

Benchmark

Protection of minor migrants in Europe

Benchmark: The situation in the Netherlands compared to other EU Member States

The benchmarks of EMN Netherlands compare the Dutch study results with those of other Member States of the European Union (EU) and Norway. What are the most relevant similarities and differences? Benchmarks are drafted on the basis of EMN studies, in consultation with Dutch experts. See the EMN Netherlands website for more information about the studies (Dutch): www.emnnetherlands.nl/onderzoeken.

EMN Netherlands benchmark, based on the study of the European Migration Network (EMN) on migrating children in Europe: 'Children in Migration, Report on the state of implementation in 2019 of the 2017 Communication on the protection of children in migration' (March 2021). The EMN conducted this study in 2019 at the request of the European Commission (EC). The motivation for conducting this study was the recommendations by the EC in 2017, made to the EU Member States to protect migrating children.¹ The EC is monitoring the implementation of the recommendations, and to this purpose, the EMN study provides the necessary policy information from the Member States. 26 national contact points² of the EMN participated in this study.

Participating countries

Belgium (BE), Bulgaria (BG), Cyprus (CY), Germany (DE), Estonia (EE), Greece (EL), Finland (FI), France (FR), Hungary (HU), Ireland (IE), Italy (IT), Croatia (HR), Latvia (LV), Lithuania (LT), Luxembourg (LU), Malta (MT), The Netherlands (NL), Norway (NO), Austria (AT), Poland (PL), Portugal (PT), Slovenia (SI), Slovakia (SK), Spain (ES), Czech Republic (CZ), Sweden (SE).

The EMN study mapped the national policies of the Member States in 2019 for all minor migrants from countries outside the European Economic Area (EEA, all EU Member States plus Liechtenstein, Norway and Iceland). The study addressed all possible phases of the migration process, such as the identification and registration procedure, integration, and return to the country of origin. The emphasis is laid on unaccompanied minors (UAMs) who applied for asylum in EU Member States in 2019, around 17,675 in 2019 (excluding Spain).³ The study also painted a picture of families with minor children in the asylum process and the specific policies for UAMs who did not apply for asylum. The study addresses the policy design and does not evaluate policies; the effect of policies in practice was outside the scope of the study. However, European NGOs did indicate that there are challenges here, for instance in the area of guardianship and the identification of UAMs.⁴

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¹ Commission Communication on the protection of children in migration (COM/2017) 211 final.

² AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK and NO.

³ Eurostat (migr_asyunaa), data requested on 10 July 2020; at the time, the statistics on Spain were not available.

⁴ NGOs involved in the study: Missing Children Europe, European Network on Statelessness, Red Cross EU Office, Danish Refugee Council (DRC), Defence for Children International Belgium, Project Play, PICUM, Refugee Rights Europe.

Most notable insights

- The regulation on the European Eurodac database for the fingerprints of asylum seekers⁵ provides rules for taking the fingerprints of minor migrants. During the identification and registration procedure, Member States are obliged to take fingerprints of asylum applicants aged 14 years and over. In 2016, the EC proposed to lower this threshold age to 6 years and over. Negotiations on this are still ongoing. Apart from the Netherlands, Member States are currently not taking fingerprints of asylum seekers below the age of 14. The Netherlands takes fingerprints of children aged between 6 and 14 for its national registration.
- 16 Member States⁶ and Norway have designated reception centres for UAMs. A number of Member States has alternatives for this, such as reception in a foster family or group accommodation. In the Netherlands, these options are included in the regular options for the reception of UAMs, the type of which depends on the child's age, needs, and residence status.
- In half of the Member States (including the Netherlands),⁷ UAMs who do not apply for asylum have access to the same accommodation and provisions as those who do. Some Member States organise special reception for unaccompanied children who do not apply for asylum.
- All Member States take the UAM's own view into account in the asylum procedure. It is notable that the Netherlands usually does this for UAMs from the age of 6, Estonia from the age of 10, and Finland from the age of 12.
- 20 countries (including the Netherlands) prioritise applications for international protection by UAMs. In the Netherlands, these cases are processed by a designated team in Den Bosch.
- In the Netherlands and a number of other countries, UAMs can no longer make use of reception facilities for children (11 countries)⁸ and/or the guardianship system (16 countries)⁹ as soon as they reach the age of 18. In principle in 10 countries (including the Netherlands), young adults in the asylum procedure are placed in reception centres for adults, or in private accommodation. In the Czech Republic, UAMs who reached the age of 18 can stay in the reception facility for children until a decision is taken on their asylum application.
- In 14 Member States (including the Netherlands)¹⁰ and Norway, law provides for the detention of UAMs in view of their return. In the other 11 Member States,¹¹ this is not possible. Here, it is notable that 4 countries¹² have a shorter maximum detention period for UAMs than the maximum period of 6 Months in the Return Directive (2008). In 3 countries, this maximum period is 72 hours. In the Netherlands, this is no more than 14 days, 4 weeks, or the maximum term of the Return Directive (depending on the situation). In addition, 3 countries¹³ have imposed an age limit.
- Around half of the Member States¹⁴ do not forcibly return UAMs. In the Netherlands and 11 other countries,¹⁵ this can be done under conditions.

5 Eurodac Regulation No. 603/2013.

6 BE (only during initial stay in the 'Observation and Orientation Centres' for unaccompanied minors), CY, CZ, DE, EL, ES, FI, HR (for children over 16), IT, LT, LU, NL, PT, SE, SI, SK.

7 BE, CY, CZ, DE, EE, ES, FR, HR, IE, IT, LT, MT, NL, SE, SK. In Estonia and Hungary, UAMs outside of the asylum procedure cannot be accommodated in reception centres for asylum seekers. Hence, their reception differs after they turn 16.

8 AT, BE, EL, IE, IT, LT, MT, NL, PT, SE and NO.

9 BE, CY, CZ, DE, EE, EL, ES, FI, FR, IT, LU, LV, NL, PT, SE, PL.

10 AT, CZ, DE, EE, FI, HR, LT, LU, LV, MT, NL, PL, SE, SI.

11 BE, BG, CY, EE, ES, FR, IE, IT, PL, PT, SK.

12 FI, SE, NL and NO.

13 AT, BE, SK.

14 BE, BG, CY, CZ, EE, ES (it is possible to return UAMs forcibly, but only if this is in the child's best interest and if it can be guaranteed that the minor will be given shelter by family or adequate social institutions in the country to which the minor returns), FR, EL, IE, IT, LT, MT, PT, SK.

15 AT, DE, EE, FI, HR, LU, LV, PL, SE and NO.

Identification and registration procedure

In 2017, the EC indicated, among other things, that Member States:

- must have specially strained staff for the support of children
- must collect biometric data in a child-friendly way.

The EC indicated that additional attention should be paid to UAMs' vulnerability and protection needs.

Identification and registration of minors

In all Member States and Norway, staff with training in dealing with children are present during the identification and registration procedure. In addition, an interpreter is present if needed in the Netherlands and 6 other Member States.¹⁶ Unlike in the Netherlands, border or police authorities have sometimes been trained in multicultural and child-friendly communication in 6 Member States.¹⁷

At the border, minors are first of all identified by means of available (identity) documents. Immediately after this (in the Netherlands and 10 other countries¹⁸), or after determination of age (in 3 Member States¹⁹), UAMs are brought into contact with child protection authorities.

Collection of biometric data

All Member States indicate that they take fingerprints and other biometric data in a child-friendly and gender-sensitive way, even though there is not always a standard procedure to do so. The most notable differences and similarities between the Netherlands and the other Member States:

- The regulation on the European Eurodac database²⁰ for the fingerprints of asylum seekers provides rules for taking the fingerprints of minor migrants. During the identification and registration procedure, Member States are obliged to take fingerprints of asylum applicants aged 14 years and over. In 2016, the European Commission proposed to lower this threshold age to 6 years and over. Negotiations on this are still ongoing. The Netherlands except, Member States are currently not taking fingerprints of asylum seekers below the age of 14. The Netherlands takes fingerprints of children aged between 6 and 14 for its national registration.
- In 11 Member States,²¹ the presence of a guardian or responsible party is obligatory when the biometric data of UAMs are taken. In the Netherlands, this is not the case.
- Just like 3 other Member States, the Netherlands has measures to create a child-friendly atmosphere,²² for example by giving a child the time to get used to the environment. In addition, 11 Member States²³ are taking measures for a gender-sensitive approach, such as the presence of female and male staff during the registration procedure.²⁴

16 BE, EE, FI, HR, LU, SE.

17 BE, BG, EE, FR, LU, LV.

18 BE, CZ, EE, EL, HR, IE, IT, NL, PT, SE.

19 AT, BE, SK.

20 Eurodac Regulation No. 603/2013.

21 CZ (biometric data are only taken from UAMs between 15 and 18 years of age), DE, EE, EL, HR, IE, LU, LV, LT, PL, SK.

22 EE, IE, MT, NL.

23 BE, CZ, EE, EL, FI, HR, IT, LU, NL, SE, SK.

24 BE, MT, NL.

Victims of human trafficking

There are different ways for Member States to detect that a child is a (potential) victim of trafficking in human beings. For example, before a residence procedure is started (at the border or as soon as a child is referred to the authorities for the first time) or during the asylum interview in the asylum procedure.²⁵ Or later, for example during stay in a reception centre²⁶ or during the return procedure.²⁷ The Netherlands is one of the countries where identifying potential victims of human trafficking is possible in all phases.

- 9 countries (including the Netherlands)²⁸ use established indicators which may point to human trafficking. 7 Member States²⁹ pay attention to possible signals of human trafficking as part of a general investigation into the UAM's vulnerability. In the Netherlands the organisations involved, for example, use lists of indicators.
- In 10 countries (including the Netherlands)³⁰ the detection of victims of human trafficking consists of two phases: the informal and the formal identification of a victim of human trafficking. A broader group of organisations can recognise a potential victim of human trafficking (informal identification), including NGOs. Formal identification is done by enforcing parties (such as the police or parties who are specialised in human trafficking),³¹ immigration authorities,³² child or youth welfare organisations,³³ or specialised staff (such as social workers, psychiatrists, or psychologists).³⁴
- In the Netherlands, the Police or Royal Netherlands Marechaussee (or at the request of the Inspectorate for Social Affairs and Employment) can identify a child as a victim of human trafficking.³⁵ This task is assigned to certified investigating officers. Other parties (government organisations, welfare organisations, etc.) can detect potential victims and share these signals with these authorities.
- In Greece and Spain, the public prosecutor (the Prosecutor's Office) formally establishes the victim status of human trafficking, based on reports by specialised professionals, or (in Greece) based on initiation of prosecution of the suspected perpetrators.
- In 8 other Member States,³⁶ the same party can detect and actually identify potential victims of human trafficking. Half of the Member States³⁷ transfer a victim of human trafficking in reception to another reception centre if this is in the child's best interest. In 7 Member States,³⁸ this is often a specialised centre for victims of human trafficking. In the Netherlands, this is the Protected Reception (BO) of the Central Agency for the Reception of Asylum Seekers (COA). In addition to potential victims of human trafficking, the BO also provides accommodation to child brides and people vulnerable to honour killings. 8 countries³⁹ involve child welfare organisations or authorities that counter human trafficking (2 countries)⁴⁰ as soon as possible. In the Netherlands, the Nidos Foundation is involved as guardian.

25 AT, BE, CY, CZ, DE, EE, FI, FR, HR, IT, LU, NL, PT, SK, SE, SI.

26 BE, CZ, DE, EE, FI, FR, HR, LU, NL, PT, SK, SE.

27 DE, EE, HR, LU, NL, PT, SE.

28 BE, DE, EE, IE, IT, NL, PL, SK and NO.

29 BE, EE, FR, LT, LV, MT, SE.

30 AT, BG, EE, FI, IT, LU, LV, MT, NL, PL.

31 AT, BE, BG, CY, CZ, EE, EL, ES, FI, FR, HR, IE, LT (children who do not apply for asylum), LU, LV, MT, NL, PL, PT, SE and NO.

32 BG, DE, FI, FR, IT, LT (children who apply for asylum), SE (children who apply for asylum), MT, PT and NO.

33 DE, FR, HR, MT, PT, SE.

34 BG, EL, SI.

35 B8/Section 3.1, Aliens Act Implementation Guidelines. In the Netherlands, the term 'identification' of a victim is not commonly used in this context, but it has been explained as such in the European synthesis report.

36 CZ, EE, FI, FR, HR, LT, LU, PL.

37 AT, BE, BG, CY, CZ, DE (UAMs), EE, EL, ES, HR, IE, IT, LU (UAMs in the asylum procedure and irregularly staying UAMs) MT, NL, PL, PT, SE and NO. MT, NL, PL, PT, SE and NO.

38 BE, BG, ES, HR, IT, LU (irregularly staying minors), NL.

39 BG, CZ, DE, EE, ES, HR, PT and NO.

40 BG, HR.

Reception and other provisions

The recommendations by the EC include reception in the Member States appropriate for children, in line with the EU acquis (the common law of the European Union). This concerns safe accommodation (including necessary support services to secure the child's best interests and well-being) and giving children access to education, healthcare and psychological support.

Vulnerability and reception

During the asylum procedure, Member States establish any vulnerability and needs of children as quickly as possible.⁴¹ In 11 Member States (including the Netherlands)⁴² vulnerability is also assessed for children who are not in the asylum procedure. In 16 Member States, assessment may influence the kind of reception chosen for a child, for instance.⁴³

- In half of the Member States (including the Netherlands),⁴⁴ UAMs who do not apply for asylum have access to the same accommodation and provisions as those who are in the asylum procedure. In other Member States, special reception exists for UAMs who do not apply for asylum, for example reception for unaccompanied children or a general children's home.
- 19 Member States⁴⁵ (including the Netherlands) and Norway accommodate families with children in general reception centres. 13 Member States⁴⁶ indicate that they accommodate families separately from single residents (to different extents). This is different in the Netherlands, but families do stay in separate residential units where possible. Facilities, such as a bathroom or kitchen, are then sometimes shared with another family or a single adult.
- In 16 Member States (including the Netherlands) and Norway, special reception facilities have been created for UAMs in the asylum procedure.⁴⁷

In addition to regular reception in larger reception facilities, there are also alternatives for children:

- stay in foster families or host families,⁴⁸ usually when the children are young. In the Netherlands, this concerns stay in host families for children below the age of 15;
- stay with distant relatives who have been identified and who can act as foster family⁴⁹ or guardian.⁵⁰ In the Netherlands this is possible in principle, but rarely takes place in practice;⁵¹
- residential housing, for example in groups⁵²
- semi-independent accommodation,⁵³ usually for older children, to improve their independence and skills for further life.

41 AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IT, LU, LV, MT, NL, PT, SI, SK, SE and NO.

42 BE, CY, EE, ES, IT, LT, LU, NL, PL, SE, SK.

43 AT, BE, DE, EE, ES, FI, FR, HR, IT, LU, LV, NL, PT, SK, SE and NO.

44 BE, CY, CZ, DE, EE, ES, FR, HR, IE, IT, LT, MT, NL, SE, SK. In Estonia and Hungary, UAMs outside of the asylum procedure cannot be accommodated in reception centres for asylum seekers. Hence, their reception differs after they turn 16.

45 AT, BE, BG, CZ, EE, EL, FI, FR, HR, IE, IT, LV, LT, LU, NL, PT, SE, SI, SK.

46 AT, BE, BG, CZ, EE, EL, FR, IE, IT, LT, LU, SK and NO.

47 BE (only during first stay in the 'Observation and Orientation Centres' for unaccompanied minors), CY, CZ, DE, EL, ES, FI, HR (for children over 16), IT, LT, LU, NL, PT, SE, SI, SK.

48 BE, BG, CY, DE, EE (not yet implemented in practice), ES, FR, HR, IE, IT, LU, NL, PL, PT, SE, SK and NO.

49 BE, CY, CZ, EE (not yet implemented in practice), ES, LV, LU, NL, PL, PT, SE, LT, SK and NO.

50 CZ, EE (not yet implemented in practice), HR, LV, LT, NL, PT, SI, SK and NO.

51 Based on input from Nidos.

52 BE (only for UAMs with a residence permit), BG, CY, CZ, EE, IE, NL, PT, SE.

53 BE, BG, CY, CZ, DE, EE, EI, ES, FI, FR, IT, LU, NL, PL, PT, SE and NO.

In the Netherlands, these alternatives are part of the regular options for the reception of UAMs. The type of reception depends on the child's age, needs, and residence status.

Undocumented/irregularly staying minors with families

16 Member States⁵⁴ and Norway offer certain provisions to irregularly staying children with families. Access to these provisions differs per Member State. For example, education is accessible in 20 countries,⁵⁵ psychological support in 13 countries,⁵⁶ and health-care in 19 countries.⁵⁷ In the Netherlands, these provisions are accessible for such children and their families. In 8 Member States,⁵⁸ this is limited to emergency healthcare. Where housing is concerned, 13 countries⁵⁹ provide accommodation or social housing to families with children staying irregularly in the country. Families must leave the asylum reception centre if they have to leave the Netherlands but do not do so within the voluntary return period of 28 days. From the reception centre they can always go to a family centre. Here they can receive accommodation, with return being the objective of the family centre. Families are encouraged to work on their departure.

Determination of residence status and procedural safeguards

In its recommendations, the EC recommends Member States to make efforts for strengthening guardianship agencies, reliable and multi-disciplinary determination of age, and quick identification of family members, for instance. In addition, the EC recommends prioritising minors, and relocation of UAMs from Greece and Italy.

Guardianship of UAMs

20 countries (including the Netherlands) have a process in place for the appointment of guardians⁶⁰ or representatives⁶¹ of UAMs. While the guardian is responsible for a child's well-being and protection, the representative focuses on, for example, administrative or criminal proceedings.

- In the Netherlands, Nidos is the organisation acting as the guardian of UAMs, comparable to child and youth welfare offices in 8 other Member States.⁶²
- It is notable that in some Member States, municipalities (6 countries),⁶³ assigned individuals (12 countries),⁶⁴ or foster families (9 countries)⁶⁵ can be entrusted with guardianship. For instance, in Italy the head of the asylum reception centre or the mayor of the municipality can act as guardian.
- In 21 countries,⁶⁶ a guardian is assigned to UAMs in the asylum procedure. In 18 of these countries, UAMs are also assigned a guardian if they do not apply for asylum but are in a different migration procedure.⁶⁷ Only in Finland, Poland, and Portugal, this is not the case.

54 BE, CY, CZ, DE, EE, EL, ES, FI, FR, IE, IT, LU, NL, PT, SK (families with children who have been placed in detention), SE and NO.

55 BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, IT, LV, LU, NL, PL, PT, SE, SI and NO.

56 BE, CY, DE, EE, EL, ES, FI, FR, IE, IT, LU, NL, SE.

57 BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, IT, LV, LU, NL, PT, SE and NO.

58 BG, CY, DE, FI, LT, LV, PL, SI.

59 BE, CY, DE, EE, EL, ES, FI (the decision to grant housing to irregular migrants rests with the municipalities), FR, IE, IT, PT, SE and NO.

60 BE, CY, CZ, DE, EE, ES, FI (for UAMs who apply for a residence permit), FR, HR, IT, LT, LU, LV, MT, NL, PL, PT, SE, SK and NO.

61 BG, EL, FI, HU, IE, LU, LV, PT.

62 CY, CZ, DE, FR, HR, IE, LT, NL, SK. Also possible in Estonia, but not implemented in practice yet.

63 BG, CZ, EE, IT, LV, SE.

64 BE, CZ, DE, FI, IT, LV, LU, PL, PT, SE, SK and NO. Also possible in Estonia, but not implemented in practice yet.

65 CY, CZ, DE, FR, HR, IE, LT, NL, SK. Also possible in Estonia, but not implemented in practice yet.

66 BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, IE, IT, LT, LU, LV, NL, PL, PT, SE, SK and NO.

67 BE, BG, CY, CZ, DE, EE, ES, FR, HR, IE, IT, LT, LU, LV, NL, SE, SK and NO.

- Most countries (18, including the Netherlands)⁶⁸ have a procedure in place for filing complaints about guardianship. Only in Finland, Lithuania, and Luxembourg this is not the case.

Procedural safeguards

Member States have implemented certain procedural safeguards for the interests of children in the asylum procedure.

- Member States inform UAMs about their rights and the procedures in an information session, the asylum interview, or via the guardian. In addition, an interpreter is present if needed in the Netherlands and 6 other Member States.⁶⁹ In addition to information brochures, Sweden, for example, has an app about the asylum procedure especially for UAMs.⁷⁰
- The Netherlands prioritises applications for international protection by UAMs, just like 20 other countries.⁷¹ In the Netherlands this is done by a special team in Den Bosch that processes applications of UAMs. 5 Member States⁷² have a special fast-track procedure to accelerate the processing of a case. This is, for instance, the case if an UAM needs extra procedural safeguards or poses a threat to state security. In Belgium and the Netherlands, UAMs follow a fast-track procedure only in the registration process with the immigration authorities.
- All Member States and Norway take minors' views into account in the asylum procedure, regardless of whether they arrived alone or accompanied by family. This is, for example, done via interviews where the representative or guardian is present. Estonia, Finland, and the Netherlands are mentioned as examples of countries where the degree of maturity is considered to determine whether an interview can take place. In the Netherlands, an interview is possible for children aged 6 and over, in Estonia 10 and over, and Finland 12 and over. Sometimes, younger UAMs can also be interviewed if they have reached a certain degree of maturity. The Netherlands has special, child-friendly rooms for interviews of children between 6 and 12 years of age.

Age assessment

Member States register the age of applicants for asylum. This is especially important for UAMs because it influences the procedure and the assigned reception. To determine age, the organisations involved analyse submitted documents supporting the date of birth stated.⁷³ In addition, 10 Member States (including the Netherlands)⁷⁴ have interviews to determine the age and obtain more details about the applicant's background and identity. In the Netherlands, the AVIM of the Royal Netherlands Marechaussee (KMar) and the Immigration and Naturalisation Service (IND) conduct these interviews during the application procedure. If the age already was determined by means of documents, no interview takes place. In Germany, educational and psychological experts conduct the interviews.

18 Member States (including the Netherlands)⁷⁵ use medical examinations only if the age cannot be determined using the other, non-invasive methods. This is in contrast with 5 other countries,⁷⁶ where medical examination is the main method. Medical examination can consist of:

68 BE, BG, CY, CZ, DE, EE, ES, FR, HR, HU, IE, IT, LV, NL, PT, SE, SK and NO. In Greece, this is provided for by law, but not yet operational.

69 BE, DE, EE, FI, FR, HR, IT, LT, LU, SK, SE.

70 The Migrationsverket Stories app.

71 BE, BG, CY, DE, EE, ES, FI, FR, EL, HR, IE, IT, LT, LU, LV, MT, PL, SE, SI and NO.

72 BE, LU, PL, PT, SI.

73 BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, LU, NL, SE, SI and NO.

74 BE, BG, CY, DE, EE, FR, HR, IE, NL, SE.

75 BG, CY, CZ, DE, EE, FI, FR, HR, HU, IT, LU, LV, LT, NL, PL, PT, SE, SI.

76 BE, PL, PT, SK and NO.

- an X-ray of the wrist⁷⁷ (possible in the Netherlands)
- an X-ray of the collarbone⁷⁸ (possible in the Netherlands)
- a dental examination or x-ray⁷⁹
- other examinations, such as examination of weight and height development⁸⁰

In addition, 18 Member States (including the Netherlands)⁸¹ ask a child (or the representative/guardian) for permission for medical age assessment. In the Netherlands and 7 other countries,⁸² refusal results in the young migrant being considered an adult.

Detention for the purpose of return

As stated in the recommendations by the EC, Member States can only place children in administrative detention on migration grounds in case of exceptional circumstances in view of return. In addition, aliens detention can only be applied as a last resort, with detention being limited to the shortest period of time. Furthermore, Member States must provide alternatives for aliens detention.

UAMs and detention in view of return

In 14 Member States (including the Netherlands)⁸³ and Norway, it is possible under law to place UAMs in detention in view of return. This is done, for example, when there is a risk that the child absconds. In the other 11 Member States⁸⁴ it is not possible to place UAMs in detention.

- In the Czech Republic, Poland, and Slovenia, detention is only possible for UAMs who do not apply for asylum.
- 4 Member States have a shorter maximum detention period for UAMs than the maximum period of 6 Months in the Return Directive. Finland, Sweden, and Norway⁸⁵ have a maximum period of 72 hours. In the Netherlands, a maximum period of 14 days applies, or 4 weeks if this is the first time a child encounters the authorities. In addition, there are situations where the maximum period of the Return Directive applies, for example if the child has left for an unknown destination before.
- In Austria, the Czech Republic, and Finland, there are age restrictions provided for by law. This means a child below the age of 14 (Austria), or 15 (Czech Republic, Finland) cannot be placed in detention.
- In 15 Member States⁸⁶ and Norway, there are alternatives to detention, for example a duty for UAMs to report to the national authorities (the Netherlands),⁸⁷ accommodation in group homes (Bulgaria), community care (Spain) or hand over travel documents.⁸⁸

77 BE, CZ, DE, EE, FI, HR, LT, LU, NL, PL, PT, SK and NO.

78 BE, BG, DE, LT, LU, NL.

79 BE, DE, FI, FR (as last resort, by decision of a judicial authority and after the person concerned consents to the examination/the image), HR, LU, PL, PT, SE, SK and NO.

80 In Portugal, the medical age assessment procedure includes: a process analysis, a clinical interview (which includes an objective examination based on anthropometric assessment, degree of height-weight development, assessment of sexual development, development of external genital organs, breast development, axillary and facial hair, pubic hair, laryngeal prominence, hip shape, screen for clinical pathological conditions that are likely to affect physical development, bone and/or dental development, sexual maturation) as well as complementary diagnostic exams.

81 BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, IT, LU, LT, LV, NL, SE, SI, SK.

82 CZ, EE, FI, HR, LT, NL, PL, SK. In EE, adulthood is assumed unless a child is evidently a minor.

83 AT, CZ, DE, EE, FI, HR, LT, LU, LV, MT, NL, PL, SE, SI.

84 BE, BG, CY, EE, ES, FR, IE, IT, PL, PT, SK.

85 In Norway, a maximum of 72 consecutive hours applies, and a total maximum of 9 days.

86 AT, BG, CZ, DE, EE, ES, FI, HR, LU, LT, LV, MT, NL, SE, SI.

87 AT, BG, CY, DE, EE, FI, HR, LT, LV, LU, MT, NL, PL, SE and NO.

88 EE, HR, LU, LV, MT.

Families with children and detention in view of return

In 12 Member States (including the Netherlands)⁸⁹ and Norway, families with children can be placed in detention in view of return. These are largely the same Member States where detention of UAMs is possible. Here, it is notable that:

- in 9 countries, a time limit applies to detention,⁹⁰ from 48 hours in France to 90 days in Bulgaria and the Czech Republic
- in Estonia, Germany, and Norway, it is possible in some cases that one of the parents is placed in detention, instead of the whole family
- the Netherlands, Poland, and the Czech Republic have special centres for the detention of families, and in case of Poland and the Czech Republic for the detention of single women
- 19 Member States⁹¹ (including the Netherlands) provide alternatives for detention, usually comparable to the alternatives for UAMs. In these Member States, the duty to report is one of the alternatives. As a rule, alternative accommodation is focussed on families' needs,⁹² for example in the form of semi-open centres.

Return of UAMs

22 Member States (including the Netherlands) and Norway have voluntary return procedures in place for UAMs.⁹³ A number of Member States stated specifically that recently voluntary return has been rare or has not taken place (inter alia Estonia, Ireland, Bulgaria, Czech Republic, Poland). Notable is that:

- in Luxembourg and Italy, unlike the Netherlands, consent of another authority is needed for voluntary return, in addition to the child's agreement; in Italy consent is needed from a court, in Luxembourg from an interdisciplinary commission
- in the Netherlands, the same measures as in other Member States usually apply to safeguard a child's interests, such as accompaniment during the journey

14 Member States⁹⁴ do not return UAMs forcibly. The Netherlands and 11 other countries⁹⁵ have legal provisions to allow this. The child's best interest always needs to be taken into consideration. Conditions Member States impose on forced return include:

- safe reception of the child after return in the country of origin⁹⁶
- presence of family and/or guardian upon return⁹⁷
- accompaniment of the child during the journey to the country of origin⁹⁸
- oversight by the National Ombudsman (Latvia)

89 AT, BE (a judgment of the Council of State saw the use of detention of families with minors suspended since 4 April 2019), DE, EE, FI, FR, HR, LV, LT, LU, NL, SE.

90 BE, BG, CZ, DE, FR, LU, NL, SE and NO.

91 AT, BE, BG, CZ, DE, EE, ES, FI, FR, HR, EL, LT, LU, LV, MT, NL, SE, SI, SK.

92 BE, CZ, EE, FR, EL, HR, LU, NL, SI.

93 AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, EL, HR, IT, LT, LU, LV, MT, NL, PT, SE, SI, SK.

94 BE, BG, CY, CZ, EE, ES (it is possible to return UAMs forcibly, but only if this is in the child's best interest and if it can be guaranteed that the minor will be given shelter by family or adequate social institutions in the country to which the minor returns), FR, EL, IE, IT, LT, MT, PT, SK.

95 AT, DE, EE, FI, HR, LU, LV, PL, SE and NO.

96 Inter alia in FI, HR, LU, NL, SE.

97 Inter alia in AT, FI, HR, LV, LU, NL, PL, SE and NO.

98 Inter alia in HR, NL and NO.

Transition into adulthood

When UAMs turn 18, they are no longer seen as children, but as adults. This has consequences for the degree of support and special safeguards in the various proceedings. The EC encourages Member States to support children in the transition period before reaching the age of 18.

The consequences of reaching the age of majority depend on the residence permit the young person applied for or was given, and the policy per Member State.

- In the Netherlands and a number of other countries, UAMs can no longer make use of reception facilities for children (11 countries)⁹⁹ and/or the guardianship system (16 countries)¹⁰⁰ as soon as they reach the age of 18.
- UAMs who turn 18 and who are still in the asylum procedure are treated as adults in 15 Member States (including the Netherlands).¹⁰¹ In 10 countries (including the Netherlands) they are, for instance, placed in reception centres for adults or in certain Member States in private accommodations.¹⁰² In the Czech Republic, UAMs who reached the age of 18 can stay in the reception facility for children until a decision has been taken on their asylum application. 20 Member States indicate that they do provide certain support.¹⁰³
- In 10 countries,¹⁰⁴ UAMs can obtain a temporary residence permit because they are minors and unaccompanied. As soon as the UAM reaches the age of 18, the right of residence lapses unless there are reasons to extend it. It is notable that in the Czech Republic and Luxembourg, the mere fact that the child has reached the age of majority does not suffice as a reason for the right of residence to lapse. This temporary residence permit does not exist in the Netherlands.
- In 9 Member States and Norway,¹⁰⁵ UAMs who reach the age of majority enter the return procedure if no further grounds for legal stay exist. Finland and the Netherlands specified that adequate reception in the country of origin is no longer a requirement for young adults (like it is for UAMs).

Transition period and after care after turning 18

Most Member States provide UAMs who are legally staying in the country with support in the transition phase to adulthood. In the Netherlands, Nidos, as guardianship organisation, provides for the transfer of support to the municipality when the young migrant is granted a residence permit. For instance, the two parties have meetings to discuss the state of affairs with respect to, for example, income, education, employment, and health-care. Nidos starts this when an UAM is 17.5 years old. When young migrants are still in the asylum procedure, they are transferred to an asylum reception centre.

In the Netherlands and 17 other countries,¹⁰⁶ UAMs who are legally staying in the country receive support for finding (transitional) accommodation. 13 Member States¹⁰⁷ also have accommodation schemes for young adults to live semi-independently, or other accommodation where they receive support. In the Netherlands this is not the case. Nidos does,

99 AT, BE, EL, IE, IT, LT, MT, NL, PT, SE and NO.

100 BE, CY, CZ, DE, EE, EL, ES, FI, FR, IT, LU, LV, NL, PT, SE, PL.

101 AT, BE, BG, DE, EE, FI, IE, IT, LT, LU, MT, NL, PT, SE.

102 AT, BE, FI, IE, IT, LU, PT, SE, NL and NO.

103 BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, IT, LT, MT, NL, PL, PT, SE, SK and NO.

104 BG, CZ, DE, ES, FR, IT, LT, SE, SK and NO.

105 BE, EE, HR, LT, LU, LV, NL, SE, SK and NO.

106 BE, BG, CY, CZ, EE, ES, FI, FR, HR, IE, IT, LU, NL, PL, SE, SK and NO. In LU, PL, SE, this support is only provided to UAMs in the asylum system.

107 BE (only if they are beneficiaries of international protection), BG, CY, CZ, EE, ES, FI, FR, IE, IT, LU (if the UAM is a beneficiary of international protection), PT, SE, SK.

however, assist UAMs in finding a room before they turn 18. This can be a privately rented room, a student house, or social housing. If this is not possible before the age of 18 is reached, the municipality then becomes responsible for offering subsequent accommodation.¹⁰⁸ If subsequent accommodation is not immediately available, Nidos and the municipality can decide in mutual consultation on the term in which transfer to the municipality can take place.

If a child with a residence status has turned 18, some Member States assist in access to training, education, or employment (16 Member States),¹⁰⁹ financial assistance (9 Member States),¹¹⁰ as well as psychological support (8 Member States).¹¹¹ The duration of this support in the transition into adulthood differs per Member State. In some Member States, it is until 21 years,¹¹² in others longer,¹¹³ until 25-27 years.¹¹⁴ In the Netherlands, municipalities are responsible after the UAM has turned 18.¹¹⁵ The duration and degree of support is provided according to the insight of the municipality.

DISCLAIMER

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108 Guide by Nidos and the Association of Netherlands Municipalities (VNG), Transfer of UAMs turning 18 (June 2017).

109 BE, BG, CY, CZ, EE, ES, FI, FR, HR, IT, PL, PT, MT, NL, SK, SE.

110 BE, CY, EE, ES, IE (if the young person is in full-time education), LT (financial assistance is only offered to UAMs seeking asylum), NL, PT, SK.

111 BE, CY, EE, ES, FI, PL, PT, SK (if still in the reception facility for UAMs). In FI and PL, this type of support is only provided to UAMs in the asylum system.

112 HR, FI, FR, IT, PT, SE.

113 BE, CZ, DE, EE, IE (in certain cases) HU, PL, PT, SK.

114 DE, SK: these young people are eligible for support to 27 years inclusive (SK, if they study) (DE, in individual justified cases); BE, CZ: to 26 years inclusive (only for those who need this continued care); EE, PL, PT: to 25 years inclusive; IE: some young people in full-time education have access to support.

115 Guide by Nidos and the Association of Netherlands Municipalities (VNG), Transfer of UAMs turning 18 (June 2017).