



EXECUTIVE SUMMARY

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

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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 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 More recommendations are listed on pages 10 and 11.



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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*

Access to a secure residence status in Belgium, Germany, Greece, Sweden, Spain, and the UK

- 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 solution¹⁷ 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 practice or in law).

17 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.

Summary of good practices identified in Belgium, The Netherlands, Ireland and Germany

In two **Belgian** reception centres, the *My Future* programme helps unaccompanied children who will age out undocumented reflect on their options.¹⁸ In Brussels, the non-profit SAAMO¹⁹ provides undocumented people with accurate information and organises a three-day 'future orientation' programme to help undocumented people reflect on their life goals. The Flemish child and youth care organisation Minor-Ndako²⁰ houses and supports undocumented former unaccompanied children for one year.

Similar initiatives exist in **The Netherlands**, where several cities support projects supporting former unaccompanied children (e.g., Utrecht). In Eindhoven, the non-profit *Vluchteling in de Knel* ('VIDK')²¹ expanded their support to include undocumented young people in families and young people who arrived after their 18th birthday because they struggle with many of the same challenges and questions as former unaccompanied children.

In **Ireland**, unaccompanied children are usually placed in mainstream child protection (called 'Tusla') and receive aftercare, regardless of residence status. Before the child turns 18, an aftercare social worker is assigned to assist them until they turn 21 or, if the child is in full-time education, 23.²²

In **Germany**, unaccompanied children or their guardian, children in families and young people themselves can apply for support to young adults (*Hilfen für Junge Volljährige*)²³ at their local Youth Welfare Office. And nearly 500 Youth Migration Services (*Jugendmigrationsdienste*) offer 12-to-27-year-olds counseling on issues regarding ageing out, access to tertiary education and vocational training, access to housing, etc.²⁴

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

19 Formerly Samenlevingsopbouw Brussel. www.samenlevingsopbouwbrussel.be

20 www.minor-ndako.be

21 www.vidk.nl

22 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*

23 § 41 Book VIII of the Social Code

24 www.jugendmigrationsdienste.de

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,²⁵ 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.²⁶
 - 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’.²⁷
- **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.

25 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*

26 Ibid.

27 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 procedure²⁸ 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.

28 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*;

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i <https://melaniamessina.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]



PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

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