five years of regular stay and if the young person meets several other criteria (focussing on social and economic integration), they may apply for Belgian citizenship.²⁴⁷

Both the temporary and unlimited residence permits (A and B-card) grant access to healthcare, education (including internships and vocational trainings), the labour market, procedures to recognize qualifications and degrees, standard social security and certain forms of social assistance.²⁴⁸

238 RvS, 9 december 2009, nr. 198.769; RVV 24 april 2015, nr. 144.068; RVV 15 oktober 2015, nr. 154.617; RVV 27 mei 2016, nr. 168.554

239 Dienst Vreemdelingenzaken, 2009, *Instructie m.b.t. de toepassing van het oude artikel 9,3 en het artikel 9bis van de vreemdelingenwet*

240 RvS 9 december 2009, nr. 198.769.

241 Integraal Verslag, Plenumvergadering, Parl.st.Kamer 2009-10, CRIV 52 PLEN 130, 26 De Vylder H., 2019, *Hoofdstuk 18. Niet-begeleide minderjarige vreemdelingen: wat na 18 jaar?*, in Desmet E., Verhellen J., and Bouckaert S. (eds.), 2019, *Rechten van niet-begeleide minderjarige vreemdelingen in België*, Die Keure

242 RvS 27 september 2016, nr. 235.858; RVV 30 november 2018, n. 213.212; RVV 5 juli 2017, nr. 189.419

243 RvS 27 september 2016, nr. 235.858

244 De Vylder H., 2019, *Hoofdstuk 18. Niet-begeleide minderjarige vreemdelingen: wat na 18 jaar?*, in Desmet E., Verhellen J., and Bouckaert S. (eds.), 2019, *Rechten van niet-begeleide minderjarige vreemdelingen in België*, Die Keure

245 Art. 13, §3, 2° and Art. 1/2, §3 of the Foreigner's law, inserted by the Law of 18 December 2016. To assess these integration efforts, the Immigration Office takes into account the attendance of integration courses, professional and/or educational activities, language knowledge and participation in associations, amongst other things. This non-exhaustive list of evaluation criteria also included the criminal past of the applicant, but this criterium was annulled by the Constitutional Court in 2018 because its broad scope was not proportionate to the objective of integration and participation (4 October 2018, n. 126/2018).

246 EMN Belgium, 2020, *Comparative overview of national protection statuses in Belgium 2010-2019*

247 EMN Belgium, 2020, *Comparative overview of national protection statuses in Belgium 2010-2019*

248 Excluding employment and integration income. Refugees and beneficiaries of subsidiary protection status do have access to social integration. Art. 3, 3° Law of 26 May 2002 regarding the right to social integration

Germany

Undocumented children and young people can access some residence procedures in Germany although the widespread use of 'Duldung' statuses is highly problematic. Crucially, *Duldung* statuses do not protect the child or young person from a forced return, do not provide sufficient safety and long-term perspectives to children or young people and are not always accompanied by a work permit.

2021-2025 COALITION AGREEMENT

Germany's new coalition government consisting of social democrats (SPD), Greens and the liberal party FDP signed their coalition agreement in December 2021.²⁴⁹ It includes the intention to make several changes to German migration law, including changes that would affect children and young people transitioning into adulthood. The proposed changes include converting the '*Ausbildungsduldung*' described below into a regular residence permit; allowing people with a '*Duldung*' status access to the labour market; easing the criteria for regularisation mechanisms; and the introduction of a regularisation programme for people who, on 1 January 2022, have been living in Germany with a *Duldung* status for at least five years (i.e. whose deportation was suspended before 31 December 2016).²⁵⁰

Protection from forced return

An unaccompanied child, including unaccompanied children intercepted at the border,²⁵¹ can only be deported if the transfer and the assistance to the child in the country of return is ensured by a family member, a person with custody or a suitable reception facility.²⁵² A deportation ban (*Abschiebungsverbot*) can then be requested by the Foreigners' Office, although this does not happen automatically.²⁵³ In contrast to a suspension of deportation (*Duldung*, below), the *Abschiebungsverbot* is a one-year, renewable residence status which can be converted in a long-term residence permit after five years.²⁵⁴

Suspension of deportation or 'Duldung' status

Suspension of deportation (*Duldung*)

When a child cannot be deported in law or practice (including because their continued presence is necessary due to urgent humanitarian or personal grounds or substantial public interests), the Foreigners' Office issues suspension of removal, called a certificate denoting that their deportation is temporarily suspended, called a *Duldung*.²⁵⁵ A *Duldung* can also be issued for urgent personal reasons, for example to complete a school year or a training course.²⁵⁶ A '*Duldung*' status can be valid for any set period²⁵⁷ but is often valid until the (unaccompanied) child reaches adulthood.²⁵⁸

249 Coalition government agreement of 24 November 2021, *Mehr Fortschritt Wagen. Bündnis Für Freiheit, Gerechtigkeit und Nachhaltigkeit*; DW, 7 December 2021, *Germany's incoming government signs three-party coalition deal* [checked on 15 December 2021]

250 For a full review of the changes, see PROASYL, 25 November 2021, *Koalitionsvertrag 2021–2025: Wichtige Erfolge, aber auch gravierende Lücken* [checked on 15 December 2021]

251 Deutscher Bundestag: *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Luise Amtsberg, Beate Walter-Rosenheimer, Dr. Franziska Brantner, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN - Drucksache 18/2999 - Situation unbegleiteter minderjähriger Flüchtlinge in Deutschland*, Drucksache 18/5564, p 25.

252 Section 58 subs. 1a of the [German Residence Act](#)

253 The Department for Migration and Refugees can also issue a deportation ban (*Abschiebungsverbot*) to asylum seekers who do not meet the criteria of international or subsidiary protection. It does so when the return would violate the European Convention on Human Rights, pose a concrete danger to the person's life, limb or freedom or if there's a life-threatening or serious illness that would be substantially worsened by deportation.

254 Section 60 (5), (7) of the German Residence Act.

255 Section 60a

256 Section 60a subs. 2 third sentence of the Residence Act. They are also issued to parent(s) of minors who have a *Bleiberecht für gut integrierte Jugendliche und junge Erwachsene* (section 25a).

257 With a minimum of three months.

258 European Migration Network (EMN), 2018, *Unaccompanied Minors in Germany: Challenges and Measures after the Clarification of Residence Status*, para 5.1.2.

The suspension of deportation grants limited access to certain rights. *Duldung* is not a fully-fledged residence status and often comes with an obligation to live in a specific town, city, or district (a 'domicile requirement').²⁵⁹ It grants access to the following rights:

- Right to access company-based training courses, internships, and the Federal Volunteer Service, if approved by the Foreigners Office.²⁶⁰
- Right to work after three months if the child receives approval by the Foreigners Office and by the Federal Employment Agency.²⁶¹
- Right to education:
 - For unaccompanied children In the Youth Care System: immediate access to education although children may enter school late for several reasons (lack of school admissions, need of therapy first, etc.)
 - For children in families in initial reception centres and arrival centres:²⁶² access to education after a certain time of residence, which can vary from a few days to six months. This is dependent on the state (*Länder*).²⁶³
- Right to adequate health:
 - For unaccompanied children: full access to healthcare without restrictions until they turn 18, equal to that of a German child.
 - For adults and children in families: right to health care, as far as it concerns:
 - Necessary medical and dental treatment to treat acute illnesses and pain.
 - Vaccinations and necessary check-ups.
 - Dental prostheses (if these cannot be delayed for medical reasons).

- Pregnant women and new mothers are granted medical and nursing care, the assistance of a midwife, medicines, bandages, and therapies.²⁶⁴

- Right to adequate housing: There is no explicit accommodation arrangement for persons with a *Duldung* status,²⁶⁵ but people may apply for social assistance to pay the cost of a private apartment.²⁶⁶

When a child with a *Duldung* status ages out, they are no longer protected against deportation and must assist authorities in obtaining travel documents (in order to return or to apply for a residence status).²⁶⁷ However, depending on the country of return, their removal may again be suspended and the young person receive a new *Duldung*. A child with *Duldung* status can apply for a residence permit on other grounds before they turn 18, for example linked to training and education (see below).

DATA ON CHILDREN WITH *DULDUNG* STATUS IN GERMANY

On 30 July 2020, 58,286 children lived in Germany with a suspension of return/*Duldung*. Of these children, 42,790 were younger than 11, 10,309 were between 12 and 15 years old and 5,187 were between 15 and 17 years old. A total of 669 children had a *Duldung* status because they were unaccompanied children (Section 58 Abs. 1a of the Residence Act).

Although we do not know how long these children had been living with this insecure status, we do know that a total of 220,907 people (adults and children) lived with *Duldung* status on that day, often for many years. Sixty percent of them had lived with the status for more than 3 years and 6.5 percent for more than a decade.²⁶⁸

259 BAG - Bundesarbeitsgemeinschaft Landesjugendämter (2017), p 40.

260 Section 61 subs. 2 first sentence of the Asylum Act.

261 Section 32 of the Employment Ordinance (BeschV.) This will change, following the coalition agreement.

262 'Erstaufnahmeinrichtung' and 'Ankunftszenrum' respectively

263 European Migration Network (EMN), 2018, *Unaccompanied Minors in Germany: Challenges and Measures after the Clarification of Residence Status*, para 4.2.1.

264 Section 4 of the Act on Benefits for Asylum Seekers.

265 Section 61 subs. 1e of the Residence Act and Section 3 of the Act on Benefits for Asylum Seekers

266 Section 3 subs. 2 of the Act on Benefits for Asylum Seekers, or after 15 months' uninterrupted residence: Section 2 of the Act on Benefits for Asylum Seekers in conjunction with Section 67 of Book XII of the Social Code

267 Section 82 subs. 4 of the Residence Act.

268 Federal Government of Germany, 2020, *Answer of the Federal Government of Germany to the Small Inquiry (Kleine Anfrage) of various members of parliament of the Leftist Party, Question 18, p. 28f*

Suspension of removal for vocational training purposes (*Ausbildungsduldung*)

A child's or young person's (new) suspension of removal can also be based on vocational training purposes, called '*Ausbildungsduldung*'.²⁶⁹ It is valid for the duration of the training, which usually lasts two to three years. If the training stops for some reason, the young person receives a new six month-long *Duldung* to find a new vocational training course. After the training is successfully completed, the young person is granted another six months to find a job fitting their recently achieved qualifications.

The *Ausbildungsduldung* is issued by discretion of the Foreigners Office, and implementation varies between regions.²⁷⁰ Moreover, suspension of removal is not granted when "*the migrant is responsible for making the removal impossible*", if they originate from a "safe country"²⁷¹ or if they are considered to have entered Germany to obtain social benefits. The onus is on the Foreigners Office to prove that one of these conditions apply.²⁷²

Residence permits

Children reaching the age of 18 and young adults also have the possibility to apply for a residence permit through integration (*Bleiberecht für gut integrierte Jugendliche und junge Erwachsene*), a residence permit for qualified employees (*Aufenthaltserlaubnis für qualifizierte Beschäftigte*), or other regularisation mechanisms.

Residence permit for qualified employees (*Aufenthaltserlaubnis für qualifizierte Beschäftigte*)²⁷³

After the *Ausbildungsduldung* (suspension of removal for vocational training purposes), a young person can be granted a residence permit if they become employed at a job fitting their qualifications and additional conditions are met. People whose removal was suspended on other grounds are entitled to this residence permit as well if they fulfil the requirements.

Everyone else, including undocumented people, can receive it on a discretionary basis.

To be granted this residence permit, one of three requirements should be met first:

- Having completed vocational training of at least two years;
- Having been employed continuously for two years with a relevant foreign higher education qualification which is recognised in Germany;
- Having worked for three uninterrupted years as a skilled worker in a position that requires at least two years vocational training.

If one of these is met, the following conditions²⁷⁴ should also be met:

- Having sufficient living space;
- An intermediate level of German;²⁷⁵
- No wilful deception of the Foreigners Office;
- No wilful hindering or delaying of measures to end his or her stay;
- No connections to extremist or terrorist organisations or support for such organisations;
- No convictions for criminal offences (does not apply to unaccompanied children);
- Not have claimed any public benefits for themselves or for their family one year prior to the application.

Residence permit through integration for young people and their parents (*Bleiberecht für gut integrierte Jugendliche und junge Erwachsene*)²⁷⁶

Children and young people between 14 and 20 years old may apply for a residence permit if they have lived in Germany for four years, regardless of training or employment. This residence permit should be granted if the following conditions²⁷⁷ are met:

269 Section 60c of the Residence Act (since 01.01.2020)

270 European Migration Network (EMN), 2018, *Unaccompanied Minors in Germany: Challenges and Measures after the Clarification of Residence Status*, para 5.4.1

271 If the person originates from a 'safe country' and 1) applied for asylum after 31.08.2015 and their application was denied, 2) if they did not apply for asylum at all OR 3) if they applied for asylum and then withdrew their application (unless they were counseled to do so by the BAMF), the person would not be granted a working permit and therefore be excluded from receiving an *Ausbildungsduldung*. This does not apply to unaccompanied children and former unaccompanied children. (Section 60a subs 6 Sentence 3 of the Residence Act.)

272 Section 60a subs 6 of the Residence Act.

273 Section 19d of the Residence Act (since 01.01.2020)

274 Section 19d subs. 1 no. 1 of the Residence Act

275 B1 CEFR level

276 Section 25a subs. 1 of the Residence Act, Section 60a of the Residence Act

277 Section 25a subs. 1 of the Residence Act

- Four years of uninterrupted residence in Germany with a residence permit (e.g. asylum seeker) or a suspension of removal (i.e. *Duldung* status);
- Four years of successful school attendance or completion of school or vocational training;
- Positive integration prognosis;
- The application is submitted before the person turns 21;
- Secured financial subsistence (unless still in school or vocational training or if it concerns a child living with a family member who takes care of them);
- No convictions for intentional criminal offences;
- No evidence of not being committed to the democratic order of the country;
- General fulfilment of the passport obligation;
- The person did not try to prevent removal by providing false information.

Many children and young people struggle to fulfil the requirements on passport and identity. They may however be granted a residence permit despite not fulfilling all requirements, but only at the discretion of the Foreigners Office.²⁷⁸

Parents and underage siblings can also receive a residence permit based on their child's/sibling's status. The underage children of someone who holds this status will also be granted a residence status if they live with their parent.

Other residence permits

All undocumented third country nationals, including young people, can access other German regularization mechanisms. For example, a residence permit can be granted to a person who has previously resided in Germany for six to eight years.²⁷⁹ Some federal states (Bremen and North Rhine-Westphalia) have passed decrees allowing young adults older than 21 to apply

for this residence permit if they have lived in Germany for only four years. This is meant to fill the gap for young adults who are too old to apply for the residence permit through integration for young people and their parents but cannot fulfill the requirement of a 6 to 8-year stay.

Also, if a person has had their removal suspended for 18 months (i.e., has had a *Duldung* status for 18 months), they may be granted a residence permit if the reasons preventing removal cannot be expected to cease to exist in the foreseeable future. The person may not be 'personally responsible' for this and should not be able to return voluntarily.²⁸⁰

Finally, one can also enter a "hardship case request" (*Härtefallantrag*) at the Hardship Commission, including for people who may be able to return (unless a date for their removal has been set).²⁸¹ The *Härtefallantrag* is seen as a means of last resort and will be rejected if other pathways to residence (incl. applying for asylum) have not been fully exhausted first. Each federal state has its own Commission, with its own procedures, rules, and grounds for exclusion. However, "urgent humanitarian or personal reasons [must] justify the continued presence of the [person]" in Germany.²⁸²

For instance, the Hardship Commission of Lower Saxony²⁸³ consists of nine voting members and a chair and includes representatives from the following entities in the region: Ministry of Interior and Sport; the District Assembly; the City Council; the Confederation of Protestant Churches; the Catholic Office; the agricultural working group of voluntary welfare; the Refugee Council; and a doctor with experience in psychotherapy.²⁸⁴ If the request is accepted, the return order is suspended. In both 2019 and 2020, around 30% of applications submitted to the Lower Saxony Commission involved children. The data does not indicate how many recently aged-out young people applied.²⁸⁵

278 Section 5 subs. 3 second sentence of the Residence Act

279 Section 25b of the Residence Act

280 Section 25 subs. 5 of the Residence Act

281 Section 23a of the Residence Act. See, for instance, the [website](#) of the Hardship Commission of Lower Saxony's Ministry of the Interior and Sport

282 Section 23a of the Residence Act

283 Nds. Ministerium für Inneres und Sport, *Die Härtefallkommission beim Niedersächsischen Ministerium für Inneres und Sport*

284 And "two other members" (unspecified). Ibid.

285 Niedersächsisches Ministerium für Inneres und Sport, 2021, *Bericht über die Tätigkeit der Härtefallkommission des Landes Niedersachsen für die Jahre 2019 und 2020*

Greece

Greek law provides some ways for undocumented people to regularise their status but they are highly inaccessible. PICUM members describe ageing out as a “step into the void.”

ESTIMATES OF UNACCOMPANIED CHILDREN IN GREECE

An estimated 2,279 unaccompanied children lived in Greece in November 2021. Of these, 92 percent were male, 8 percent female. The vast majority are 14 and older: just seven percent were younger than 14. At the time that the numbers were gathered, 1,578 unaccompanied children were living in shelters, 309 in supported independent living (SIL) apartments, 268 in reception and identification centres, 92 in relocation hubs and 32 in open accommodation centres, facilities for unaccompanied children.²⁸⁶

Protection from forced return

Children, either unaccompanied or accompanied, are not protected from deportation due to their age alone. In theory, a person is considered documented during the asylum procedure, and thus protected from deportation.

However, children are regularly pushed back or expelled by Greek security forces.²⁸⁷ There are several cases of documented and undocumented unaccompanied children, children in families and young people being abducted in refugee camps to then be expelled to Turkey.²⁸⁸

Greek law requires that a best interests assessment identifies that a life in the country of return is in the unaccompanied child's best interests before they are (forcibly) returned.²⁸⁹ However, such an assessment is rarely if ever conducted before issuing the deportation order by the entities who issue the first grade administrative decision on asylum claims and the administrative judges who function as the Second Grade Administrative Committee issuing second grade administrative decision, ordering the deportation of rejected asylum seekers.²⁹⁰

Suspension of deportation or 'Duldung' status

The status is not designed with children or aged out young people in mind, but the Greek police can provide undocumented people with a 'status of postponement of removal'²⁹¹ or protection from deportation²⁹² if they cannot return for risks of refoulement or because return is not in the child's best interests. These postponements are valid for six months and can be renewed if the conditions persist.

286 E.K.K.A. National Center for Social Solidarity, 30 November 2021, *Situation update: unaccompanied children (UAC) in Greece*

287 Solidarity Now, 30 March 2021, *Joint Action for the Creation of an Initiative of Organisations in Relation to Pushbacks*

288 PICUM member survey ageing out – Greece. See also, The Independent, 4 March 2021, *Greek 'pushbacks' brought to European court after child refugees 'towed out to sea and abandoned in raft'* [checked 10 December 2021]; EUobserver, 25 February 2021, *Afghan family beaten in Greece set adrift at sea* [checked 10 December 2021]; IOM, 11 July 2021, *IOM Alarmed over Reports of Pushbacks from Greece at EU Border with Turkey* [checked 17 January 2022]; UNHCR, 12 July 2021, *UNHCR calls on Greece to investigate pushbacks at sea and land borders with Turkey* [17 January 2022]

289 Article 25 of Law 3907/2011

290 Article 95 of Law 4636/2019

291 [L. 3907/2011](#) on the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of Directive 2008/115/EC “on common standards and procedures in Member States for returning illegally staying third country nationals” and other provisions, Art. 24 §2

292 [L. 3386/2005](#) on the Codification of Legislation on the Entry, Residence and Social Integration of Third Country Nationals on Greek Territory, Art. 78 A.

These postponements of removal or protections from deportation do not grant effective access to services but only ensure that the person is not deported during those six months. People could apply for a separate work permit, but only in agriculture, livestock, the clothing industry or domestic work sector. This will no longer be possible after 1 July 2022, following a change in law in September 2021.²⁹³

How often these postponements and work permits are issued or renewed is unclear, as no official data is collected.²⁹⁴

Residence permits

There are no clear ways for undocumented children or young people to regularise their stay outside of the asylum procedure. Recent reforms have shrunk pathways for stay for undocumented people, including children. In May 2020, a law abolished the possibility for rejected asylum seekers who cannot be returned to be considered for the potential application of a residence permit for humanitarian reasons.²⁹⁵ This provision was repealed retroactively from 1 January 2020 and was completely abolished as of September 2021, even for the older cases.²⁹⁶

Residence permit for humanitarian reasons

Undocumented third country nationals who have never applied for asylum (see above) and find themselves in one of the following situations may be granted a temporary, renewable residence permit.²⁹⁷

- a victim of human trafficking;
- a victim or witness to a criminal act;
- a victim of domestic abuse;
- employed under particularly abusive working conditions or are working while underage ;
- attending a legally approved 'mental dependence treatment programme';
- adults unable to take care of their affairs due to health reasons or children in need of protection and under the care of public institutions, if return to a 'safe environment' is impossible;
- a child placed in the care of a Greek or regularly residing family by a Greek or foreign court;
- being a victim of a work accident, for the duration of the treatment;
- a child staying in a boarding school;²⁹⁸
- a patient with serious health problems.

The young person must be able to present a passport, even if expired, in addition to many other documents (dependent on the grounds cited by the young person).²⁹⁹

Until 2020, unaccompanied children who had seen their asylum claim rejected could be referred to the Ministry of Interior, who could issue them a residence permit on humanitarian grounds. Since the introduction of law 4686/2019, they can no longer be referred by the Appeal Committees and unaccompanied children and young people can, under the current legislation, not regularize their stay.

293 Art. 72 par.4 and Art.73 par.2 of [Law 4825/2021](#).

294 For more in this status, see PICUM, 2022, *Barriers to return: protection in international, EU and national frameworks*

295 Following amendment of article 61 (e) of [Law 4686/2020](#) "Improvement of the migration legislation, amendment of L. 4636/2019 (Á 169), 4375/2016 (Á 51), 4251/2014 (Á 80) and other provisions" Gov. Gazette A' 96 /12-5-2020, art. 61. (See also Art. 67 of Law 4375/2016).

296 [L. 4825/2021](#) on Reform of deportation and return procedures of third country nationals, attraction of investors and digital nomads, issues of residence permits and procedures for granting international protection, Art. 7255. The Commissioner of Human Rights has asked to reconsider the bill as it does not meet human rights standard, please see: Council of Europe, September 2019, [Greece's Parliament should align the deportations and return bill with human rights standards](#), Strasbourg. For

297 Article 19A. "Issuance of a residence permit for humanitarian reasons" of [Law 4251/2014](#) Code of Immigration and Social Integration and other provisions.

298 The provision was included in law after a number of children had been placed in boarding schools by prosecutors without them being issued with a residence permit. This provision prevents them from ageing out as undocumented adults. Source: Written correspondence with ARSIS, 21 January 2022

299 For an up to date overview of documents needed, visit Ministry of Migration and Asylum, [Residence Permit categories for Third Country Citizens & Documents to be submitted](#)

Residence permit for those born in Greece or having completed six years of schooling

Young people who have grown up undocumented in Greece may be able to receive a residence permit under article 108 of law 4251/2014. The article gives access to a five-year residence permit for adult third country nationals who are younger than 23 and were either born in Greece, or successfully completed six years of school in Greece. They have the same rights and obligations as long-term residents, including access to the labour market, education, social security, etc.

Residence permit after seven years of consecutive stay

Article 19 of Greek law 4251/2014 provides for the exceptional granting of a three-year residence permit to third country nationals who have resided in Greece for seven consecutive years. The Greek government's website³⁰⁰ includes a list of documents people must submit. These include standard requirements, like a filled in application form, recent ID-photos, and a copy of a valid passport or travel document of a declaration of identity if the person is "objectively unable to obtain" a passport. To prove residence for seven consecutive years, a range of dated documentation is accepted, including evidence of attending school, past asylum applications, past residence permits, etc.

People must pay 300 euro to apply and 16 euro to print the residence permit.

Due to a backlog of applications, there have been important delays in processing applications and for a time new applications were not accepted.³⁰¹

Spain

Spain has developed several ways for undocumented children and young people to regularise their stay – either in the context of their transition to adulthood, or on the basis of other grounds (work relationship, social ties, etc).

DATA ON SPAIN

Approximately 40,700 people between 15 and 19 years old were living in Spain without a residence permit in 2019 (slightly more than one fourth of all undocumented people younger than 19, and 23 percent of all third country nationals of that age group).³⁰²

In 2019, 2,873 unaccompanied and 509 accompanied children arrived by small boat from continental Africa. This was a significant decrease from 2018, when an exceptionally high number (7,026) arrived.³⁰³

In 2019, 7,745 age assessment procedures were initiated, with clear differences in numbers between Autonomous communities. Barcelona had the most age assessment procedures (1,808) followed by Almería (1,679) and Algeciras (652). Then, with some distance, Granada (499), Melilla (461), Ceuta (465), Murcia (392), Madrid (318), Las Palmas (304), Málaga (229), Tenerife (122) and Girona (90).³⁰⁴

On 31 December 2019, 12,417 unaccompanied children were under the guardianship system or in foster care. Only 8.7 percent were girls, and the remainder were boys.³⁰⁵

There is no data on the number of unaccompanied or accompanied children who age out without a secure residence status each year. However, about 7,000 former unaccompanied children between the ages of 18 and 23 are expected to benefit from the 2021 reform (see below).³⁰⁶

300 Ministry of Migration and Asylum, *Residence Permit categories for Third Country Citizens & Documents to be submitted*

301 PICUM member survey ageing out – Greece

302 Fanjul G., Gálvez I., and Zuppiroli J., 2021, *Creecer sin papeles en España*, por Causa and Save the Children, p. 18

303 Fiscalía General del Estado, *Capítulo III. Fiscales Coordinadores y Delegados para Materias Específicas - 4. Extranjería. 4.7 Menores no Acompañados* [checked on 2 December 2021] See also Agencia EFE, 4 December 2018, *Spain: 59,048 migrant arrivals by boat in 2018, so far, trebles 2017 figures* [checked on 2 December 2021]

304 Fiscalía General del Estado, *Capítulo III. Fiscales Coordinadores y Delegados para Materias Específicas - 4. Extranjería. 4.7 Menores no Acompañados* [checked on 2 December 2021]

305 Fiscalía General del Estado, *Capítulo III. Fiscales Coordinadores y Delegados para Materias Específicas - 4. Extranjería. 4.7 Menores no Acompañados* [checked on 2 December 2021]

306 InfoMigrants, 21 October 2021, *Migrants in Spain: 15,000 youths to benefit from stay permit reform* [checked on 2 December 2021]; European Commission, 1 November 2021, *Spain: New regulation for unaccompanied foreign minors* [checked on 3 December 2021]

Protection from forced return

Spain's immigration law stipulates that all unaccompanied children under the guardianship of a Spanish public administration or any other entity are considered 'regular' for all purposes and should not be deported. However, a residence permit will only be issued once it has been established that the child cannot be reunited with their family, and the permit does not prevent family reunification from taking place at a later time if reunification is considered to be in the best interest of the child. The return is then not seen as a forced return, but rather a 'return based on family connection'.³⁰⁷

Although very few of these returns were previously carried out, with just two returns in 2019,³⁰⁸ hundreds of unaccompanied children were returned from Ceuta to Morocco on this basis in 2021.³⁰⁹ Several of the children did not have access to a lawyer or the chance to make their case for residence in Spain,³¹⁰ raising questions on the legitimacy of the returns and the procedure itself.

Unaccompanied children are also detained because they were not identified as children. The Jesuit Migrant Services reported that at least 58 presumed unaccompanied children were found in expulsion centres in 2019.³¹¹ This is likely to occur more often, either because the age assessment was not carried out, or because the age assessment was done incorrectly. The UN Child Rights Committee has thoroughly criticised the age assessment policies of the different Spanish Autonomous Communities (who are responsible for unaccompanied children).³¹² Thousands of children are likely treated as adults.

Residence permits

In 2021, Spain reformed the Immigration Act to give unaccompanied children and former unaccompanied children a better access to a secure residence status. In addition, Spain also has other residence procedures that (aged out) young people can apply for.

Residence permit for unaccompanied children

In October 2021 the bureaucratic procedure to access a residence permit as an unaccompanied child was simplified by Decree.³¹³ Since then, Autonomous Communities have 90 days to assess whether family reunification is possible and issue the unaccompanied child with a residence permit. Before the change, they had nine months, leaving scores of children in uncertainty and many ageing out before acquiring a residence permit. Spanish law considers all unaccompanied children under the guardianship of a Spanish public administration or any other entity as regularly residing.³¹⁴

However, the vast majority of unaccompanied children in Spain are between 15 and 17 years old upon arrival,³¹⁵ and many do not receive the residence permit they are entitled to. The Public Prosecutor's office writes that, in 2019, "[t]here are numerous prosecutors that report the difficulties for undocumented foreign minors to obtain residence authorization for various reasons (Tenerife, oversaturation of the centers; Castellón, processing and documentation errors; Coruña, refusal of the consulates to issue passports to the minors due to lack of prior documentation; Pontevedra, refusal to grant registration cards by the competent administrative authority; Zaragoza, refers to the sometimes

307 Article 35 of the [Regulation of the Foreigner's Law \(Reglamento de la Ley de Extranjería\)](#)

308 Fiscalía General del Estado, [Capítulo III. Fiscales Coordinadores y Delegados para Materias Específicas - 4. Extranjería. 4.7 Menores no Acompañados](#) [checked on 2 December 2021]

309 Euronews, 16 August 2021, [Spain defends the return of unaccompanied child migrants to Morocco](#) [checked on 2 December 2021]

310 Alarabiya News, 16 August 2021, [Spanish court suspends repatriation of unaccompanied minor migrants to Morocco](#) [checked on 2 December 2021]

311 Servicio Jesuita a Migrantes, 2020, [Informe CIE 2019. Diez años mirando a otro lado](#)

312 OHCHR, 13 October 2020, [Spain's age assessment procedures violate migrant children's rights, UN committee finds](#)

313 Reforming articles 196, 197 and 198 of the [Organic Foreigner's Law](#) of 2000. The [Royal Decree 903/2021](#) of 19 October, modifies the Organic Law 4/2000 of 11 January 2000 on rights and liberties of foreigners in Spain and their social integration, after its reform through the [Organic Law 2/2009](#) on the Rights, passed by the [Royal Decree 557/2011](#) of 20 April.

314 Article 35 of the [Regulation of the Foreigner's Law \(Reglamento de la Ley de Extranjería\)](#); reform of article 196

315 UNHCR, UNICEF, IOM, 2020, [Refugee and Migrant Children in Europe Accompanied, Unaccompanied and Separated](#)

exasperating slowness of procedures at the consulate; etc.).”³¹⁶ While the 2021 reform is an important step towards protecting unaccompanied children from harm, these problems need to be resolved too.

The reform also allows unaccompanied children to work “for activities that favour their social inclusion” when they are older than 16.³¹⁷ Previously, unaccompanied children were not allowed to work, which had implications for their inclusion, finances, and future residence applications (under the ‘arraigo’-system).

Extension of the residence permit of unaccompanied children

The 2021 reform will effectively protect unaccompanied children from ageing out as undocumented adults. The modification of articles 197 and 198 create new legislation for children who ‘aged out’. Young people who are documented on their 18th birthday will receive an extension of the permit they had as a child. They will also have access to the ‘minimum vital income’ (*‘ingreso mínimo vital’*, currently approximately 470 euros per month) and be allowed to work regularly, which was not the case before.

Regularisation programme for former unaccompanied children

Former unaccompanied children who have already aged out but are undocumented and are between 18- and 23-years old at the time of the reform, benefit too. They can apply for a temporary residence permit for exceptional circumstances.³¹⁸ Several conditions apply:

- Having aged out undocumented, or have aged out documented but were not able to renew that residence permit
- Be a former unaccompanied child
- Be between 18 and 23 years old at the time of the reform (9 Nov 2021)
- Have income equal to or higher than the ‘minimum vital income’
- Have, when they were under guardianship, participated in social integration activities organised by the institution and prove their integration into Spanish society
- Not have a criminal record

The ‘minimum vital income’ is 470 euros at the time of writing. Importantly, *“income from employment, the social system, as well as other amounts that may be received will be considered.”*

Some concerns remain. Young undocumented people who were never part of the child protection system will not be able to benefit from the reform. This includes the many children who were determined to be adults through faulty age assessment methods, even though they had official birth certificates or official documentation proving their chronological age. Civil society organisations, including PICUM members, are also concerned that young people who meet the requirements will nonetheless be unable to regularise if they have a criminal record. The organisations feel this condition is especially cynical because the previous legislation may have pushed some former unaccompanied children to engage in petty crime to fend for themselves.³¹⁹

316 Own translation. Fiscalía General del Estado, *Capítulo III. Fiscales Coordinadores y Delegados para Materias Específicas - 4. Extranjería. 4.7 Menores no Acompañados* [checked on 2 December 2021]

317 Article 196 of Foreigner’s Law

318 Based on [Organic Law 4/2000](#) on the Rights and Freedoms of Foreign Nationals in Spain and their Social Integration, article 31.3

319 Save the Children Spain, Fundación Raíces, Asociación Ex Menas Madrid, CEAR, Plataforma de Infancia, Servicio Jesuita a Migrantes, SOS Racismo Gipuzkoa, Col.lectiu Hourria, Wasata sans frontières, Asociación Maakum, CP San Carlos Borromeo, Coordinadora de Barrios, Extranjeristas en red, Asociación Elin, Red AcogeAldeas Infantiles SOS, CEAR - Euskadi, COF Coordinadora Obrim Fronteres, Girona Acul, Social Project 4.0, Coordinadora d’ONG’s Comarques Gironines i alt maresme, Fundación Amigó, FEPA, 2021, *Las entidades y profesionales de infancia y migraciones celebran la tan esperada reforma del reglamento de extranjería que mejorará la vida de los niños y niñas que llegan solos a España*

Temporary residence permit on exceptional grounds (social ties, labour and family unity)

Spain's immigration law³²⁰ includes three other residence permits "due to exceptional circumstances" for third country nationals: arraigo social, arraigo familiar and arraigo laboral.

The 'arraigo social' gives access to a one-year residence and work permit (including self-employment) if the young person can prove:

- More than three years of continuous stay
- Job offer or contract for more than one year duration
- Family or social ties to Spain (this must be confirmed by the Autonomous Community)
- No criminal record or entry ban

The 'arraigo laboral' gives access to a one-year residence and work permit if the young person can prove:

- They are undocumented when applying
- Two years of continuous stay with or without residence status
- A six-month labour relationship of at least 30 hours per week³²¹
- No criminal record
- No entry ban was issued against them

Young people who are family members of a Spanish or EU citizen may apply for the 'arraigo familiar'.³²²

A fee of 38 euro needs to be paid when applying for any of the 'arraigo' permits. They all give access to one-year residence permits, which must be converted.

Sweden

Sweden introduced a regularisation mechanism for aged out unaccompanied children who followed upper secondary studies³²³ in 2018, which benefited 7,500 young people. However, no new applications have been accepted since July 2021 and the programme will be phased out by 2025. With the mechanism's disappearance, undocumented children and young people can no longer regularise their status outside of the asylum procedure.

Protection from forced return

Children in families can be deported if they are accompanied by at least one adult family member or legal guardian.³²⁴ An unaccompanied child may not be deported or expelled from Sweden if there are no reception arrangements in place in the country of return. This is called an 'impediment to enforcement'. The Swedish Migration Agency or the Police Authority must ensure that the child will be cared for by a family member, a designated guardian or a reception unit that is well suited to care for children, such as a children's home.³²⁵

The Migration Agency must start the search for family members and investigate the reception arrangements while the asylum procedure is ongoing. An asylum application must not be refused if there is no realistic prospect that reception and care in the country of return can be put in place for the child in question.³²⁶ In practice this means that many children whose asylum applications are rejected are left in limbo for up to three years as the safeguards for return are not met. While undocumented, the child retains their guardian and access to education, healthcare and accommodation.

320 [Royal Decree 557/2011](#), Articles 123 and 124

321 As an employee. Self-employment does not qualify.

322 For more on the arraigo familiar, see PICUM, 2018, *Manual on regularisations for children, young people and families*.

323 "All youth in Sweden who have completed compulsory school have the right to a three-year upper secondary education. Upper secondary education should provide a good foundation for work, further studies, personal development and active participation in the life of society." Source: Skolverket, n.d., *Overview of the Swedish upper secondary school*

324 PICUM member survey on ageing out – Sweden.

325 12 kap. 3 a § Foreigner's Law (Utlänningslagen). In line with the EU Return Directive.

326 Preparatory works to the Foreigner's Law 2004/2005: 170 page 192, Migration Agency legal guidance on the enforcement of decisions concerning unaccompanied minors SR 24/2017 (Migrationsverkets rättsliga ställningstagande angående verkställighet av beslut som rör ensamkommande barn).

Residence permits

Residence permit for students at upper secondary school (phasing out)³²⁷

In the summer of 2018, Sweden introduced a regularisation mechanism for young people who had claimed asylum as unaccompanied children but saw their application refused.³²⁸ In short, young people who met the following criteria were able to apply for a temporary residence permit to study in Sweden:

- Be younger than 25 years old
- Studying in either a national programme for upper secondary school or a full-time in an equivalent programme; in vocational education in upper secondary school; or in a vocational programme of the municipality
- Not yet having completed such education, in Sweden or abroad

Although the permit is usually extended for full-time education only, part-time studies could qualify too.³²⁹ To extend/renew the permit, the young person has to report their active participation in the studies every year.

The resulting residence and work permit is valid for the duration of the training programme plus six months

(usually issued for 13-month periods, which has to be renewed). If the young person found employment within six months of graduation, they would be given permanent residence.³³⁰

About 7,500 former unaccompanied children were able to regularize their stay through the programme, but it had its faults and well-founded critics.³³¹ For instance, the condition to find employment within six months of graduation was very difficult to attain for many (especially in times of rising unemployment), and too few study programmes in Sweden qualify.³³² Also, “many young people (...) have a patchy history of formal education in Sweden, sometimes due to having been transferred between asylum accommodations – and schools – in different parts of Sweden, and due to limitations to the right to education for undocumented persons over 18.”³³³

Sweden introduced a phasing out of the mechanism in 2021, with the mechanism coming to an end between 2023 and 2025. The above rules continue to apply to those people who have already received a permit on these grounds and wish to extend it, with no new applications possible after 20 July 2021.³³⁴

Since July 2021, all new residence permits issued by Sweden are temporary. If, after three years, the person fulfils additional requirements³³⁵ they can obtain a permanent residence permit.

327 For more on this mechanism, see Migrationsverket, n.d., *Frequently asked questions about residence permits for upper secondary level*

328 *Act (2017: 353)* on residence permits for students at upper secondary level

329 *Act (2018: 755)* amending the Act (2017:353) on residence permits for students at upper secondary level

330 Migrationsverket, n.d., *The Swedish Upper Secondary School Act* [checked on 13 December 2021]

331 Scott, H, 29 June 2020, *Calling out the law with a lie: Community perspectives on precarity, welfare and law in times of Covid-19 in Sweden*, University of Oxford Faculty of Law

332 Sverige Radio, 16 June 2019, *Kritik mot oklarheter i nya gymnasielagen* [checked on 13 December 2021]

333 Scott, H, 29 June 2020, *Calling out the law with a lie: Community perspectives on precarity, welfare and law in times of Covid-19 in Sweden*, University of Oxford Faculty of Law

334 Migrationsverket, n.d., *The Swedish Upper Secondary School Act* [checked on 13 December 2021]; Migrationsverket, n.d., *Swedish Upper secondary School Act – What’s new?* [checked on 13 December 2021]

335 These are: fulfilling the requirements for an extended residence permit, having a temporary residence permit for at least three years, be able to support yourself financially (if adult), and “live an orderly life” (if 15 and older).

The United Kingdom

The UK adopted a set of policies in 2012 to make it as difficult as possible for undocumented migrants to live in the UK. Such policies, termed “*hostile environment*” by the UK government, were created to incentivize undocumented migrants to leave “*voluntarily*.”³³⁶ The UK did have some ways for undocumented children in families and young people to regularise their stay – if they could bear the stress and afford the fees. After nearly a decade of campaigning by young people and British civil society, the Home Office adopted changes³³⁷ to the Immigration Rules in March 2022 that should facilitate children’s and young people’s access to a secure residence status.

Protection from forced return

The UK does not deport unaccompanied children “*unless the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be removed.*”³³⁸ Adequate reception arrangements may constitute the family home or the home of a relative where the child previously lived, a family member or relative living in a third country whom the child wants to be reunited with and who are willing and capable to care for the child, or governmental reception arrangements. Whether these are safe should be assessed before the child is returned, however.

Children in families are not similarly protected from forced return, although the UK has developed a ‘Family Returns Process’ that seeks to increase family take up of voluntary return and Assisted Voluntary Return (AVR); ensure that any enforcement action takes into account the welfare of children and the wider family; better prepare families for return and give them the opportunity to take responsibility for

their return; and give families the opportunity to make further representations and seek judicial reviews before enforcement action commences. The process has several child protection elements.³³⁹

Undocumented young people are not protected from deportation or detention, irrespective of the time they have spent in the UK or whether they previously received a temporary residence status as an unaccompanied child. As Home Office guidance states, “*if the applicant is approaching 18 this must not prevent caseworkers from completing any preliminary work necessary to ensure that removal can go ahead as soon as possible after the applicant turns 18.*”³⁴⁰

Residence permits

A full overview of procedures would go beyond the scope of this report³⁴¹ and this section thus focuses on two residence permits: one given to unaccompanied children at the latest until their 18th birthday and a temporary residence permit issued based the length of time a child, young person or adult has lived in the UK.

Limited leave to remain as an unaccompanied asylum-seeking child

The UK issues a specific status to unaccompanied children³⁴² who saw their asylum claim rejected and did not receive humanitarian protection but “*there are no adequate reception arrangements in the country to which they would be returned if leave to remain was not granted.*”³⁴³ This temporary residence permit is called ‘unaccompanied asylum-seeking child leave’ or ‘UASC leave’ for short.

336 The Joint Council for the Welfare of Immigrants, *The Hostile Environment explained* [checked on 10 Dec 2021]

337 Home Office, 15 March 2022, [Statement of changes in Immigration Rules](#); Home Office, 15 March 2022, [Explanatory memorandum to the statement of changes in Immigration Rules presented to Parliament on 15 March 2022 \(HC 1118\)](#)

338 Home Office, 31 December 2020, *Children’s asylum claims v 4.0*, guidance, p. 70

339 See Home Office, 10 July 2020, *Family returns process (FRP)* and PICUM, IOM, UNICEF, UN Human Rights, ECRE, Save the Children, and Child Circle, 2019, *Guidance to respect children’s rights in return policies and practices. Focus on the EU legal framework*

340 Home Office, 31 December 2020, *Children’s asylum claims v 4.0*, guidance, p. 84

341 For an exhaustive overview, see Coram Children’s Legal Centre, 2017, *Securing permanent status: Existing legal routes for children and young people without leave to remain in the UK*

342 Local authorities have a responsibility to provide services and support to children in need under *Section 20 of the 1989 Children Act 1989*, regardless of their residence status.

343 Home Office, 25 February 2016, *Immigration Rules part 11: asylum. Asylum (paragraphs 326A to 352H)*

This status is only issued to unaccompanied children younger than 17½ for a period of 30 months, or until the child turns 17½, whichever is shorter.

It cannot be extended or renewed into adulthood, as one of the conditions for the permit is being an unaccompanied child. As such, the permit is not a route to settlement and is intended to facilitate only temporary stay. Also, it is *“unlikely that the Home Office will grant a young person further leave to remain after they have reached their majority, as it is unlikely that they will have met the requirements for leave on the basis of family or private life or any other reason under the Immigration Rules (...).”*³⁴⁴

Government guidance is unambiguous: the child must not be returned if the conditions are not met (see above), including for those who are 17 ½. They will be *“liable for removal on turning 18. This (...) gives the young person and their social worker up to 6 months to prepare for return to their country of origin.”*³⁴⁵

Limited leave to remain based on private life (7 years, 10 years and 20 years continuous stay)

The UK Immigration Rules include provisions to stay in the UK on the grounds of a narrow reading of article 8 of the European Convention of Human Rights (private and family life).³⁴⁶

Until 20 June 2022:

Paragraph 276ADE (1) of the Immigration Rules includes provisions for a temporary residence permit for people who have lived in the UK continuously³⁴⁷ (irrespective of whether they were documented or undocumented during that time) notably people who:

- have lived continuously in the UK for at least 20 years; or
- are under the age of 18 years and have lived continuously in the UK for at least 7 years and for whom it would not be reasonable to expect them to leave the UK; or
- are aged 18 years or above and under 25 years and have spent at least half³⁴⁸ of his life living continuously in the UK; or
- have lived continuously in the UK for less than 20 years and for whom there would be *“very significant obstacles to the applicant’s integration into”* the country of return.

The applicant must not meet any of the prescribed list of ‘general grounds for refusal’ which includes a range of criminal offences, immigration offences, and being subject to a current deportation order.³⁴⁹ Also, application forms need to be filled in, a copy of a valid passport submitted, and three fees paid (an administrative fee, the Health Immigration Surcharge, and a fee to have biometric data taken). These fees are prohibitively high: £2,612.20 per applicant (£1,033 application fee + £1,560 Immigration Health Charge + £19.20 biometric information enrolment fee) and there is no longer a lower rate for child dependents.³⁵⁰

A temporary residence and work permit of 30 months is issued which must be renewed (as well as fees paid) until an indefinite leave to remain can be applied for. The temporary permit does not allow access to public funds and can be revoked in some circumstances. In most cases, indefinite leave to remain can only be applied for after ten years, meaning people must renew the permit and pay these high fees at least four

344 Coram Children’s Legal Centre, 2017, *Securing permanent status: Existing legal routes for children and young people without leave to remain in the UK*, p.14

345 Home Office, 31 December 2020, *Children’s asylum claims v 4.0*, guidance, p. 65

346 Home Office, 25 February 2016, *Immigration Rules part 7: other categories. Other Categories (paragraphs A246 to 276BV)*

347 Any period of imprisonment is discounted from the time.

348 This is counted in days, not months or years. Coram Children’s Legal Centre, 2017, *Securing permanent status: Existing legal routes for children and young people without leave to remain in the UK*

349 Coram Children’s Legal Centre, 2017, *Securing permanent status: Existing legal routes for children and young people without leave to remain in the UK*

350 Home Office, 11 October 2021, *Home Office immigration and nationality fees: 11 October 2021*; Gov.UK, *UK Visa and Citizenship Application Services*; NRP Network, *Immigration application fees*

times.³⁵¹ If, for whatever reason, the person cannot renew the permit before the end of their previous grant, they must start from the beginning.

The 'seven-year rule' for children includes the condition that it "would not be reasonable" for the child to leave the UK. Home Office guidance³⁵² goes into detail as to how this must be assessed, stating that "the determination sets out that if a child's parents are both expected to leave the UK, the child is normally expected to leave with them, unless that would not be reasonable."

The lengthy, insecure, and expensive procedures have been criticized by young people and civil society. Living with indefinite leave to remain "means a decade of living with unrelenting uncertainty."³⁵³

After campaigning by the group We Belong³⁵⁴ and a case³⁵⁵ brought against the UK, the Home Office published a concession to the family Immigration Rules granting the possibility of early indefinite leave to remain to young people aged 18 to 25.³⁵⁶ The concession notes that "public interest factors which underpin the 10-year settlement policy – namely, the need to serve a longer probationary period before qualifying for settlement, and the principle of encouraging lawful compliance – may be less relevant (...) for those applicants who were either born in the UK or entered as children (below the age of 18), but are now young adults (aged 18-24). [As they] cannot be considered responsible for any previous non-compliance with immigration laws and are fully integrated into society in the UK. For these individuals it will not usually be proportionate

to expect them to have to complete a longer (10-year) route to settlement. Where that is the case, they should be able to settle after 5 years' continuous leave."³⁵⁷ The concession was integrated into the Immigration Rules in March 2022 (see below).

These temporary residence permits are often issued on the condition that the person/family does not take recourse to public funds, covering most benefits.³⁵⁸

As of 20 June 2022:

Many of the elements above will continue to apply, including the fees and grounds for refusal. However, some of the changes to the Immigration Rules³⁵⁹ the Home Office presented to Parliament on 15 March 2022 will likely facilitate access to a secure residence status for some children and young people.

Paragraph 276ADE (1) will be replaced by a new *Appendix Private Life*, while two new appendices will include the requirements for indefinite leave to remain (*Appendix Settlement Family Life* and *Appendix Relationship with Partner*).

The Appendix Private Life retains the above-mentioned grounds for stay based on private life:

- having lived continuously in the UK for at least 20 years (becomes PL 5.1(a));
- be under the age of 18 years and have lived continuously in the UK for at least 7 years and for whom it would not be reasonable to expect them to leave the UK (becomes PL 3.1);

351 The four times refers to the initial application + three renewals. This means that an undocumented young person undertaking this process may be expected to pay up to £ 10,000 over the course of the whole process.

352 Home Office, *Family Policy. Family life (as a partner or parent), private life and exceptional circumstances*, p. 52. See also Free Movement, *Can children and parents apply to remain after seven years' residence?* [checked on 22 March 2022]

353 We Belong, 2020, *Mental Health Check*, p. 22

354 <https://webelong.org.uk/about-us>

355 MICLU, October 2021, *Challenge to the 10-year-route results in Home Office concession for young people*

356 Home Office, 21 October 2021, *Concession to the family Immigration Rules for granting longer periods of leave and early indefinite leave to remain*. For an analysis, see Kingsley Napley, October 2021, *The Home Office's new "early ILR concession"*

357 Home Office, 21 October 2021, *Concession to the family Immigration Rules for granting longer periods of leave and early indefinite leave to remain*, p. 4

358 For a full list, see Home Office, 17 February 2014, *Guidance Public Funds* [checked on 10 Dec 2021] See also, Free Movement, 2019, *What is the no recourse to public funds condition?* [checked on 10 Dec 2021]

359 Home Office, 15 March 2022, *Statement of changes in Immigration Rules*; Home Office, 15 March 2022, *Explanatory memorandum to the statement of changes in Immigration Rules presented to Parliament on 15 March 2022 (HC 1118)*

- are aged 18 years or above and under 25 years and have spent at least half³⁶⁰ of his life living continuously in the UK (becomes PL 4.1);
- having lived continuously in the UK for less than 20 years and for whom there would be “*very significant obstacles to the applicant’s integration into*” the country of return (becomes PL 5.1(b)).³⁶¹

‘Continuous stay’ is defined and may include “*time spent in the UK with or without permission*” for all four grounds, although different types of absences break it.³⁶²

Going forward, applicants who are children who have lived continuously in the UK for seven years (PL 3.1) or young people (PL 4.1) will be able to choose between a 30-month and a 60-month temporary residence status (definite leave to remain). As both durations use the same eligibility criteria, the only difference between either will likely be the application fee.³⁶³ Seeing as fees are a key barrier to accessing a residence status in the UK,³⁶⁴ this may be a significant challenge for many.

Most importantly, they will no longer have to complete ten years on the ‘private life route’ to apply for a secure residence status (indefinite leave to remain). As of June, children (PL 3.1.) and young people (PL 4.1.) will be able to apply after five years of continuous residence on the ‘private life route’, halving the time and cost.³⁶⁵ This codifies in law the concession made by the Home Office in October 2021 mentioned earlier.³⁶⁶

In addition, undocumented children who were born in the UK will be able to apply for indefinite leave to remain after having lived in the UK for seven years, irrespective of whether they had any previous residence status.³⁶⁷ However, children must still show that it is “*unreasonable*” to expect them to leave the UK, and the Immigration Office and UK courts apply a high threshold.³⁶⁸ Children born in the UK will also be eligible for British citizenship once they are ten years old.³⁶⁹

These changes are a significant victory for the undocumented children and young people living in the UK and the British human rights and child rights advocates who have campaigned for it for a decade,³⁷⁰ and show the importance of fair, affordable and humane procedures.

360 This is counter in days, not months or years. Coram Children’s Legal Centre, 2017, *Securing permanent status: Existing legal routes for children and young people without leave to remain in the UK*

361 People whose asylum claim was deemed inadmissible cannot apply on this ground, including asylum seekers who the Home Office wishes to remove to a ‘safe third country’ where they could have applied for asylum (i.e., all EU Member States). Home Office, 15 March 2022, *Statement of changes in Immigration Rules*, PL 6.1, p. 175. Home Office, *Immigration Rules part 11: asylum (updated on 17 February 2022)*, 345B.

362 For instance, six-month absences. Time spent serving a prison sentence does not count towards ‘continuous’ stay either. Home Office, 15 March 2022, *Statement of changes in Immigration Rules*, PL 7.1 to PL 7.3, p. 175

363 Free Movement, 17 March 2022, *Statement of changes HC 1118: new family and private life rules* [checked on 22 March 2022]

364 Gardner Z and Patel C, 2021, *We are here. Routes to regularisation for the UK’s undocumented population*, The Joint Council for the Welfare of Immigrants

365 People applying under PL 5.1 will still need to complete ten years, but they can “*combine time on family and private life routes towards the qualifying period rather than having to ‘reset the clock’ on the qualifying period if their circumstances change, though they will need to complete at least a year in their current route.*” Home Office, 15 March 2022, *Explanatory memorandum to the statement of changes in Immigration Rules presented to Parliament on 15 March 2022 (HC 1118)*, paragraph 7.29, p. 6

366 Home Office, 21 October 2021, *Concession to the family Immigration Rules for granting longer periods of leave and early indefinite leave to remain.*

367 And pay the respective fees.

368 Home Office, *Family Policy. Family life (as a partner or parent), private life and exceptional circumstances*, p. 52. See also Free Movement, *Can children and parents apply to remain after seven years’ residence?* (checked on 22 March 2022)

369 Home Office, 15 March 2022, *Explanatory memorandum to the statement of changes in Immigration Rules presented to Parliament on 15 March 2022 (HC 1118)*, paragraph 7.34, p. 8

370 Children and Young People Now, 19 March 2022, *Young migrants will benefit from faster and affordable routes to settle in the UK, says charity* [checked on 22 March 2022]







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