

Unaccompanied minors in the European Union – definitions, trends and policy overview

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1 Introduction: Unaccompanied minors – a still emerging policy task for the European Union?

“I have to deal with these children too now” a policy official from the German Ministry of the Interior once said to me, in 2009, when we discussed a study on UAM I was preparing for the European Migration Network (Parusel 2009). He seemed to be disenchanted, as if he had to take on a particularly cumbersome task. He used to work on the EU’s common visa policy, and on returning rejected asylum seekers. Now it seemed to worry him to enter into negotiations with his counterparts in other EU Member States, the European Commission, and the European Parliament in order to reach a consensus on what the EU should do to address the situation of UAM. Perhaps, he was worried not without reason.

At the time, the number of UAM seeking protection in Europe had started to rise significantly, and there was widespread confusion among policy-makers and officials about how to deal with them (Hammarberg 2010, p. 173). In Germany, for example, child and youth care legislation and practices on the one hand, and immigration and asylum laws on the other hand, were contradictory with regard to UAM. Also, the practices of the 16 federal Länder [states] regarding the determination of the age of UAM without documents varied greatly, and the border police sometimes did not seem to know what to do when they discovered UAM who had entered the country irregularly. There were not even complete statistical data on the phenomenon, as the Federal Office for Migration and Refugees only counted UAM below the age of 16 as minors (Parusel 2009), while from a perspective of Germany’s social code on child and youth care services (SGB VIII), and throughout all other German legislation, minors are being defined as people below the age of 18. All these uncertainties and contradictions had likely contributed to my interlocutor’s hesitation about his new policy portfolio. Furthermore, while the EU had been working on a common approach to asylum, visas, and other migration-related topics for quite some time, UAM were still a rather new concern. While some Member States had been aware of this particular group of migrants for years, others had barely heard that something like this could actually become relevant.

Eurostat, the European Commission’s directorate-general for statistics, started to collect harmonized statistics for all Member States on asylum-seeking UAM for the first time in 2008, but the figures collected since show a strong increase. Back in 2008, just around 12,000 UAM lodged an asylum application in the EU. Most of them had come to the United Kingdom, Sweden, Germany, the Netherlands, and Finland. In 2015, the overall figure was fifteen times as high, amounting to 88,245 UAM, and the main destinations were Sweden and Germany.

In January 2000, the term “unaccompanied minor” (UAM) appeared for the first time in an official document from the European Parliament, when it published a study on “Asylum in the

EU Member States” (Ericsson 2000). The Council of Ministers first mentioned the issue in a resolution on “minimum guarantees for asylum procedures” passed in June 1995. In a section entitled “Additional safeguards for UAM and women,” the resolution contained two paragraphs on UAM, demanding that an adult assist them during their asylum procedures, and that national authorities should take the mental development and maturity of an UAM into account when examining their applications for protection (EU 1996, p. 16).

The EU institutions had little information on what was actually going on in the Member States, however. The Parliament’s study of 2000 only included very few references concerning national provisions on UAM. A first comprehensive EU-level study, covering details on national reception and integration arrangements, age determination and asylum procedures as well as detention and return of UAM, was undertaken by the European Migration Network (EMN) in 2009-2010. It covered policies in 22 Member States and concluded that the EU acquis and legislative measures adopted on the national level of the respective Member States were “providing, on the whole, appropriate measures.” It also acknowledged, however, that there could be “certain elements” which were not “effectively covered or could be further improved” like, for example, the development of common standards for reception and the provision of assistance to UAM (EMN 2010, p. 107). In fact, a careful reading of the EMN report reveals a striking number of issues where national approaches differed greatly and where childrens’ rights were not adequately addressed.

Much has happened since then, however, and it is the intention with this article to update and clarify the role of the EU and its institutions regarding the situation of UAM in the Member States today. The article tries to summarize how their entry and stay have become a policy topic for the EU and what its supra-national policies and laws say about these minors’ rights and entitlements in asylum, migration and integration processes. Thus, as compared to other articles in this special edition, this contribution does not investigate the actual situation of UAM in a given state or territory but rather how national policies are affected or framed by EU policies. The article also provides a statistical overview, in order to illustrate the extent to which UAM are a common concern for the Union. In conclusion, it asks what the EU could do to improve the situation of UAM in Europe.

The article is largely based on an explorative review and analysis of the various provisions on UAM in policy and legal documents from the institutions of the European Union, mainly the Commission and the Council. Some major examples of reports and studies produced by EU Agencies, such as the European Asylum Support Office (EASO) or the Fundamental Rights Agency (FRA) are also part of the analysis. As far as the quantitative overview of the numbers of UAM arriving in the EU during recent years is concerned, the article uses harmonized statistical data from Eurostat and complements this with data (mainly on UAM who do not officially apply for asylum) from other sources, such as the EMN.

2 Unaccompanied minors in the EU – definitions and statistical trends

2.1 Definitions

Since the creation of a Common European Asylum System (CEAS) had been first envisaged, in 1999, a number of EU directives on asylum issues were elaborated and adopted, determining minimum conditions for the reception of asylum seekers in the Member States, asylum procedures, and criteria for granting refugee status and subsidiary protection. Another key element of the CEAS today has been the transformation of the multilateral Dublin Convention into an EU regulation (EU 2003), establishing rules for the determination of the

Member State responsible for processing an asylum application. Meanwhile, between 2011 and 2013, the second generation of directives and the third generation of the Dublin regulation have been adopted and are being implemented (Peers 2013), while the process to reform these laws, also in the light of the “refuge crisis” of 2015-2016, is still ongoing.

The existing pieces of EU legislation on asylum matters all include certain provisions on UAM, as well as definitions of what an UAM is in the sense of the respective document. For example, the second (“recast”) version of the Qualification Directive (EU 2011a) defines the term UAM in two steps, saying first that “minor” means “a third-country national or stateless person below the age of 18 years.” It then goes on with the following definition of an “unaccompanied minor,” saying that an UAM is a minor

“who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States.”

The definitions used in the other legal instruments of the CEAS are very similar, with the so-called “Temporary Protection Directive” (EU 2001) combining the two-step definition in the Qualification Directive into a single definition of “unaccompanied minor:”

“a third-country national or stateless person below the age of eighteen, who arrives on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or a minor who is left unaccompanied after they have entered the territory of the Member States.”

The “second generation” directives on asylum procedures (EU 2013b) and on reception conditions for asylum seekers (EU 2013a), both adopted in June 2013, use the same definition as the recast Qualification Directive of 2011 described above (EU 2011a), and it has also been entered into the European Migration Network’s Asylum and Migration Glossary, a compendium which lists, defines and explains a total of 400 terms relating to this policy area (EMN 2014).

2.2 Statistical trends

Between 2008 and 2015, the number of UAM applying for asylum in the EU increased strongly. In 2015, more than seven times as many UAM applied for asylum in the Member States than in 2008 (see Table 1). In 2016, the number decreased again, by roughly one third compared to 2015, which is mainly a result of border closures and more restrictive asylum policies across Europe.

The distribution of UAM between the Member States has been highly unequal. For the period 2008-2016 as a whole, Germany was the main destination, with 73,315 UAM, followed by Sweden (60,720) and the United Kingdom (21,150). At the same time, several countries hardly registered any UAM during the nine-year period 2008-2016.

The striking numerical differences between Member States that receive many UAM and those that receive very few can be a result of choices that UAM make regarding their preferred destinations. These choices can in turn depend on the factual or perceived attractiveness of the respective destination countries with regard to, for example, accommodation, care and

integration arrangements as well as the presence of migrants from the same countries of origin. It is also likely, however, that there are differences between the Member States as to the accessibility of asylum systems and whether or not UAM can receive a legal residence status even without applying for asylum. Eurostat data do not capture UAM who remain outside national asylum systems. Hence, the fact that some Member States have registered very few UAM as asylum seekers does not necessarily mean that no or very few UAM have arrived there.

Table 1: Asylum applicants considered to be unaccompanied minors, 2008-2016

	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total 2008-2016
Germany	765	1 305	1 950	2 125	2 095	2 485	4 400	22 255	35 935	73 315
Sweden	1 510	2 250	2 395	2 655	3 575	3 850	7 045	35 250	2 190	60 720
United Kingdom	4 285	2 990	1 715	1 395	1 125	1 265	1 945	3 255	3 175	21 150
Austria	695	1 040	600	1 005	1 375	935	1 975	8 275	3 900	19 800
Italy	575	415	305	825	970	805	2 505	4 070	6 020	16 490
Hungary	175	270	150	60	185	380	605	8 805	1 220	11 850
Netherlands	725	1 040	700	485	380	310	960	3 855	1 705	10 160
Belgium	470	705	860	1 385	975	415	470	2 850	1 035	9 165
Denmark	300	520	410	270	355	350	815	2 125	1 185	6 330
Bulgaria	15	10	20	25	60	185	940	1 815	2 750	5 820
Finland	705	535	315	150	165	160	195	2 535	370	5 130
Greece	295	40	145	60	75	325	440	420	2 350	4 150
France	410	445	610	595	490	365	270	320	475	3 980
Poland	375	360	230	405	245	255	185	150	140	2 345
Malta	20	45	5	25	105	335	55	35	15	640
Cyprus	70	20	35	15	25	55	50	105	215	590
Slovenia	20	25	25	60	50	30	65	40	245	560
Romania	55	40	35	55	135	15	95	55	45	530
Ireland	100	55	35	25	25	20	30	35	35	360
Croatia	:	:	:	:	70	55	10	5	170	310
Luxembourg	0	10	20	20	15	45	30	105	50	295
Portugal	5	0	5	5	10	55	15	50	25	170
Spain	10	20	15	10	15	10	15	25	30	150
Slovakia	70	30	5	20	5	5	10	5	0	150
Czech Republic	35	10	5	10	5	0	5	15	0	85
Lithuania	0	5	10	10	5	0	5	5	0	40
Latvia	5	0	5	0	0	5	0	10	5	30
Estonia	0	0	0	0	0	5	0	0	0	5
European Union (28 countries)	11 695	12 190	10 610	11 690	12 540	12 725	23 150	96 465	63 290	254 355

Source: Eurostat (2017).

The by far most frequent country of origin of UAM seeking protection in the EU has been, in each year from 2008 to 2016, Afghanistan (see Table 2). The number of Afghans increased from 3,225 in 2008 to more than 48,000 in 2015. At the same time, countries at the Horn of Africa, mainly Somalia and Eritrea, have also played a major role as countries of origin, and

since 2013, there have been so many UAM who arrived from war-ridden Syria that they became the second-largest group in 2015 and 2016, but also over the total period of 2008-2016.

Table 2: 15 main countries of citizenship of unaccompanied minors applying for asylum in the EU, 2008-2016

	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total 2008-2016
Afghanistan	3 225	4 595	3 945	5 245	5 245	3 310	5 800	48 420	23 990	103 775
Syria	105	75	110	155	395	1 030	3 060	17 270	11 990	34 190
Somalia	1 270	1 800	1 200	645	960	1 580	2 180	3 800	2 775	16 210
Eritrea	505	410	325	250	250	730	3 635	5 945	3 335	15 385
Iraq	1 730	825	555	415	320	200	380	5 215	4 155	13 795
The Gambia	50	85	45	55	105	205	1 065	1 515	2 330	5 455
Pakistan	300	70	165	225	400	340	220	1 000	1 945	4 665
Guinea	240	310	405	480	385	270	235	450	1 165	3 940
Albania	95	95	55	165	335	560	805	1 060	755	3 925
Iran	475	315	335	310	240	180	160	800	940	3 755
Nigeria	285	330	200	145	140	145	400	890	1 085	3 620
Morocco	45	65	75	125	300	525	605	610	645	2 995
Stateless	60	50	70	70	90	350	650	1 305	270	2 915
Russia	510	470	345	450	260	340	185	160	110	2 830
Ethiopia	85	85	85	110	100	125	195	1 205	715	2 705

Source: Eurostat (2017).

The vast majority of all UAM applying for asylum in the EU are boys, and only a minority are girls. In 2008, 79.9% of those UAM applying for asylum were male. This share was 83.7% in 2012, 90.9% in 2015, and 89.2% in 2016 (Eurostat 2017). This shows that the immigration of asylum seeking UAM has been predominantly male for many years, with the already existing trend recently accelerating. It is difficult to answer why this is the case. In many countries of origin, boys may be seen as stronger and more resilient to endure a long and often risky irregular journey to Europe, and therefore their parents or other relatives might send them to Europe more probably than girls.

Another pattern is that a majority of UAM are 16 or 17 years old, i.e. close to reaching legal age. This age group accounted for 54.7% of all UAM in 2008, 66.1% in 2012, 58.0 in 2015, and 68.5% in 2016 (Eurostat 2017).

The statistical data presented so far only include UAM who have applied for asylum in the EU. There is evidence, however, that there are many UAM who remain outside the asylum systems. Statistical data on this group is difficult to obtain and compare, as there is no systematic data collection on the EU level (O'Donnell/Kanics 2016, p. 73). One of the rather few sources for such statistics are the Annual Policy Reports of the EMN, where National Contact Points in each Member State and Norway (except Denmark) try to collect such data. According to the report for 2015, which was the most recent one at the time of writing, more than 23,000 UAM arrived in EU Member States that year without asking for asylum. Especially Italy, France, Spain, Greece and Belgium reported several thousand such minors, but also for Germany, it is known (from other sources) that the number of UAM who are

taken into care by youth welfare authorities is higher than the number of UAM applying for asylum (Parusel 2015, pp. 32-33). Other Member States have few minors in this group, and for some countries, there are no data (EMN 2016, p. 7).

Unfortunately, the EMN provides no guidance on why UAM apply for asylum in some Member States while they do not in others. Whether or not an application is lodged may have something to do with the willingness of an UAM to actually stay in the country in which he or she is detected. When an UAM wants to travel onwards, there is no incentive to apply for protection in the first country. It is documented, for example, that some UAM who arrived in France did not want to stay there but rather tried to travel further on to the United Kingdom (Collins 2017). It could also be the case that Member States – deliberately or indirectly – discourage UAM from entering asylum procedures, and in some Member States, it can be possible receive a protection status and to be granted a legal right to stay even without undergoing an asylum procedure. As information on why UAM sometimes remain outside asylum systems is patchy, there is a need for more systematic research on this matter.

Table 3: Unaccompanied minors not applying for asylum, 2015

	Total	Female	Male
Belgium	781	125	656
Cyprus	0	0	0
Czech Republic	65	4	61
Greece	927	49	878
Spain	3 341	452	2 889
France	5 990	<i>Not available</i>	<i>Not available</i>
Italy	11 921	550	11 371
Lithuania	27	4	23
Luxemburg	0	0	0
Latvia	26	1	25
Malta	1	1	0
Poland	15	1	14
Slovakia	23	1	22
Total	23 117	1 188	15 939

Source: Adapted from EMN 2016, p. 7.

3 EU legal framework and policies on unaccompanied minors

3.1 International and regional law

Obviously, the current EU law and policies regarding UAM have not been developed in a normative vacuum. On the one hand, EU legal action on migration and asylum is always influenced by policies on the national level of EU Member States and their governments' preferences (Geddes 2003, pp. 128-129). On the other hand, it is also pre-determined and framed by international and regional law. Under Article 6.2 of the Treaty on the European Union (TEU), the EU must respect fundamental rights in whatever action it takes, which includes compliance with provisions in the United Nations Convention on the Rights of the Child (CRC), the most important text on childrens' rights in international law (Eurasylum 2008, p. 11). The CRC was adopted by the United Nations General Assembly in 1989 and has been ratified by all EU Member States. It embodies four general principles; the best interests

of the child (Article 3), non-discrimination (Article 2), the right to life and survival and development (Article 6), and the right to be heard (Article 12). In addition, it also provides for fundamental rights including the need for protection from abuse, exploitation and neglect, and stresses the importance of childrens' physical and intellectual development. Particular attention is also given to the role of the family in providing care to the child, to special protection needs of children deprived of their family and those of asylum-seeking and refugee children (UNHCR 2014, p. 13).

At the regional level, the Council of Europe's framework for the protection of human rights includes several human rights instruments, two of the most relevant ones being the European Convention on Human Rights (Council of Europe 1950) and the Council of Europe Convention on Action against Trafficking in Human Beings (Council of Europe 2005).

3.2 Directives and regulations

One of the essential elements of the Common European Asylum System, which is the framework under which most UAM are treated, is the "Qualification Directive" (EU 2011a), laying down standards "for the qualification of third-country nationals or stateless persons as beneficiaries of international protection." It also prescribes a uniform status for refugees or persons eligible for subsidiary protection, and determines the content of the protection granted, such as rights and entitlements for those who are granted protection.

Regarding UAM, the directive mainly highlights representation of UAM by adults, accommodation, and the tracing of family members. It demands that Member States ensure the representation of UAM by a legal guardian or, where necessary, by an organization responsible for the care and well-being of minors, or by any other appropriate institution as soon as possible *after* the granting of international protection. They shall also ensure that UAM are placed with adult relatives, with a foster family, in specialized centers, or in other suitable accommodation, and that, in this context, the preferences of the child are heard. The directive also asks Member States not to move UAM around, as "changes of residence (...) shall be limited to a minimum." On family tracing, it says that if an UAM is granted international protection and the tracing of his or her family members has not started, Member States shall start doing so as soon as possible.

The directive also demands that those people working with UAM shall have appropriate training concerning their needs, and elaborates on requirements for Member States when assessing if an UAM can avail him- or herself of "internal protection against persecution or serious harm" in their country of origin. Normally, asylum seekers can be rejected when it is considered that they can find protection in their own countries. For UAM, however, the availability of appropriate care and custodial arrangements in the home country should form part of the assessment as to whether protection in their home country is available. When assessing asylum applications of UAM, the Member States should also regard child-specific forms of persecution.

Another important directive is one addressing minimum standards for the reception of asylum seekers in the Member States, the "Reception Conditions Directive" (EU 2013a). Among other issues, it contains rules for detention facilities, stating that minors shall be detained "only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively." Also, detention shall be for the "shortest period of time" and "all efforts shall be made to release the detained minors and place them in accommodation suitable for minors."

In addition to detention, the directive includes a chapter with provisions for “vulnerable persons.” UAM are considered one category of vulnerable persons, alongside disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. Member States shall take the particular situation of such persons into account within a reasonable period of time after an application for international protection is made.

Again, for UAM, the directive demands that they have an adult representative. It also indicates how UAM should be accommodated during asylum procedures, namely with adult relatives, with a foster family, in accommodation centers with special provisions for minors, or in other suitable accommodation. Interestingly, the directive allows Member States to make a distinction between UAM aged 16 or 17, and younger UAM. Those that are 16 or older may be placed in accommodation centers for adult asylum applicants, if it is in their best interests.

Similarly to the Qualification Directive, the Reception Conditions Directive also says that changes of residence of UAM shall be limited to a minimum, that staff responsible for UAM has appropriate training, and that authorities shall try to find any family members of UAM as soon as possible. Minors in general, not only UAM, shall have access to leisure activities, and, in case they have been victims of abuse, neglect, violence or other traumas, to rehabilitation services.

The third directive within the CEAS framework, on asylum procedures (EU 2013b), also contains a number of safeguards for UAM. A central requirement in this directive is their right to adequate support during asylum procedures. Legal representation by an adult is mentioned even in this document, but it also includes some guidance on the sensitive issue of age assessments, stating that

“Member States may use medical examinations to determine the age of unaccompanied minors [...] where [they] have doubts concerning the applicant’s age. If, thereafter, Member States are still in doubt concerning the applicant’s age, they shall assume that the applicant is a minor.”

The directive prescribes that any medical examination shall be performed with full respect for the individual’s dignity, that it shall be the least invasive examination, and be carried out by qualified medical professionals. Where medical examinations are used, UAM shall be informed of this, including information on the method of examination and the possible consequences of the result of the examination for the asylum decision, as well as the consequences of a refusal to undergo such examination. Importantly, for cases in which an UAM refuses to take part in medical age testing, a decision to reject his or her asylum application may not be based solely on that refusal.

Furthermore, the directive also states that UAM should normally not be subject to accelerated asylum procedures, which are often used for people from “safe countries of origin”, for example, or when an asylum application is considered to be manifestly unfounded (Den Heijer 2016). Special procedures in transit zones or at airports, or particular border procedures, should be avoided, too. Thus, the directive acknowledges the vulnerability of UAM, requiring Member States to apply higher standards to them than to adults.

Last but not least, the Dublin regulation (EU 2003) also plays a significant role for how UAM are treated when they apply for asylum in the EU. It establishes rules for the determination of the Member States responsible for processing an asylum application. While in most cases, it is the Member State of first arrival that is in charge, there are several exceptions from this principle. Within the regulation's hierarchy of criteria for determining the responsible State, the highest criterion is that where the applicant is an UAM, the Member State where a family member or a sibling of the UAM is legally present shall be responsible, provided that uniting with this person is in the best interests of the minor. When an UAM does not have a family member or sibling in a Member State, the presence of other relatives shall serve as a criterion, provided that it is in the best interests of the minor to be with that person. In cases in which family members, siblings or relatives stay in more than one Member State, the process obviously becomes complicated, but the regulation requests that the Member State responsible shall be decided on the basis of what is in the child's best interests. Only in the absence of a family member, a sibling or a relative, the Member State where the UAM has lodged their application for protection shall be responsible.

In addition to the above-mentioned key elements of the CEAS, also other EU legal instruments contain provisions that should ensure the protection and rights of UAM. The Anti-Trafficking Directive, for example, contains detailed rules on assistance, support and protection for UAM who are victims of trafficking (EU 2011b). The preamble stresses the importance of extended protection mechanisms for UAM who are victims of trafficking in human beings. Among other requirements, it obliges Member States to ensure legal representation to these UAM.

3.3 “Soft law” provisions on unaccompanied minors

In 2010, reacting to a growing number of UAM coming to EU Member States from third countries, the European Commission released an “Action Plan on Unaccompanied Minors” for the period of 2010-2014, stating that although the EU's legislative and financial instruments on asylum, immigration and trafficking in human beings had addressed the situation of UAM, greater coherence and better cooperation were still needed. The Action Plan identified a number of problems and presented some possible solutions. As main strands of action, the Action Plan stressed the prevention of unsafe migration and trafficking of children by, among other measures, addressing the issue of migration of UAM in other policy fields, such as development cooperation, poverty reduction, education, health and human rights. The plan also proposed intensified efforts to trace the family members of UAM, more child-adequate asylum procedures and more suitable accommodation and care arrangements. It also asked the Member States to grant UAM who cannot be returned to their countries of origin a safe legal status, i.e. even in cases in which asylum cannot be granted (EC 2010).

In 2011 the European Commission issued a communication on the “Agenda for the Rights of the Child 2011-2014,” which included a total of 11 actions aimed at making justice systems within the EU more child-friendly and improving the protection of children in vulnerable situations. One of these actions is to support “the exchange of best practices and the improvement of training for guardians, public authorities and other actors who are in close contact with unaccompanied children.” (EC 2011, p. 11)

4 Evaluations and studies on EU law and policies on unaccompanied minors

To evaluate to what extent the Member States of the EU have implemented the above-mentioned EU-level provisions on UAM, and whether they respect even “soft law” requirements in their everyday asylum practice, is a difficult task for obvious reasons. While

numerous studies have been carried out on the functioning of the CEAS, such as on issues of sharing burdens or responsibilities between Member States regarding asylum seekers (e.g. Angenendt/Engler/Schneider 2015) or the harmonization of asylum outcomes (e.g. Thielemann/Armstrong 2012), specific analyses regarding UAM are rare (O'Donnel/Kanics 2016). Most of the literature on UAM concerns itself with the situation in specific Member States, focusing mainly on those countries where many UAM have arrived, or where they have attracted most attention among the public, as for instance in Sweden (e.g. Çelikaksoy/Wadensjö 2015).

Some examples of investigation or evaluation, sometimes including first-hand qualitative research, can be found, however. In 2012, for example, the European Commission evaluated the implementation of its Action Plan on UAM in a “mid-term report.” (EC 2012) It found, among other things, that the reasons behind the arrival of UAM continued to be diverse and interrelated, but that some progress had been made regarding the prevention of unsafe migration, such as by means of dialogue with countries of origin and transit – a finding that, however, certainly can be questioned in the light of the “refugee crisis” of 2015 and 2016, where unsafe migration was a mass phenomenon. As far as reception conditions and safeguards for UAM in asylum procedures are concerned, the report remained vague, mentioning the ongoing further development of the CEAS, the setting-up of various working groups, the development of guidelines for Member States (e.g. on age assessment) and the possibility for Member States to use EU funds for projects targeting UAM.

A richer piece of factual information on Member States' policies on UAM, and a source of interesting statistical data, are two comparative studies by the European Migration Network (EMN), carried out in 2009-2010 and 2014-2015, respectively (EMN 2010; EMN 2015). The first EMN study found that whilst Member States had established and more or less harmonized their entry procedures including border controls for UAM who lodge an application for asylum, this had not happened to the same extent with regard to UAM not applying for asylum. Accurate and consistent methods for the determination of the age of UAM were a common challenge. The study also noted that there were wide differences between reception and accommodation arrangements for UAM among the Member States, as well as regarding guardians or legal representatives and their duties. In a number of Member States, a disturbingly large number of UAM disappeared from care facilities (EMN 2010).

Some aspects that were examined by the EMN in 2009-2010 were updated, and other issues added, in the second EMN study of 2014-2015. It identified a number of gaps and challenges that needed to be addressed to ensure that all UAM benefit “from the same level of protection” everywhere. Overall, whilst many provisions and measures were available for asylum-seeking UAM and those granted international protection, this was not always the case for non-asylum seeking UAM. Regarding the return to their home countries of UAM who are not allowed to stay, the study found that forced returns were unlikely to take place even where they were legally possible (EMN 2015, pp. 5-8).

Other studies have identified challenges, too. A study by the UNHCR of 2014 concluded that the relatively high number of UAM arriving or moving internally in Europe posed “very real challenges,” including pressures on resources to provide new arrivals with appropriate care and support, to trace families, to determine the child's best interests, and to find durable solutions. Government agencies consequently had to find new ways of working together in innovative constellations and with new partners (UNHCR 2014, p. 7). The study looked into how the EU applied the “best interests of the child” principle, particularly with regard to

issues such as the arrival and preliminary identification of UAM, their access to the respective state's territory, registration and documentation, referral to child protection services, process planning, and applying the best interests principle in asylum and immigration procedures. It concluded by recommending the EU to ensure a holistic approach to establish a child's best interests, to consider all the characteristics of the child and their circumstances and needs, to ensure that the processes are child-friendly, including the provision of child-friendly information, to give children the opportunity to be heard, in accordance with his or her age and level of maturity, and to seek all relevant information about the child together with the child and from relevant sources as early in the process as appropriate (UNHCR 2014, p. 53).

Difficulties to determine or at least estimate the age of young unaccompanied asylum seekers without identity documents have long been a problem for immigration and other authorities at the national level, and eventually, the EU level dealt with this, too. While the EU asylum acquis does not require or recommend states to use one method or another, the issue is addressed in the literature (e.g. ECRE 2015; De Sanctis et al.). In 2014, the European Asylum Support Office (EASO) published an overview of national practices in this respect, as well as recommendations. In principle, EASO argues that all the methods that the Member States use have advantages and disadvantages. However, no method currently available can tell with certainty the exact age of an individual. Therefore, age assessment should only be undertaken where there are doubts about the claimed age. In all such actions, the best interests of the child should be a primary consideration, and before resorting to medical examination, consideration should first be given to documentary or other forms of evidence. Assessment should also be performed with full respect for the individual's dignity and use the least invasive methods (EASO 2014, pp. 6-7).

Regarding investigations of the psychological and emotional situation of UAM in the EU, there are so far rather few examples for primary research, which gathers information by talking to the minors directly. One rare instance is a study commissioned by the European Union's Fundamental Rights Agency (FRA 2011), which looked into the situation in 12 EU Member States and tried to explore the views, experiences and expectations of a total of 336 UAM from various countries, mainly Afghanistan, Morocco, Somalia and Iraq, as well as of officials dealing with them. Regarding accommodation, for example, the study found that UAM preferred small-scale facilities and that many were generally satisfied with the care and support that they were provided with. Many UAM felt that recreational activities, in particular sports, were vital, but they had made the experience that opportunities for such activities varied in between and within countries. Children appreciated education and wanted to attend school, and those who had learnt the language of their receiving country and attended normal classes with local children were more satisfied than others. In general, children were critical of age assessment procedures, with some having little information about them, and others considering age assessment as unfair (FRA 2011, pp. 7-10).

5 Conclusions

The information collected and reviewed for this article shows that the phenomenon of children and young people arriving in the EU unaccompanied by any adults has been increasing dramatically over recent years, and that the EU institutions have started to address the phenomenon in various ways, not least in the framework of its Common European Asylum System and "soft law" measures. The "best interest of the child" principle and protection issues have certainly had a considerable impact on the formulation of policy, as the EU asylum directives now do contain a number of safeguards regarding UAM and their well-being. There has also been a considerable amount of research on the situation of UAM in the

EU, but to analyze and compare between countries to what extent the existing safeguards have been put into practice, and what has been achieved, remains a challenge.

It can also be concluded that the existing legal instruments only address some aspects pertaining to UAM, such as the requirement for Member States' authorities to ensure legal representation and a certain level of care. Other aspects, such as age assessment, education opportunities for UAM, the risk of trafficking and exploitation, and forced return in case of rejected asylum applications are still not sufficiently addressed, if at all. Furthermore, there are wide policy gaps regarding UAM that remain outside formal asylum processes and UAM who reach legal age pending asylum applications. The safeguards that directives provide for do not cover those who do not, for whatever reasons, apply for asylum. There is no EU law on what kind of residence permits UAM are granted in case an asylum procedure ends with a positive decision, either. Therefore, e.g., it remains unclear how long such permits are valid, and what duties and rights they convey. In a similar vein, regarding those who are rejected, little is known about voluntary and forced return, and about the impact of such measures on the well-being of UAM. Finally, when a minor cannot be returned, despite a negative decision on their asylum claim, there is a risk that they end up with an irregular status, with limited rights regarding education or work.

Another problem is the unequal distribution of UAM across Europe. The so-called "refugee crisis" of 2015 and 2016 clearly showed that some Member States received many asylum seekers while others were barely affected by rising refugee flows. When we look at the particular group of UAM, their distribution between states was even more uneven, with Sweden and Germany together receiving more than 57,000 UAM in 2015 and twelve other Member States receiving less than 100 each. While there can be many reasons for this, we can assume that decisive factors are that the level of care provided to UAM varies greatly among Member States, as do (factual or perceived) integration, education and work opportunities, and so does the likelihood to get a positive asylum decision and permanent residence.

Researchers and advocacy networks have argued that EU policy-makers should focus more on finding "durable solutions" for UAM, instead of putting forward piecemeal actions regarding certain aspects of entry and asylum procedures. "Durable solution" would mean that UAM are enabled to develop into adulthood in an environment that adequately meets their rights and needs, and that UAM will not be put at risk of persecution or serious harm. Such an approach would require the EU to develop and implement outcomes that may not be obvious in the context of immigration restrictions and border control. For instance, a durable solution may include a right to stay on humanitarian grounds, even in the absence of a claim for asylum or in cases in which an asylum application is rejected (O'Donnell/Kanics 2016). As this would require pragmatism and flexibility, such an approach cannot easily be incorporated into the existing directives and regulations, however. Rather, it requires the EU to find new methods of co-operation among its Member States.

Regarding the existing EU legal instruments and "soft law" initiatives presented and discussed in this article, it must be taken into account that the institutional and legal landscape in the EU is subject to quick and sometimes radical changes. Propelled by the many failed attempts to reach a credible common answer to the exceptional refugee situation of 2015 and 2016, and in the expectation of even stronger migratory pressures in the future, not least from Africa, the CEAS and its various components are being revised again. There is also a focus on "quick-fix" frontline measures, such as to close the EU's external borders, introduce systems for an extraterritorial processing of asylum claims, fight migrant smugglers, and put pressure

on third countries to discourage their citizens from attempting to come to Europe. In such a political climate, it is difficult to focus on fair treatment and durable solutions for UAM, as such work is necessarily long-term and requires resources and patience.

On the one hand, the findings of this chapter can therefore quickly be overrun by new policy developments. On the other hand, however, many of the problems identified have existed for a long time, and the refugee situation of 2015-2016 showed that the harmonization of national asylum policies in the EU had not proceeded as far as many observers and specialists may have thought. Hence, there is little reason to believe that the problems that UAM currently face in the EU will quickly disappear.

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