



Assessing the age of asylum applicants and providing guardianship

The information presented in this fact sheet is extracted from the [Asylum Report 2022](#).
Direct link to the section: <https://euaa.europa.eu/asylum-report-2022/section-5-children-and-people-special-needs-asylum-procedure>

Once arrived in an EU+ country, it is critical to promptly identify children who are travelling alone as unaccompanied or separated from their families. When children are not identified early in the asylum procedure, they may face inadequate support or even detention, and they are at greater risk of falling into the hands of traffickers or becoming victims of crime or exploitation.

The identity and age of migrant children is often unclear as many do not have documentation. If there are substantial doubts about a child's age, an age assessment may be carried out by national authorities to determine the correct path for the applicant and ensure best interests in the case of a minor.

Data at a glance

Total asylum applications in EU+ countries, 2021	648,000
Asylum applications by unaccompanied minors, EU+ total, 2021	23,600 (4% of all asylum applications)
Top receiving EU+ countries, 2021	Austria: 5,600 Germany: 3,300 Bulgaria 3,200

Source: Eurostat [migr_asyunaa] as of 22 April 2022.

Several countries reported an alarming increase in the number of unaccompanied children in 2021, which put the spotlight on any pre-existing gaps in the procedure to appoint a guardian, age assessments of self-proclaimed minors and the legal framework to ensure that a child's best interests are heard and taken into account in the context of asylum.



Key developments extracted from the Asylum Report 2022

- > A draft law on child protection was discussed in France and adopted by the National Assembly in July 2021,¹ and by the Senate in December 2021.² The draft includes several provisions relevant to unaccompanied children. For example, the services responsible for evaluating the child's minority and isolation will be subject to stricter regulatory measures. When a department has established the age and the fact that the child is unaccompanied, another department cannot undertake a new assessment to re-evaluate these conclusions.
- > France's special action plan on vulnerabilities foresees several steps to facilitate unaccompanied children's access to the asylum procedure, for example through a dedicated registration procedure harmonised across prefectures. The action plan proposes to establish an inter-ministerial working group to accelerate the designation of guardians for unaccompanied children and the amendment of the Civil Code to clarify the application of guardianship for unaccompanied children whose parents are alive but geographically far.³
- > The Austrian Federal Ministry of Justice established a Commission on the Best Interests of the Child in February 2021. The commission was tasked to review the legal framework and practices related to children in the asylum procedure.⁴ Its report of July 2021 included a set of recommendations organised around 11 topics, including on the assessment of the best interests of the child in the asylum procedure, legal advice to children, age assessments, guardianship, accommodation and care for children, avoiding statelessness, improving the legal framework, data collection and monitoring children's rights.⁵
- > The Ministry of Justice announced to follow up on the recommendations of Austria's Commission on the Best Interests of the Child and improve processes for the guardianship of unaccompanied children and the determination of the best interests of the child. The Austrian parliament requested the federal government to undertake a more in-depth revision of these processes.⁶ The Federal Ministry of the Interior conducted an internal review as well, concluding that many of the recommendations were already being applied or were on the way to implementation.

Legal representation

- > Croatian authorities observed that guardians often consent to unaccompanied children aged 16 years and older to be accommodated in regular reception facilities in order to stay close to adult relatives in the same facility. Guardians receive basic training on international protection, but the authorities noted that they may need more specialised knowledge to address the specific circumstances surrounding the protection of children. The Croatian Ministry of the Interior established good relations with guardians and schools, facilitating the school enrolment of both accompanied and unaccompanied children.
- > METAdrasi published a detailed overview of the development of rules and responsibilities for the guardianship of unaccompanied children in Greece in recent

years, highlighting that the current inconsistencies in the process risk leaving children without representation.⁷ In a recent ECtHR case, the Greek authorities had not informed the prosecutor – who acts as a temporary guardian for unaccompanied children – about the arrival of an unaccompanied child who identified as a gay boy and was at a heightened risk of contracting COVID-19 due to his asthma. The authorities treated him as an adult, he was accommodated in unhygienic conditions in a tent with 14 other unrelated adult men and was exposed to repeated racist and homophobic attacks. The child was eventually referred to an age assessment procedure following his lawyer’s intervention and was recognised as a minor 4 months after his arrival.⁸

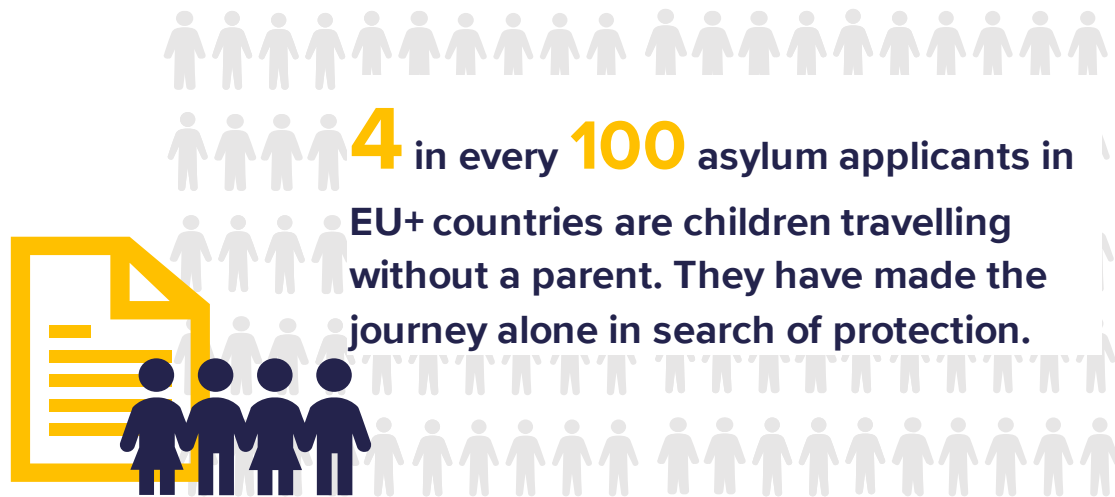
- In 2021, the European Committee of Social Rights **concluded** that Greece was in breach of several provisions of the European Social Charter. An effective guardianship system for unaccompanied children was not in place and the protective custody scheme in practice meant that many children were detained. The committee also noted violations related to the reception of applicant children.
- The Maltese Minor Protection (Alternative Care) Act was amended in 2021 to avoid the potential conflict of interest that was embedded in the previous practice, when social workers and guardians belonged to the same institution. Persons claiming to be minors receive a provisional care order and an interim representative is appointed (the CEO of AWAS), until the results of the age assessment confirm minority. AWAS conducts the age assessment and sends the results to the court, which nominates the guardian and issues the definitive care order.⁹ AWAS noted that in practice no NGO or other private actors have volunteered to fulfil the tasks of guardians and it was difficult to identify a permanent legal guardian.
- The Finnish Immigration Service became entirely responsible for providing guidance on, planning and monitoring the guardianship of unaccompanied children in 2020, and this new arrangement had started to be implemented in 2021.
- Ensuring the continuity of guardianship and legal representation for unaccompanied children is crucial, as illustrated in a **case** from the Administrative Tribunal in Luxembourg. The child intended to appeal against a negative asylum decision, but at the moment of submitting the appeal, he was not assisted by a representative. His new representative had submitted a request to represent the child but had not received a decision yet, while his previous representative considered his tasks to have been taken over.
- In Slovenia, amendments to the International Protection Act ensured that unaccompanied children have continuous legal representation even after a decision is given on their asylum application.¹⁰ Statutory representatives are obliged to attend training every 3 years, and the training programme was enhanced with material on communication skills.¹¹

Assessing the age of a child applicant

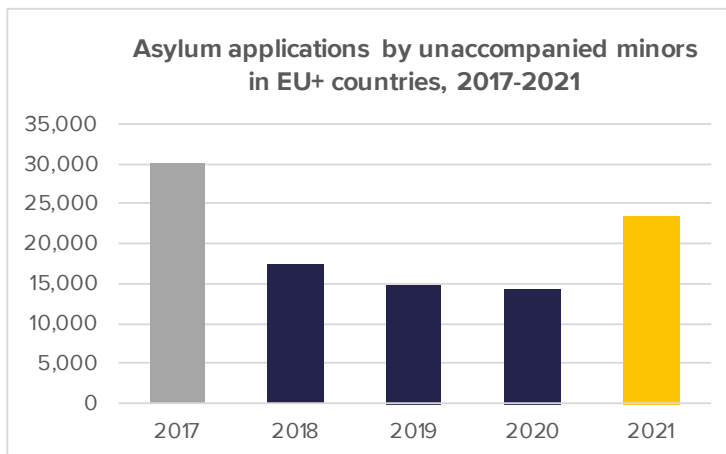
- In 2021, the EUAA updated and published its findings on age assessment practices in EU+ countries.¹² Complementing a child-friendly animation which was released in 2020,¹³ the agency published a booklet for children arriving to Europe which explains what the age assessment process is.¹⁴ AWAS in Malta has updated the age

assessment procedure and the age assessment tool with the support of the EUAA, according to the Agency's guidelines.

Unaccompanied minors seeking protection



With **23,600 applications**, 2021 had the highest number of unaccompanied minors seeking refuge in EU+ countries since 2017.



2/3 of all unaccompanied minor applicants were **16 to 17** years old

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Source: Data by Eurostat as at 22 April 2022.

There was a sharp increase in the number of applications by children from Afghanistan and Syria. Young Afghans represented 53% of all unaccompanied minors, while Syrian children accounted for 16%.

<https://euaa.europa.eu/asylum-report-2022>

- An advisory council was established in Belgium, chaired by the Catholic University of Leuven and the University of Ghent, to improve and standardise age assessment processes, ensuring that all hospitals carry out the examinations in the same manner. Authorities continued to be faced with a high number of applicants claiming to be minors: in 2021, 69% of self-proclaimed minors were found to be adults.
- The Croatian Ministry of the Interior clarified the procedural steps for an age assessment in collaboration with medical institutions. However, no age assessment has so far taken place based on the new rules in 2021, as self-proclaimed minor applicants had absconded before the process could be initiated.
- In Slovenia, authorities can request an age assessment already when an asylum application is made, instead of when it is lodged. These amendments were introduced to ensure that children can have access earlier to tailor-made reception and support, and authorities can start arranging procedural guarantees.¹⁵
- In Cyprus, the Administrative Court for International Protection raised issue with the age assessment procedure and the role of Social Welfare Services as the guardian of unaccompanied children.¹⁶ Based on the judgment, national authorities started to revise relevant roles and procedures.
- Finnish authorities purchased a new, more reliable software which automatically calculates an applicant's presumed age based on an X-ray of the wrist. Discussions were also underway in France to revise the methods for an age assessment, in particular related to bone age assessments.
- Principles of the age assessment procedure were clarified with the Organic Law 8/2021 in Spain. The law underlines that when the age of majority cannot be established, the person must be considered a minor pending the results of the age determination. Medical tests require the child's prior informed consent, and they must be carried out respecting the child's dignity and without risking the child's health. Medical tests which are invasive, require the child to be completely naked or genital examinations can no longer be done.¹⁷
- Amnesty International welcomed these changes and urged for additional measures to accelerate the age assessment process, noting that approximately 1,000 minors were waiting for the results of their age determination on the Canary Islands, in some cases for over a year.¹⁸ Indeed, the UN Committee on the Rights of the Child **found** that Spain had violated several articles of the Convention on the Rights of the Child in the age assessment process for a Gambian child who arrived to the Canary islands by boat. The Committee also **found** several violations in the age assessment process and the subsequent treatment of a girl from Cameroon fleeing domestic violence.
- In June 2020, the Swedish government commissioned an independent inquiry to examine the method used by the National Board of Forensic Medicine for the medical age assessment in the asylum process.¹⁹ The inquiry's interim report was published in October 2021 (SOU 2021:84). It contains, for example, the current underlying scientific basis for the method and a description of how the board's statements have developed

over time. The inquiry's final report will include a research study and is expected to be published in 2024.²⁰

-  The Constitutional Court in Czechia **concluded** that an applicant's constitutional rights were violated when the medical examination for an age assessment was undertaken in the absence of an interpreter and without the supervision of the child protection services. The flaws in the process led to the applicant being treated and detained as an adult.
-  The Court of the Hague **reiterated** case law that information from another Member State showing that the applicant was registered as an adult was sufficient to consider him an adult also in the Netherlands.

To search for more developments by topic, country or year, consult the [National Asylum Developments Database](#).

To read more case law related to asylum, consult the [EUAA Case Law Database](#).

Sources

Please see [Sources on Asylum 2022](#) for the full list of over 1,000 references which were consulted for the Asylum Report 2022.

¹ Projet de loi n° 644, adopté par l'Assemblée nationale relatif à la protection des enfants [Draft Law No 644, adopted by the National Assembly, on the Protection of Children], July 8, 2021. https://www.assemblee-nationale.fr/dyn/15/textes/115t0644_texte-adopte-seance

² Projet de loi n° 54, adopté par le Sénat, relatif à la protection des enfants (procédure accélérée) [Draft Law No 54, adopted by the Senate, on the Protection of Children (accelerated procedure)], December 15, 2021. <https://www.senat.fr/leg/ta21-054.pdf>

³ Ministry of the Interior | Ministère de l'Intérieur. (May 2021). *10 actions renforcer la prise en charge des vulnérabilités des demandeurs d'asile et des réfugiés [10 actions strengthening the response to vulnerabilities of asylum seekers and refugees]*. <https://www.interieur.gouv.fr/content/download/127815/1021010/file/Plan-vulnerabilite-28052021.pdf>

⁴ Federal Ministry of Justice | Bundesministerium für Justiz. (2022, May 3). *Kindeswohlkommission [Commission on the Best Interests of the Child]*. <https://www.bmj.gv.at/themen/Kindeswohlkommission.html>

⁵ Federal Ministry of Justice | Bundesministerium für Justiz. (2021, July 13). *Bericht der unabhängigen Kommission für den Schutz der Kinderrechte und des Kindeswohls im Asyl- und Fremdenrecht [Report of the independent Commission on the Best Interests of the Child in asylum and aliens law]*. [https://www.bmj.gv.at/dam/jcr:0a8466e4-c24a-4fd2-bfbc-c8b11fa-cba2f/Bericht%20der%20Kindeswohlkommission_13.%20Juli%202021%20\(Langfassung\).pdf](https://www.bmj.gv.at/dam/jcr:0a8466e4-c24a-4fd2-bfbc-c8b11fa-cba2f/Bericht%20der%20Kindeswohlkommission_13.%20Juli%202021%20(Langfassung).pdf)

⁶ Parliament, Republic of Austria | Parlament, Republik Österreich. (2021). *Bericht der Kindeswohl-Kommission – rasche Umsetzung der dort dargestellten Empfehlungen [Report of the Child Welfare Commission- rapid implementation of the recommendations presented]*. https://www.parlament.gv.at/PAKT/VHG/XXVII/II_01120/index.shtml

⁷ METAdrasi - Action for Migration and Development | METAδραση – Δράση για τη Μετανάστευση και την Ανάπτυξη. (2022). *Input to the Asylum Report 2022*. <https://euaa.europa.eu/sites/default/files/2022-03/metadrasi.pdf>

⁸ HIAS Greece, & Greek Transgender Support Association. (2021). *The European Court of Human Rights examines possible inhuman and degrading treatment of a gay unaccompanied minor in Greece*. https://www.hias.org/sites/default/files/eng_pr_the_european_court_of_human_rights_examines_possible_inhuman_and_degrading_treatment_of_a_gay_unaccompanied_minor_in_greece.pdf

⁹ Act No XXIII of 2021, an Act to amend the Minor Protection (Alternative Care) Act, Cap. 602., May 25, 2021. <https://www.parliament.mt/media/112352/att-23-of-2021-att-dwar-il-protezzioni-tal-minuri-harsien-alternattiv.pdf>

¹⁰ Art. 16(3), 18(8) of the [International Protection Act](#).

¹¹ Art. 18(3) of International Protection Act; Articles 6 and 7 of the [Decree on the implementation of the statutory representation of unaccompanied minors and the method of ensuring adequate accommodation, care and treatment of unaccompanied minors](#).

¹² European Union Agency for Asylum. (July 2021). *Age assessment practices in EU+ countries: Updated findings*. <https://euaa.europa.eu/publications/age-assessment-practices-eu-countries-updated-findings>

¹³ European Union Agency for Asylum. (2021). *EASO Asylum Report 2021: Annual Report on the Situation of Asylum in the European Union*. <https://euaa.europa.eu/easo-asylum-report-2021>

¹⁴ European Union Agency for Asylum. (January 2022). *All you need to know about age assessment*. <https://euaa.europa.eu/publications/all-you-need-know-about-age-assessment>

¹⁵ Art. 17(2) of the [International Protection Act](#).

¹⁶ Cyprus, Administrative Court for International Protection [Διοικητικό Δικαστήριο Διεθνούς Προστασίας], Y.D.M.O. v Republic of Cyprus, through the Asylum Service, Case No 601/16, 31 December 2021 (not published yet)

¹⁷ Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia [Organic Law 8/2021 of June 4 on the comprehensive protection of children and adolescents against violence]. <https://www.boe.es/eli/es/lo/2021/06/04/8>

¹⁸ Amnesty International. (2021, October 19). *Canarias: más de mil menores no acompañados en riesgo de acabar viviendo en la calle en un limbo sin derechos [Canary Islands: more than a thousand unaccompanied minors at risk of living in the street in a limbo without rights]*. <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/canarias-mas-de-mil-menores-no-acompanados-en-riesgo-de-acabar-viviendo-en-la-calle-en-un-limbo-sin-derechos/>

¹⁹ Swedish Government | Regeringskansliet. (2021, April 22). *Tilläggsdirektiv till Utredningen om medicinsk åldersbedömning (Ju 2020:14), Dir. 2021:27 [Supplementary Directive to the Inquiry into medical age assessment (Ju 2020:14), Dir. 2021:27]*. <https://www.regeringen.se/rattsliga-dokument/kommitteradirektiv/2021/04/dir.-202127/>

²⁰ Ministry of Justice | Justitie-departementet. (2021, October 28). *Granskning av Rättsmedicinalverkets metod för medicinsk åldersbedömning i asylprocessen, SOU 2021:84* [Review of the National Board of Forensic Medicine's method for medical age assessment in the asylum process, SOU 2021:84]. <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2021/10/sou-202184>