



CHILD
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**Collective Awareness Platform for Missing Children
Investigation and Rescue**

The need for homogenous legal framework on missing unaccompanied migrant minors in EU

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Abstract:

With almost 20.000 unaccompanied migrant minors registered in the EU in 2018 alone (cf. EUROSTAT 2019) and high numbers of missing incidents among this specific group, the measures to safeguard these children within the EU should be scrutinized. Additionally, unaccompanied migrant minors have an increased vulnerability due to their lack of a social network and guardians at their location while simultaneously relying on personal networks for information in the migration decision-making process (cf. Dekker et al. 2018: 2f.). Consequently, children in migration are more likely to fall prey to human trafficking or sexual abuse (cf. European Commission 2017: 2), which is assumed to be one of the reasons for the high rate of missing persons cases among unaccompanied migrant minors in shelters (cf. BAMF 2018: 76). One crucial element in state intervention in missing children cases in the legal framework that these interventions are placed within. For the EU, in cases of missing unaccompanied migrant minors, a vastly heterogeneous image has arisen. This white paper will thus attempt to analyse the current legal situation and make recommendations on potential improvements to support the interests of the children rather than those of the nation states.

Current legal situation:

The EU has defined unaccompanied migrant minors as a third-country national or stateless person below the age of 18 years, who arrives on the territory of the (Member) States unaccompanied by the adult responsible for them by law or by the practice of the (Member) State concerned, and for as long as they are not effectively taken into the care of such a person (cf. EU2011: DIRECTIVE 2011/95/EU). This seems to suggest that unaccompanied migrant minors are considered children without legal guardians or even caretakers, who are entitled to the same level of protection as children without a guardian from within the EU.

Currently, however, the group of unaccompanied migrant minors¹ are both specifically vulnerable to going missing and often receive different treatment to other missing minors once they do go missing. Furthering the difficult situation of the missing unaccompanied migrant minors, the legislative framework and resulting work practice in handling these cases varies greatly within the different member states of the EU and inhibits concerted action. While some countries aim to take direct action, much like in other cases of missing children, others like Germany and Denmark have introduced a mandatory waiting period before reporting missing unaccompanied migrant minors, which does not apply to other missing children (cf. Cancedda et al. 2013: 3). In Denmark,

¹ While the increased vulnerability is true for children in migration in general, including those accompanied by a guardian (cf. European Commission 2017: 2), and legal measures of member states should thus address them as a group, this paper focusses specifically on the situation of unaccompanied migrant minors, who lack the support of a guardian.



there is a mandatory 24 hr waiting period for cases of missing children who are older than 15 years (cf. *ibid.*: 16), whereas in Germany, missing unaccompanied minors, who reside in shelters, are only reported to the police the next morning. This delay is believed to be justified to avoid unnecessary police action for adolescents, who may have stayed out late². While this might seem like a pragmatic approach, it can lead to life-threatening situations for the missing youths, especially when no risk assessment was conducted prior to the event or when the assessment suggests that the child might be at risk of going missing (e.g. when the child was victim of trafficking, exploitation or abuse, or was previously homeless, or is in a difficult process to be reunited with family). However, in Germany, the waiting period varies, depending on the risk assessment and protocol of the shelter and can span from reporting directly after the disappearance to 48 hours after the actual disappearance (cf. European Migration Network 2020: 3). Even more dangerous for the children involved, their disappearance can lead to their status or residential permit to be withdrawn in eight EU member countries without any further action taken to ensure their recovery (Austria in cases where the asylum status is not yet decided, Estonia, Finland, Hungary, Luxembourg, Slovakia, Slovenia, Sweden) and the United Kingdom (cf. European Migration Network 2018: 50). It should be noted that national protocols in handling cases of unaccompanied migrant minors change throughout time, however, NGOs have reported that in the member states whose protocols demands an equal treatment of missing children regardless of their nationality or migrant status, there is still a gap between the existing legal frameworks and the actual work practice (cf. European Migration Network 2020: 1). In Slovakia, for instance, no measures are provided by the government to prevent or intervene in the disappearance of unaccompanied migrant minors, such as the use of NGOs, a hotline or alerts in the Schengen Information System (cf. European Migration Network 2014: 41). After a minor has disappeared from the refugee shelters, local police may conduct a search of the neighbourhood, however, the nationwide system for the search of missing persons called PATROS is not used for cases of missing unaccompanied migrant minors (cf. *ibid.*). In 2017, a study and report on the situation of unaccompanied migrant minors (UAM) has been published, which noted the persisting issue of UAMs going missing from shelters (cf. Meszarosova/ Obonova 2018: 43). However, no information on potential changes in the protocol on missing unaccompanied migrant minors has been made available since. By introducing different protocols for missing unaccompanied migrant minors compared to other missing children, the EU states prioritise the 'migrant' label and the attached national security interests over the 'child' label and the specific

² Results of expert interviews undertaken in the HORIZON 2020 project: ChildRescue 2018-2020 Grant Agreement Nr. 780938



rights that should apply universally to all children according to the EU Charter of Fundamental Rights.

Needless to say, this practice dramatically increases the vulnerability of missing unaccompanied minors to fall victim to crimes such as human trafficking, since the perpetrators will be aware of the fact that no further action will be taken by the police or the state to look for these children³. Problems of insufficient cooperation of different stakeholders and a lack of training of professionals, who work on cases of missing migrant minors, remain (cf. *ibid.*). Due to the high level of distrust in and lack of official information on the legislation in the different states, a lot of minors in migration rely on social media as an information source and communication tool when making migration choices (cf. Dekker et al. 2018: 2 f). Thus, personal networks are valued highly for this decision-making process (cf. *ibid.*:7), which can lead to an increased vulnerability for victimisation in human trafficking (that may have started off as a smuggling situation) and irregular migration, which in turn heightens the minors' overall vulnerability as they then have no access to official resources if they migrated irregularly. Irregular migration describes the process of arriving to or being in a country without having applied for asylum, thereby not being registered officially. While the EU requires its member states to establish the legal guardianship over unaccompanied migrant minors, this only applies to children who have applied for asylum in the country, thus leaving irregularly migrated children to their own devices (cf. Cancedda et al. 2013: 17). Child victims of human trafficking are also entitled to legal guardianship according to Article 14(2) of the Directive 2011/36/EU of the European Parliament and of the Council of the EU regardless of their migration status, however, this is not implemented in practice.

Additionally, the confusion about the responsibility for unaccompanied migrant minors between different stakeholders, such as between states or between NGOs and the state, increase the number of unknown case outcomes in missing unaccompanied migrant minors (cf. MCE 2018: 5). Furthermore, there is a lack of research or reliable data on the reasons and circumstances of unaccompanied migrant minors who go missing. While the majority of missing cases of unaccompanied migrant minors in Germany have been cleared (although there was no additional information on the outcome of these cases), some 4,458 missing cases of unaccompanied migrant minors remained unsolved in the years 2015-2018 (cf. BKA data online, table 1)⁴. The German state was also unable to receive valid data on the causes of going

³ Results of expert interviews undertaken in the HORIZON 2020 project: ChildRescue 2018-2020 Grant Agreement Nr. 780938

⁴ The data provided is only published on the BKA website and updated regularly. During the update, old cases which have since been cleared are listed as cleared as well, so that the numbers below refer to the BKA website in February of 2020 and may have been altered since then.



missing (cf. BAMF 2018: 21), however an increased risk of sexual and labour exploitation, human trafficking and hate crimes have been attested and might contribute to these cases (cf. *ibid.*: 76).

Table 1: Missing unaccompanied migrant minors in Germany 2015-2018

Year	Missing unaccompanied migrant minors in Germany	Cleared cases	Percentage of cleared cases
2015	8,200	6,547	79,84 %
2016	9,748	8,490	87,1 %
2017	6,186	5,129	82,91 %
2018	3,961	3,471	87,63 %

On the European level, almost 20.000 unaccompanied migrant minors have been registered upon entering in 2018 (cf. EUROSTAT 2019), but there is only scarce and fragmented data beyond that. There is few if any information available on the gender and age breakdown of the children who have arrived unaccompanied and the precise number of missing unaccompanied migrant minors within Europe is also unknown (cf. EUROPOL 2018: 20). While the exact number of missing incidents remains unknown, more than 30.000 migrant and refugee children are assumed to have gone missing within Europe between 2014-2017 as reported by 14 member states, the majority of which had not completed the asylum process (cf. European Migration Network 2018: 9). Due to a lack of compatible data and differences in definitions of missing unaccompanied migrant minors in the member states, the actual magnitude of their disappearance remains unknown (cf. European Migration Network 2020: 1). In 2017 alone, around 10.000 migrant and refugee children were officially registered as missing (cf. *ibid.*:10), with high numbers of underreporting in cases of missing unaccompanied migrant minors. The reasons for the high number of missing incidents among unaccompanied migrant minors can only be speculated about, with assumptions including a general distrust towards official authorities and the information they publish, lengthy asylum procedures, insecurity about the asylum status outcome as well as exploitation and abduction (cf. EUROPOL 2018: 21). However, missing unaccompanied migrant minors, who are linked to human trafficking, remain underreported in the European countries (cf. European Migration Network 2018: 10). Studies on the European level have further suggested that missing unaccompanied migrant minors are often subjected to trauma through hazardous living conditions, exploitation and the unmet need for parental



guidance and psychological counselling (cf. *ibid.*: 48). Furthermore, studies have shown that the risk of exploitation rises linear with the time Runaways spent unsupervised, which can sensibly assumed to also be true for missing unaccompanied migrant minors (cf. Shankar/Gadkar 2015: 115).

Additionally, missing unaccompanied migrant minors are vastly underreported: Missing Children Europe (MCE), who runs the missing children hotline and collected data from 26 EU countries, received notice of 6.221 new cases in 2018, 4,1% (550 cases) of which were missing unaccompanied migrant minors (cf. MCE 2019). Considering that an estimated 30.000 migrant and refugee children went missing from 2014-2017 (cf. *ibid.*), there seems to be an alarming gap between the actual and the reported cases, which renders unaccompanied migrant minors highly vulnerable to exploitation. Due to the streamlining of data collection on both national and international levels, the data on missing unaccompanied minors is especially poor (cf. European Migration Network 2018: 48). The lack of reported data in turn is also influenced by the various legal definitions of what constitutes a 'missing' unaccompanied migrant minor and how to respond to them going missing (cf. ICMEC 2016: IV). Hence, the legal framework dictates the circumstances of the phenomenon in more ways than one. Therefore, a legally binding international agreement on the protocols in handling cases of missing unaccompanied migrant minors and a consequent adjustment of the work practice would be desirable. So far, the interests of the nation states in securing their borders and regulating migration have partially been placed above the interests of a specifically vulnerable group, namely unaccompanied migrant minors within Europe.

Additionally, the current Covid19 pandemic has further increased the vulnerability of unaccompanied migrant minors, since a lot of the services are no longer available due to health concerns for the staff members. Consequently, counselling and leisure activities are cut short. Based on past experience of children going missing from care in higher numbers than from their families, the current lack of additional programs can be feared to lead to an increase in runaway cases from shelters. Consequently, due to the current situation, their vulnerability to fall victim to traffickers is also increased, since the minors might perceive them as the safer option in times of uncertainty. Furthermore, social distancing within the shelters is often not an option for unaccompanied migrant minors, because of lack of space. This might lead to an even further increased urge to leave the shelter.

Action taken by the EU:

The EU has been made aware of the issue of high numbers of unaccompanied migrant minors going missing within Europe and has attempted to address the issue of the disappearance of



migrant children by introducing different actions (cf. Radjenovic 2017). Some of these actions were aimed at missing children in general, thereby casting missing migrant minors primarily as children rather than migrants, which should be the norm in accordance with the legal conventions, but sadly is often not met in the work practice. These actions contrast with the differing treatment single member states give to missing migrant minors in comparison to other missing children.

One action of the EU was the EU wide implementation of the '116 000' telephone hotline to report missing children, which is currently active in 32 countries (cf. *ibid.*). However, current statistics provided by MCE, which collects data from the hotline operators in 26 countries, showed that only nine of these 26 hotline providers could offer any insight on the disappearance of migrant minors, totalling 263 of the overall 6.221 new cases reported in 2018 (cf. MCE 2019: 6). Of these cases, 202 (77%) pertained to unaccompanied migrant minors (cf. *ibid.*). These low numbers of reported cases of missing migrant minors through the hotline in contrast to the comparably high numbers of calls for runaway cases (3.777) suggests that there is either a lack of awareness of the hotline from the caregivers of the migrant minors or a perceived helplessness in these cases due to the intricate legal situation. Therefore, it is recommended to actively promote the hotline and attached help offers in shelters for unaccompanied migrant minors. Measures to increase the awareness of all actors involved could include, but are not limited to, awareness raising campaigns in state-run facilities and NGOs dealing with unaccompanied migrant minors or workshops on the correct response to missing unaccompanied migrant minors for police officers. Another response that was put in place for all missing children, which means also missing migrant minors, are the proposed 10 principles for the integrated protection of all children in all settings, which was published in 2015 after its development in the context of the 9th European Forum on the rights of the child (cf. Radjenovic 2017). The second principle of which is "no child is discriminated against", a principle that promises access to the national child protection services for all children "on an equal basis" (cf. European Commission 2015: 11).

Due to the sudden rise in unaccompanied migrant minors entering Europe in 2015, an additional action plan on unaccompanied minors was drafted. The ongoing actions contributing to the protection of children in migration was consequently published in 2016, which showcased measures that had been taken, such as financial aids to identify children at risk of human trafficking within Europe through EUROPOL and vaccination programmes in hotspots of migration (cf. European Commission 2016: 2). Additionally, a communication on the specific vulnerability of children in migration and the need to implement efficient protection of them has been published in 2017 (cf. European Commission 2017). However, while strengthening and sensitising police forces to the issue of human trafficking of migrant minors is certainly helpful, no action has been taken to ensure the equal treatment of missing unaccompanied migrant minors in comparison to



other missing children within the member states. Despite numerous resolutions specifically addressing the issue of the high numbers of missing unaccompanied migrant minors in the EU (cf. Radjenovic 2017) and the communication on the vulnerability of children in migration by the European Commission which showcases their awareness of the issue (cf. European Commission 2017), the situation remains unchanged.

Recommendations for future action:

In order to address the issue of missing unaccompanied migrant minors EU-wide in a unified and efficient manner, the EU should encourage its member states to create a homogenous legislation that is comparable across the member states and does not discriminate against the rights of migrant minors by treating their missing incidents differently from other children's disappearances. Consequently, **a new plan for action on missing migrant minors should be drafted addressing the legal framework in the member states and providing specific measures for unaccompanied children.** Most importantly, the gap between the theoretical promises of signed conventions and actual work practices needs to be addressed and closed. The following corner stones are proposed by the authors in conclusion to the above observations as the basis for an improved attention to unaccompanied migrant minors in the EU:

Legislative adaptations:

1. Ensure the implementation of the rights of children as declared in the EU Charter of Fundamental Rights and the UN Convention on the Rights of the Child in the work processes of member states when handling missing children cases to ensure that member states do not differentiate between children born in and those born outside of the EU
2. Ensure the legal equality of missing unaccompanied migrant minors in comparison to other missing children in all EU member states (i.e. no extended waiting periods before responses to disappearances)
3. Instate a clear, EU-wide regulation on the custodian of unaccompanied migrants to reduce confusion about responsibility among international actors
4. Disappearances of unaccompanied migrant minors should not impact on their asylum status

Structural changes:

1. Increase the number of shelters for children in migration to ensure they are not forced to sleep rough
2. Ensure care and shelter for minors independent of their asylum status to include irregularly migrated children



3. Improve cross border cooperation to increase the efficiency of responses to international disappearances and prevent human trafficking (for detailed suggestions on improved cross border cooperation cf. MCE 2019: 11ff)
4. Introduce measures to protect unaccompanied migrant minors during the Covid19 pandemic, including shelters that offer sufficient space for social isolation and ongoing counselling
5. Implement street work activities to identify and refer unaccompanied migrant minors to relevant and competent services

Communication strategies:

1. Draft materials and lesson plans for distribution among shelters to inform unaccompanied migrant minors about the dangers of human trafficking and their rights
2. Ensure the use of social media platforms that are popular with children in migration in the outreach work
3. Promote the 116 000-hotline specifically in shelters for unaccompanied migrant minors to ensure better cooperation with key actors and support of the children

Additional suggestions:

1. Improve the data collection on missing children cases EU-wide to ensure a comprehensive data base including age and gender of the missing children is guaranteed
2. Grant research funds specifically dedicated to enlightening the issue of high disappearances of unaccompanied migrant minors, including the reasons for and the prevalence of victimisation after going missing

Introducing a ratifiable protocol on unaccompanied migrant minors for all EU member states has not lead to a completely homogenous legal framework throughout the EU, but it offers the member states clear guidelines on potential improvements of current state regulations. This might prove crucial to ensure the safety of unaccompanied migrant minors in Europe, if the current gap between legal framework and work practices in the field can be closed. Therefore, the introduction of this paper can be seen as an essential first step in raising awareness of the issues currently at hand and thereby help in ensuring that all children in Europe are safe and are actively being searched for in incidents of them going missing. Hence, the EU Charter of fundamental rights for all children, independent of their place of birth or current nationality in a non-discriminatory manner, could be fulfilled to its complete extend.



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