

A semi-transparent globe is centered in the background, showing a map of the world with various countries labeled. The globe is resting on a dark, circular base.

# LEGISLATION ON MIGRANT CHILDREN IN THE EU

CHILD-UP Project



Horizon 2020  
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for Research & Innovation

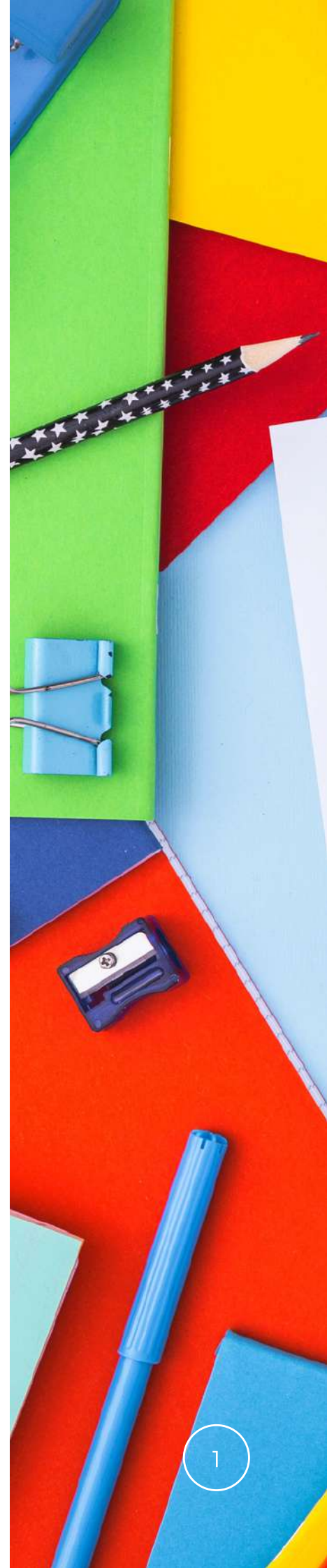
Synthesis of Deliverable 3.1

## Executive summary

The CHILD-UP project investigates the social conditions of migrant children's integration through social participation, taking into account gender differences, legal status and age groups, with the final aim to propose an innovative approach to understand and transform their social condition. In support of this aim, the current two-part report provides an overview of migrant children's wellbeing, protection and education as well as a comparative investigation of the legislation in partner countries that most deeply impacts young migrants and their families.

In selected contexts in seven countries, Belgium, Finland, Germany, Italy, Poland, Sweden, and the UK, the research focuses on policies and practices of integration, migrant children's access to basic services, their enrollment in school, and the differences that exist for children of different migratory statuses.

This report includes data on recent migration flows of children to Europe and to the specific regions of the partners. It has gathered information on how children arrived (on their own -unaccompanied, with families who are documented or undocumented, or as refugees). It offers an assessment of wellbeing of migrant children and their families as evaluated through available data on access to healthcare services, housing, employment, and the time children have spent out of school. It further includes approaches to family reunification, the training of workers who support migrants, and migrant children's access to and placement in school. This report is the culminating document of work package 3, and subsequent work packages include quantitative and qualitative data, analysis of examples of educational practices of integration, and finally, proposals of innovation in dialogic practices of integration as active participation.



## Methodology

This report draws on grey and scientific literature from the relevant European and local levels, and specific country data and information provided by all project partners. This information was gathered through a template, created by the main author, containing questions to guide the procurement of information. These templates were completed by partners and then reviewed to find key information that was then grouped by theme. What is contained in the report is based on both the main author's initial proposal for the report, but also what information and important material and ideas emerged during the research process.

### Definition of Childhood and Perceptions of Migrant Children

Childhood is a culturally dependent category that is defined differently by different groups. The ages it includes, how children are viewed and treated, and their position in


society are by no means universal. The UN Convention on the Rights of the Child (UN 1990), to which all CHILD UP partner countries are signatories, was ground-breaking in its insistence that children's point of view be considered in decisions affecting children's lives. The definition of children it proposes, and which is the same in most legislation concerning children in the partner countries, are all persons under the age of 18. The UNCRC also states that children should be treated as children first, and other factors of their situation should be considered as secondary. For example, in the case of migrant children, they should be treated first as children - regardless of their migratory status. The findings in this report show that, while this is typically adhered to in legislation, it is not always the case in practice. Migrant children with precarious statuses - refugee and undocumented - still face barriers to accessing services that children should be entitled to, such as adequate housing, healthcare, education, and the right to family unity.



All the partner countries highlighted the link between immigration and security concerns of governments and the wider public. Partners pointed to the portrayal of migrants in the media and criminal acts attributed to them remain in the news and the public eye for a long time. Additionally, while migrant children are perceived to have a great deal of potential for criminality and negative impact on a society, their agency is ignored or neglected in other areas of life. While the voice of the child principle is laid out in the UNCRC, children's voices, self-determination, and agency in their integration is sorely neglected. The CHILD UP project sees children as agentic actors who can direct their own integration and endeavours to promote this in the school setting.

## **Reception and Integration Policies and the Broader Political Climate**

The political climate and public debate in all of the involved countries are characterized by intense disagreement over immigration and integration. While overall attitudes towards immigration and immigrants varies by country, all of the partner countries have experienced the rise of right-wing parties that has been the trend across Europe. Dead-locked parliaments that find it difficult to form stable governments, like those of Belgium and Sweden, may become more common. Migrants, and particularly migrant children, are caught in the middle as they are held up as both the symptom and the cause for various societal ills. Despite very different histories of immigration and approaches to integration, even the most open systems of immigration and integration have been characterised in recent years by various increased restrictions and requirements. At the same time however, many new integration measures have been created to support migrants. More consideration of language barriers, more time allotted for language learning and meeting integration pathway measures, easier and more transparent access to support services, and more emphasis on cultural sharing (to



show the receiving society values and wishes to learn about the migrant's cultural background) would benefit integration and migrant families and children. Additionally, even in cases where integration is governed and legislated at the national level, the majority of the responsibility for support of migrants and their integration happens at the local level. It is also at this level that actors understand the specific needs of the local population, and it is therefore important that local level actors be supported, have access to adequate resources, and that their point of view is considered in policy and legislation at every level.

## **Family Reunification**

Family is recognized as fundamental in the Universal Declaration of Human Rights,\* and the right to be with one's family is acknowledged, in some way, in the legislation of all the partner countries. As it is a fundamental and universal human right, it also applies to migrants, but this is not always the case. EU member states are also expected to adhere to the Family Reunification Directive (2003/86/EC), but there are still divergences in national level practices, and this directive does not include refugees and those with subsidiary protection (though in general they are included in national approaches) (European Migration Network 2017). Overall, family reunification in the partner countries has become more difficult in recent years. Measures have been introduced in response to fears of migration, concerns that migrants are bringing 'fake' family members into the country, and concerns about the labour market. In many cases, these measures unequally impact specific ethnic groups and often those of a lower socio-economic status. While women and men apply for family reunification at an equal rate (European Migration Network 2017) minimum income standards may disproportionately impact women. Women typically earn less than men, are often employed in part time work, and time spent on maternity leave may also affect this aspect. In some cases, applicants

have to wait a long time for decisions on these matters, which extends the period of stress, anxiety and emotional turmoil. This condition has the potential to have a severe negative impact on migrant children wishing to be with their families, and is contrary to the best interest of the child principle. For children, the best outcome would be for states to continue to offer family reunification for third country nationals, but to relax requirements in order to facilitate and shorten the process and positively impact migrant children.

In the table below a graphic summary of the approaches to family reunification in all partner countries.

Country	Minimum income requirement?	Time limit in which refugees must apply?	Can those with subsidiary protection apply?	Application fee?	Other key limits?
Belgium	Yes	Yes		Yes - but not for those with international protection	
Finland	Yes - but asylum seekers and refugees exempt if they apply within 3 months	No	Yes - but must meet the income requirement	No	
Germany	Yes - but asylum seekers and refugees exempt if they apply within 3 months	Yes - application must be submitted within 3 months after the protection was granted	Yes - since 2018 only 1000 persons per months may enter in this way	No - but application fee for their German visa	Limited number of family members - specifically defined after legal status granted
Italy	Yes - but not for refugees	No - but one must have a residence permit that is valid for at least a year	Yes	No	Minimum income and housing requirements
Poland	Yes - refugees and those with subsidiary protection are exempt if they apply within 6 months of receiving protection	No - but simpler process if one applies within six months after receiving protection	Yes	No	Narrow definition of family members
Sweden	Yes	No - but simpler process if one applies within three months of being granted protection	Yes	No	Minimum income and housing requirements
UK	Yes	There is no time limit as long as one does not become a citizen of the UK	Yes	Yes - but not for those with international protection	Refugee children are not eligible to sponsor their parents and or siblings

## Health and Housing

A key moment when adherence, or lack thereof, to the above cited international agreements comes into focus is when child migrants seek healthcare and housing. The most crucial and problematic situation is that of undocumented children – or those with irregular statuses. Again, the partner countries fall on a broad spectrum, from undocumented migrants risking deportation for seeking services to cases where healthcare workers are forbidden to report people who have irregular statuses. In terms of healthcare, in all partner countries there is meant to be universal access to healthcare services for emergency situations. Even in countries where policy technically permits access for migrants to health services, it is often the case that undocumented and even refugee migrants go without medical care. The reasons for this are numerous, but usually involve communication difficulties, mistrust of services, migrants' lack of knowledge of their rights, and complex and slow-moving bureaucracy. Well-being of children is contingent upon stability and reliable

housing. Both health and education are linked with housing and it is considered a basic human right which is laid down in international and local agreements and declarations, such as the Universal Declaration of Human Rights (UDHR). According to these agreements, this right is not contingent upon migratory status. Especially vulnerable groups of migrants, however, still face obstacles to adequate housing. Different migratory statuses lead to varying degrees of access to the labour market and social welfare. As is the case with healthcare, sometimes service providers and landlords are required to report undocumented migrants.

While the majority of EU countries have policies aimed at combating homelessness among children, there are still gaps that children may fall through. Accommodation for those who are undocumented and seeking asylum sometimes breaks with international conventions and even national legislation. Additionally, migrants are at risk of social exclusion. In some cases, this means being separated from co-nationals by distribution policies, or else

concentrated in places where there are no host country nationals and limited ways to build social capital and integration in the host society. Indeed, it is necessary for migrants to have access to both groups in order to have support and to become well integrated.

Below a table that summarizes the conditions of access to health care in all partner countries.

Country	Full access to care regardless of status	Limited/emergency access for undoc migrants	Risk of deportation	Key barriers to access
Belgium		X		-Bureaucracy -Lack of interpreters
Finland	X			- Language - Lack of information
Germany		X	X	-Bureaucracy - Availability of (trained) staff in social welfare service organizations
Italy	X			- Bureaucracy - Language - Lack of information
Poland	X			-Language -Cultural competence of medical staff -Some migrants have no health insurance
Sweden		X	Contested issue	- Language - Lack of information
UK	Entitlement to free NHS healthcare depends on 'ordinary residence'	X	X	Cost - a limited array of services are currently free of charge irrespective of country of residence





## School Placement and Training for Migrant Support Workers

Whether in policy or just in practice, schools are key players in integration. Despite the numerous EU documents that address the right to education, access to education, programming, approaches, philosophies, and resources vary widely between countries. In some cases, undocumented and asylum-seeking children (even when explicitly allowed to enrol in school) are excluded from enrolling in schools. In all partner countries, however, schools are expected to support the integration of migrant children and their families. Often, they must do this with limited resources and insufficient training for staff members and teachers. Schools may be overcrowded, have concentrations of migrant children, have migrant students without the experience to support them, and face difficulty in supporting children when they have limited information on the educational background of pupils. The challenges faced by schools and migrant children are mitigated or enhanced based on several factors, including the experience that the school systems have in welcoming migrants, the overall resources available to the school, as well as resources specifically dedicated to migrant children and families, and the trainings (and their efficacy) that are available to teachers and other school actors.

Below a table that summarizes school conditions and placement for migrant children in all partner countries.

Country	Overcrowded Schools	Concentration of migrant children	Time spent out of school	Lack of information on child's educational background	Access for undocumented children
Belgium		X		X	Explicitly allowed
Finland		X			Explicitly allowed
Germany	X	X	X	X	Explicitly allowed
Italy		X	X	X	Explicitly allowed
Poland		X			Implicitly allowed
Sweden		X			Explicitly allowed
UK	X	X		X	Explicitly allowed

## Comparative legal analysis of the inclusion of migration children

While the Convention on the Rights of the Child is perhaps the most important and foundational international document regarding the lives and rights of children, migrant children often suffer from the gaps that still exist and hinder their ability to benefit from these rights. After an overview of the treatment of migrant children in international and European Union Law, the second part of the report then focuses a lens on the national context in each party country.

The first measure taken by States as soon as an unaccompanied or separated minor is on their territory is identification. Identification commonly refers to the analysis of the documents of the minor and might be carried out through an age assessment procedure, which is an essential condition for the application of measures aimed at protecting the child. Age assessment brings about the problem arising from the dialogue between legal and medical sciences. In most countries, when it is not possible to ascertain identification elements through documents and interviews, there is the possibility to proceed to medical exams. In Finland and Sweden, age assessment is allowed when there is a “reasonable doubt” about the age of the individual. In Poland, if there are still doubts after medical examinations, the person is considered to be a minor. In the United Kingdom, the physical appearance of an unaccompanied minor is assessed. In order to ensure that an unaccompanied foreign child is adequately represented, as soon as the child is identified, the State should assign him a guardian. Essentially “guardianship” refers to the designation of responsibility to an adult or organization for ensuring that the best interests of a child are fully represented.



In Belgium, there are three types of guardians:

- the so-called “employee-guardians”, working for NGOs;
- private individuals who do so professionally;
- private individuals who are registered as volunteers.

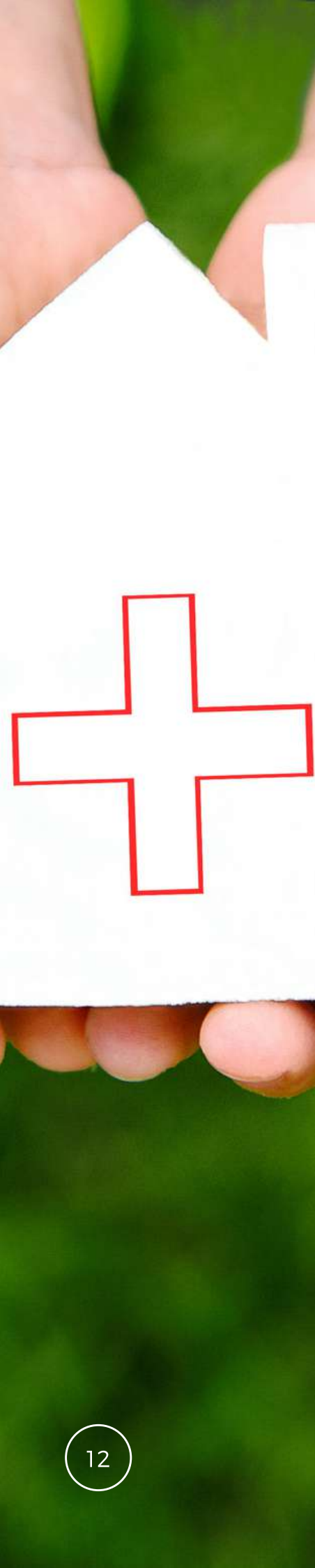
In Germany, private persons may be appointed as guardians, but the Youth Welfare Office might also be appointed as guardian in the event that no voluntary guardians are available. In Italy, voluntary guardians are private individuals who voluntarily perform the task and are selected and trained by the regional ombudspersons for children, or by the Italian Authority for Children and Adolescents. In Finland and Poland, only a legal representative is appointed as guardian. In the United Kingdom, with the exception of Scotland, there is not yet a real system of guardianship for unaccompanied minors; it is up to the local authorities to provide support and protection for unaccompanied minors.

In the EU context, Article 24(2) of Directive 2013/33/EU provides for the obligation for Member States to ensure that unaccompanied minors seeking asylum, can be accommodated with a foster family or in centres suitable for hosting minors. All Member States provide accommodation and other care facilities for unaccompanied minors. In many cases, the type of accommodation depends on the child’s individual needs, their age and whether they have applied for asylum or not (EMN 2018b: 22-23). While in Belgium, Germany, Sweden and Italy the process of UAM’s reception is realized in two or three steps, in Poland, Finland and United Kingdom, UAM’s accommodation is a one-step procedure. For migrant children, access to education is recognized of utmost importance for their integration into the host society. The right to education is guaranteed by Article 14 of the Charter of Fundamental Rights of the EU. The directive calls on States to ensure that all migrant children have access to education under the same conditions as their own nationals. Although, in general, all the partner countries guarantee access to education for migrant children and the education of unaccompanied minors often starts with language lessons, there are some differences among their strategies for migrant children integration in the school systems (Eurydice 2018; see also IOM, UNICEF, UNHCR 2019).



Concerning the right to health, it is enshrined in Articles 24 and 39 of the CRC. The provisions of the Convention oblige States Parties to guarantee the highest possible standard of health and access to care to all children, including physical and psychological recovery and social reintegration of children who are victims of any kind of violence, exploitation or abuse. With regard to access to health care, all partner countries treat migrant children equivalent to national children, whenever parents reside in the territory; nevertheless, there are differences which depend on the status of the migrant children and their parents. In Germany, asylum seekers have access to full health care beginning only 15 months after arrival; before then, they only have access to basic care. In Poland, primary care for asylum seekers is provided through doctors working in reception centres for asylum seekers; however, asylum seekers have some facilities, such as free access to medicines. For what concerns irregular migrant children or children of irregular migrants, in Finland, Germany and Poland, only access to basic and emergency care is guaranteed. In Belgium, they have access to treatment through the Urgent Medical Aid,

which also provides for preventive care, and to vaccinations up to 6 years of age. In Italy, UAMs which are irregular and over 6 years of age have access to emergency and essential services; before, they have access, despite not being able to enrol in the National Health Service, to all free health care. In the United Kingdom, Sweden is the only State among the selected ones where all migrant children have the same access to care as Swedish children, regardless of their status and whether they or their parents are staying legally or illegally on the territory of the State. In Germany, access to healthcare changes for UAMs depending on their situation. For children staying in residential institutions of the Youth Welfare Office, access to care is automatic and efficient. This is not the case for UAMs holding a stay permit pending recognition of asylum, suspension of removal, or a special residence permit: in these cases, health care is only guaranteed in case of acute illness and pain. In Poland, UAMs irregularly resident in the territory of the State have access to emergency care as they are always free of charge, but the costs of subsequent treatment are not covered. In Finland, UAMs



seeking asylum have the same right to public health care as Finnish minors. UAMs outside asylum centres don't have free access to healthcare. However, the Finnish Child Welfare Act applies to all children who live in Finland independent of nationality.

In Italy, the law n. 47/2017 also contains dispositions aimed at protecting UAMs' right to health and effectively guarantees the registration of UAMs in the SSN, even pending the request for the residence permit and for the appointment of a guardian. Law n. 47/2017 has ensured a better protection of UAMs' right to health, aiming to achieve effective equality of legal status between UAMs and Italian children.

As regards family reunification, this can only be achieved when this decision is taken in the best interests of the child. Almost all selected States grant the UAMs refugee status or subsidiary protection and the possibility to reunite with their first-degree relatives, but some of them have different rules (EMN 2018b). In Finland, sponsors generally have to demonstrate the security of their livelihoods to reunite with their family members (including minors). In Sweden, the minor applying for reunification and the family members involved are given the opportunity to perform a DNA test to prove the blood link in the event that the rest of the test is not sufficient to guarantee a residence permit. In Germany, during the preliminary and regular taking-into-care, the youth welfare office must enable the reunification of unaccompanied minors with family members living in Germany or abroad, if they can be identified and if minors' wellbeing is not to be negatively affected due to reunification. In the case of unaccompanied minor refugees, both biological parents are entitled to reunification until they reach the age of 18 by apply of the unaccompanied minor. This applies regardless of whether they have entered or are living with other relatives.

As regards the UAMs' return to their country of origin, it can only take place if it does not entail a reasonable risk that the return could lead to a violation of the child's human rights. Return should only be voluntary and should reflect the best interests of the child. Almost all the States taken into consideration permit voluntary return of unaccompanied children to their country of origin (EMN 2017b), but only some of them have specific provisions regarding the access to Assisted Voluntary Return.

In Belgium, if UAMs have a valid residence permit, when they reach the age of majority, they may be assigned a civil guardian. In theory, unaccompanied minors who have reached the age of majority should leave their accommodation, but reception may be extended until the end of the school year. If the child is particularly vulnerable, assistance may be extended up to the age of 21. In Germany unaccompanied minors up to the age of 18 will continue to receive assistance if they have refugee status, humanitarian protection or are waiting for a decision on asylum or if their removal is suspended.

In Poland, UAMs seeking asylum or international protection turning 18 continue their journey under the same previous rules. As regards refugees or persons enjoying international or humanitarian protection and trafficked children, once they have reached the age of majority, they may obtain a permanent residence permit. As regards other unaccompanied minors, they may, before reaching the age of majority, try to obtain a temporary residence permit.

In Finland, at least 6 months before the turning 18, an independent promotion plan is drawn up together with the child. If the minor had obtained a residence permit, his situation is not reviewed at the age of majority and the request for extension of the permit is then accepted. Support is provided by the municipality of residence until the age of 21 (Björklund 2015: 36).

In the United Kingdom, every UAM aged 16 is accompanied by a personal advisor to help him or her draw up a pathway plan for their transition to adulthood.



The treatment of unaccompanied minors who reach the age of 18, although all may be supported by local authorities until the age of 21, differs according to their status. In Italy, when UAMs reach the age of majority, those who are included in an integration process may request to remain in the care of social services and therefore be supported by them until the age of 21 (Article 13 of the Law n. 47/2017). Where an unaccompanied minor is granted refugee status, the situation shall not be reviewed on reaching the age of majority. If the minor has a residence permit of another type (for minors, for family reasons), this can be converted, on reaching the age of majority, into a permit for study or work.

Beside the key areas of focused just discussed, in addition to shedding light on obstacle, this second part of the report also offers some potential solutions and suggestions for the way forward in the wellbeing and integration of migrant youth. It highlights that the contribution of the public sector as well as civil society is crucial to ensure that the best interests of migrant children are determined and considered in identifying a durable/long-term solution for them, irrespective of whether they are alone, separated or with their families.





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See more results of the CHILD-UP Project at  
[www.child-up.eu](http://www.child-up.eu)



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