

UNACCOMPANIED MINORS

CRITICAL CONDITIONS AT ITALIAN EXTERNAL AND INTERNAL BORDERS

ASGI'S MONITORING REMARKS
ON THE CURRENT SITUATION
FOR UNACCOMPANIED MINORS
AT ITALIAN BORDER AREAS
AND THE IMPACT OF PROPOSALS
RELATED TO THE EU PACT
ON ASYLUM AND MIGRATION

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1_Introduction

The Italian legal framework regarding the protection and reception of unaccompanied foreign minors is particularly advanced and in line with the principle of the best interests of the minor, a cardinal principle that must guide all procedures involving minors. However, the situation encountered by foreign minors at Italy's internal and external borders is characterized by several illegitimate practices and consequent violations of their rights.

Serious concerns for the respect of the fundamental rights of foreign minors also arises from the new proposals attached to the European Pact on Migration and Asylum, presented by the European Commission on 23 September 2020. Negotiations on the Pact are currently underway, but it is already evident, as widely denounced by various realities, that it would imply a risk for the European asylum system of taking a further step backwards.

The approval of the reform proposals associated with the Pact would in fact risk consolidating practices contrary to the best interests of these minors (such as detention and refoulement), as already experienced at the borders of several Member States, including Italy.

Inasmuch, this document has a two-fold purpose: on the one hand, it seeks to draw attention to the illegitimate practices implemented at the external and internal borders and, on the other, it provides a critical interpretation of the possible reforms that would follow the adoption of the proposals in this Pact. It achieves this, especially in light of what is already happening in Italy, with specific reference to the situation of unaccompanied foreign minors.

In conclusion, specific recommendations will be submitted to Italian and European authorities with the intention of contrasting the illegitimate practices we have encountered.

In addition, further recommendations will address the new Pact, indicating the changes that should be made to the proposals, so that they respect the rights of minors and the principle of their best interests.

2_National Legal Framework

In 2017, Italy adopted its first comprehensive legislation concerning unaccompanied minors (Law 47/2017, the so called “Zampa Law”). This law introduced important innovations and several **assurances concerning the protection and reception of unaccompanied foreign children**¹, following arrivals at Italian coasts in high numbers since 2016. After their disembarkation, the children often disappeared because of the lack of safeguards and appropriate accommodation and protection.

The 2017 law establishes that all unaccompanied minors are entitled to the same rights and child protection safeguards as those enshrined in the New York Convention on the rights of the child (CAT)², **on equal grounds to Italian and European minors**. It follows that in all decisions and procedures concerning such minors, **the best interests of the child must be a primary consideration**. In compliance with such “best interests” principle, the law envisages that, if doubts over the age of the person exist, a **presumption of minority prevails and the person shall be treated as minor**. In order to assess the best interests of minors, they shall be heard in all proceedings regarding their status, and their age and degree of maturity are to be taken into account³. Moreover, the best interests of minors have to be considered when deciding upon reception measures in order to ensure appropriate living conditions based on age. Article 3 of Law 47/2017 sets a general and **unconditional prohibition of refoulement of unaccompanied foreign minors at borders**. The prohibition operates regardless of the reasons for the minor’s entry into Italy, and the fact that he or she is an asylum seeker. Moreover, **unaccompanied migrants cannot be returned to their country of origin**, unless it appears that the reunification with his/her family is in the best interest of the child and that in the country of origin he/she would live in better conditions. In such a case, the Juvenile Court can order specific family investigations in the country of origin and the situation of the person in Italy has to be reviewed through detailed reports by social services. The judge can thereby reach a decision for the assisted voluntary return of the child. During the procedure, both the unaccompanied minor and his/her guardian **have the right to appear** in front of the judge. Given that rejection and expulsion of unaccompanied foreign minors is forbidden, it also follows that their detention is unlawful: Article 19 (4) of Legislative Decree n. 142/2015 provides for a **general prohibition of detention of all unaccompanied minors**, whether they are asylum seekers or not. Moreover, under the Italian legal framework, all unaccompanied children **shall be accommodated in reception facilities for minors and are entitled to a permit to stay** “for minors” until they are 18 years old⁴, unless they applied for international protection. Moreover, Law 47/2017 **grants swift access to asylum procedures for unaccompanied minors** who were prevented from lodging their asylum application because of delays in appointing a guardian⁵.

1 In accordance with Article 2, Law 47/2017, an “unaccompanied foreign minor” (UM) is defined as a foreign minor who is found in Italian territory or is subject to Italian jurisdiction, who lacks the material assistance and representation of his/her parents or other adults who would be responsible for him/her in the context of Italian legislation.

2 UN Convention on the Rights of the Child, 1989.

3 Article 18 (2) Legislative Decree 142/2015.

4 Law 47/2017 also introduced a humanitarian provision that extends the protection measures for unaccompanied minors who, reaching the age of 18, are not already accommodated within a protection system. The extension is decided by the Juvenile Court, in situations where the person is about to turn 18 and is on his/her way to reach autonomy and a certain degree of integration in the country, but he/she still needs support.

5 Article 18 Law 47/2017, Article 26 (5) Italian Legislative Decree 25/2008.

The premise for children to have access to protection, reception and integration measures in accordance with Law 47/2017 is their **identification as unaccompanied minors**.

Article 5 of the Zampa Law prescribes that public security authorities, assisted by cultural mediators, should ascertain the minor's identity and age **primarily by means of personal documents**, such as passport, identity card, birth certificate or any other document with a picture of the person, unless there are doubts concerning their authenticity.

If identification documents are not available and there are well-founded doubts about the age declared by the migrant, **an age assessment procedure may be ordered by the judicial authority**. The child must be informed about the methods and consequences of the procedure, which has to be carried out with a **multi-disciplinary approach (combining social and medical examinations)**, by professionals with appropriate expertise⁶.

Throughout the entire procedure, **the person has the right to be heard and has to be treated as a minor**⁷. From the mandatory presumption of status as a minor, it follows that, even if the decision by Juvenile Court has not yet been taken, **migrants can never be detained and shall be placed in specific reception facilities for minors**.

As for the reception system, Law 47/2017 defined a structured national reception system, with minimum standards in all reception facilities, which is currently organised in two stages. During the first stage, children are accommodated in **first reception facilities for minors** (so-called "FAMI" centres), for first aid and immediate assistance purposes. The centres are run by Ministry of Interior territorial representatives (Prefectures) and host minors for a maximum period of 30 days. During this stage, children are identified and informed about their rights, including the right to apply for international protection⁸. The second stage of UM reception takes place in "SAI" centres (Accommodation and Integration System): they are run by Local Councils and have to comply with the assistance standards of the general Italian system of residential care facilities for children. In addition to the basic services provided for in FAMI centres (cultural mediation, legal, medical and psychological assistance), SAI projects must include school courses, vocational training, professional orientation and job placements services, in order to grant social inclusion and autonomy of minors.

To sum up, all the procedures and guarantees provided for by L. 47/2017 are inspired by the best interest of the child principle, from which it follows that: minors shall never be pushed back; they cannot be detained and shall be accommodated in reception facilities for minors; they have a right to be heard and treated like a child in all the administrative procedures concerning their status; unaccompanied minor are to be assisted by a guardian, that shall be promptly appointed.

6 In order to ensure uniform application throughout the country of socio-healthcare age assessment methods and the criteria for identifying the specialized figures who must be involved, a Protocol for determining the age of MSNAs was adopted on 9 July 2020 by the Unified State-Regions Conference.

7 One of the consequences is that the migrant is placed in reception centres for children.

8 As a measure of last resort, since 2016 Prefectures may decide to accommodate migrant children (older than 14) in special reception facilities for unaccompanied minors ("CAS minori") while waiting for the availability of places in ordinary centres. Remarkably, there is no time limit for reception in CAS and the centres can host up to 50 minors, in clear contrast with the standards of reception care facilities for minors.

3_Unaccompanied Minors at Italian Border Areas

3_1 Unaccompanied Minors at External Maritime Borders

As a general rule, unaccompanied minors who reach Italy by sea - by independent landings and following to SAR operations - **after disembarkation are moved to the local hotspot**. After being tested to Covid-19, they undergo identification procedures (registration, fingerprint release, etc.) with police authorities and are required to sign a document called "foglio notizie" (information sheet). According to Hotspot Standard Operating Procedures (SOPs)⁹, **the identification of all foreign citizens should be preceded by the legal information provision** concerning asylum, which in the case of unaccompanied minors should be carried out in a child-friendly manner by International Organizations¹⁰.

SAR operations, disembarkation procedures, identification procedures at the hotspot, as well as detention on board quarantine ships and detention centres on land, are all possible avenues for the disclosure of unaccompanied minors as such, and their identification.

However, **the lack of a targeted and child-friendly information provision by International Organizations** - as regards both the rights of unaccompanied minors and right to asylum - **may hinder both the disclosure and the identification of unaccompanied minors**. If not promptly identified as such, **unaccompanied minors can be automatically channelled through asylum or return procedures**, as is the case for adults. As highlighted by several NGOs (including ASGI), the implementation of the so-called Hotspot Approach envisages the classification of migrants between those who are entitled to seek international protection and those who are not.

This may happen - in contrast with the individual nature of the right to asylum - through an informal application of the nationality-based assessment grounded on the "safe country of origin" criterion¹¹. Although, in accordance with the existing legal framework, **identification of unaccompanied minors should take place at the hotspot, in practice this may occur in each of the several spaces crossed by foreign citizens after rescue, hotspots, quarantine ships, as well as reception and detention facilities**. In very rare cases, and depending on the availability of dedicated staff on-board, the first identification of unaccompanied minors may even take place onboard SAR vessels performing rescues.

As part of the hotspot approach, the identification of possible unaccompanied minors should take place during the pre-identification, screening and photo-identification stage.

However, **the preconditions for the individual will to seek international protection** or other elements which may prevent expulsions, such as status as a minor or other specific needs that may emerge, are **the provision of clear information**, its full understanding and the existence of dedicated times and spaces for the disclosure of traumatic experiences. **The absence of these preconditions**, which may be exacerbated by the limited presence of child protection organizations at the hotspot, **may lead to simplified and nationality-based categorization processes**.

In the information provided by the Police Headquarters of Agrigento in relation to the Freedom of Information Act (FOIA) submitted by ASGI and concerning the presence of unaccompanied minors

9 The document adopted by the Ministry of Interior in 2016 can be accessed at: http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf.

10 In particular we refer to International Organizations as UNHCR, IOM, Save the Children.

11 ASGI (2020), Hotspots, Italy, ECRE, AIDA, <https://asylumineurope.org/reports/country/italy/asylum-procedure/access-procedure-and-registration/hotspots/>.

on quarantine ships, reference is made to the “transit” of minors through the Lampedusa hotspot¹². However, the police authority does not specify whether identification and age assessment procedures did take place there. In addition, any information provided concerned the temporary borders of this transit, as well as methods and criteria adopted for initial identification of unaccompanied minors.

Starting from April 2020, and according to an administrative act issued by the Director of the Civil Protection Service (protocol n. 1287 dated 12 April 2020) – which followed the joint ministerial decree of 7 April concerning the partial classification of Italian harbours as unsafe¹³ – **the Italian Government began systematically using private ships to quarantine** foreign citizens arriving in Italy following SAR operations as well as independent disembarkation on Italian shores.

The measure to transfer unaccompanied minors to quarantine ships – which took place at least from April to October 2020 – **raised several critical issues**.

According to information provided by Palermo Juvenile Court, in relation to the Freedom of Information Act (FOIA) request submitted by ASGI concerning the presence of unaccompanied minors on quarantine ships¹⁴, **the identification and age-assessment procedures of unaccompanied minors were not carried out on-board the ships and until 8 October 2020 unaccompanied minors were not reported to the judicial authority** “except at the end of the quarantine and in the context of subsequent transfer to community facilities”, disregarding the rule as per Article 19, item 5 of Italian Legislative Decree 142/2015.

On 21 October 2020¹⁵, the Ministry of the Interior ordered the suspension of transfers of unaccompanied minors to quarantine ships. Despite this, the above-mentioned shortcomings regarding identification and age-assessment procedures at the hotspot, coupled with the limited consideration of possible unaccompanied minors’ self-declarations as such when they are on-board, **saw such transfers still take place**, being possibly followed by unlawful removal procedures and simultaneous detention in detention centres¹⁶.

Further critical issues have been observed concerning the unlawful detention of unaccompanied minors in **hotspots**, quarantine ships and detention facilities.

According to the Italian legal framework, *hotspots* are supposed to host migrants only for identification purposes for limited periods of time and, under no circumstances, minors detention in hotspots is justified, a practice that appears to be a full violation of Article 13 of the Italian Constitution and of the guarantees provided by Article 5 of the European Convention on Human Rights (ECHR)¹⁷.

In addition to the systematic application of **informal detention** measures during identification procedures, this **may take also place in other circumstances** – in particular at Lampedusa hotspot – such as the following stages preceding transfer to other places for health surveillance, reception or administrative detention purposes.

12 The transit of 605 unaccompanied minors was reported. See <https://inimine.asgi.it/wp-content/uploads/2020/12/Risposta-Questura-di-Agrigento-MSNA.pdf>

13 According to the 7 April joint ministerial decree, issued by the Italian Ministries of Interior, Health and Transport, Italian harbours did not meet criteria to be identified as Safe Places for people who were rescued by non-Italian flagged vessels outside Italian territorial waters and in the context of SAR events outside IMRCC coordination.

14 Reply from the Palermo Juvenile Court to ASGI request submitted based on FOIA, accessible at: <https://inimine.asgi.it/wp-content/uploads/2020/12/Risposta-Tribunale-per-i-Minorenni-di-Palermo.pdf>

15 Reply from the Palermo Juvenile Court to ASGI request submitted based on FOIA, accessible at: <https://inimine.asgi.it/wp-content/uploads/2020/12/Risposta-Tribunale-per-i-Minorenni-di-Palermo.pdf>

16 See <https://inimine.asgi.it/ancora-minori-stranieri-non-accompagnati-a-bordo-delle-navi-quarantena/>

17 See <https://inimine.asgi.it/hotspot-italia-rimandata-a-settembre/>

Since 2016, more than 12,000 migrant children have been placed in hotspot facilities in Lampedusa, Messina, Pozzallo, Trapani and Taranto. A total of 1,609 children were placed in hotspots in 2019, including 1,228 unaccompanied and 381 accompanied children¹⁸.

As for 2020, until 15 April 2020, 606 minors were placed in hotspots, including 515 unaccompanied and 91 accompanied minors¹⁹. **This seems to be in contrast with Italian legislation** which, as specified above, envisages that they must be accommodated in “specific government first reception facilities”²⁰.

In particular, **during the first 7 months of the pandemic, unaccompanied minors were also subject to fiduciary isolation or quarantine at hotspots.** In the case of Lampedusa hotspot, unaccompanied minors were kept in social isolation conditions, accommodated in situations of promiscuity with adults, within often inadequate and overcrowded spaces and deprived of their personal liberty. In these circumstances, access by unaccompanied minors to dedicated and appropriate health and psychosocial support was significantly compromised.

Even if transfers of unaccompanied minors to **quarantine ships** were suspended by the Italian Ministry of the Interior in October 2020, **this measure raised several critical issues, including the possible violation of the right to personal freedom.** The circumstances in which foreign nationals - including unaccompanied minors - were transferred and kept on quarantine ships did match many of the essential features of the deprivation of personal liberty, falling within the scope of Article 13 of the Constitution²¹.

Further shortcomings were observed concerning material reception conditions and access to health care on-board the ships. Both migrants and IRC staff members²² reported **situations of promiscuity** of minors with adults, **insufficient availability of medical personnel** and possible **lack of adequate space** for accommodation. These critical issues may result in contacts between people who tested positive and others who tested negative, with relevant consequences in terms of protracted isolation for the latter. **Limited provision of information** concerning purposes, temporary limits of the measure and subsequent procedural steps - including possible repatriation - was also observed, in particular as regards cases of persons transferred from reception facilities on land. **Finally, the possible lack of identification of unaccompanied minors** as such in which, quoting

18 National Ombudsman for detainees, *Report to Parliament 2019*, 26 March 2019, available in Italian at: <https://bit.ly/2GijVoY>, p. 133. In December 2020, ASGI lawyers filed interim measures at ECHR for foreign citizens - amongst which 3 UASC - who were held in the Lampedusa hotspot following the 23 November 2019 shipwreck. On 10 December, the ECHR asked Italy to provide additional information concerning reception conditions in the Lampedusa hotspot. In particular, the ECHR asked for clarifications concerning the adequacy of the facility to host minors, the individual situation of appellants in the facility, on possible protection measures adopted by relevant authorities to ensure them prompt access to a safe and protected environment and concerning the possibility of transferring them to adequate reception facilities, as envisaged by the domestic and international legal framework. ASGI, the EDU Court asked Italy to provide clarifications about the Lampedusa hotspot, 12 December 2019, <https://inlimine.asgi.it/la-corte-edu-chiede-chiarimenti-allitalia-sullhotspot-di-lampedusa/>.

19 National Ombudsman for detainees, *Report to Parliament*, March 2020, p. 205.

20 In 2017, ASGI lawyers filed an appeal to the ECHR against the Italian government for the illegal detention of 14 foreign minors in the Taranto hotspot. The detention had lasted several days in inhuman and degrading conditions. The case is still pending and the Court has requested clarifications from the Italian government regarding illegal practices. ECtHR, *Trawalli and Others v. Italy*, Application No 47287/2017, notified on 11 January 2018, <http://hudoc.echr.coe.int/eng?i=001-180670>. Regarding the Taranto hotspot see also <https://inlimine.asgi.it/visita-allhotspot-di-taranto/>.

21 For more details see <https://inlimine.asgi.it/wp-content/uploads/2021/05/Report-Rights-on-the-skids-The-experiment-of-quarantine-ships-and-main-points-of-criticism-ASGI.pdf>.

22 Information provided by two humanitarian workers of the Red Cross on board a quarantine ship to the media. See Camilli, E. *Navi quarantena, due operatori umanitari raccontano “quel sistema sbagliato che sospende il diritto”*, 24 December 2020, available at https://www.redattosociale.it/article/notiziario/navi_quarantena_due_operatori_umanitari_raccontano_quel_sistema_sbagliato_che_sospende_il_diritto_.

the Italian Ombudsman for detainees “the foreign citizen is basically precluded from having correct personal data reported on the entry information sheet [foglio notizie]”²³, **may easily lead to unlawful deprivation of liberty in detention facilities**, and delayed disclosure/age assessment (e.g., reference is made to Ponte Galeria, Bari, Trapani-Milo and Gradisca d’Isonzo detention facilities). **ASGI documented cases in which the detention of self-declared unaccompanied minors was validated** by a Justice of the Peace who ordered their detention to take place within supposedly dedicated areas. Even if according to Law 47/2017, the only Authority that can order the age assessment - only if founded doubts on the minor’s age do exist - is the Public Prosecutor’s Office at the Juvenile Court, **in those cases it was ordered by the Public Security Authority** without the involvement of the Juvenile Court, in full violation of the pertinent legal framework which disposes the immediate end of detention in those cases, to be followed by the prompt transfer of the assumed minor to a suitable centre.

Even when the age assessment is ordered by the competent judicial authority, in the meantime and in violation of the law, the assumed minors remain in detention for a variable period of time, being illegally deprived of their personal freedom.

3_2 Unaccompanied Minors at the Maritime Internal Border with Greece

Although the borders of Adriatic ports are usually not given much media attention, arrivals via the Adriatic route have increased in the last few years due to the critical conditions in the Greek system, as well as all countries on the Balkan route. The monitoring initiatives promoted by various NGOs, including ASGI, have revealed a **significant number of pushbacks carried out by Italian authorities in Adriatic ports**, both to the Greek ports of Patras and Igoumenitsa and to Albania and Croatia. Some testimonies also report pushbacks to Montenegro.

Through Freedom of Information Act (FOIA) requests sent to public administrations, the above-mentioned NGOs belonging to the Adriatic Ports network were informed about the following readmissions or pushbacks carried out from 1 January 2020 to 15 April 2020 (a short period of time): 311 refoulements at the Bari maritime border, 53 at the Brindisi maritime border, 17 at the Venice maritime border and 13 at the Ancona maritime border.

According to Ministry of the Interior data, published recently by Altreconomia magazine, **from 1 January to 15 November 2020 there were 892 pushbacks of foreign citizens from Adriatic ports and 201 active readmissions**²⁴.

For readmissions to Greece, Italy takes as the legal basis of this practice - as for other internal borders - the 1999 bilateral readmission agreement with Greece, which came into force in 2001. In accordance with this agreement, Italian authorities can carry out forced returns to Greece of undocumented individuals arriving at Italian Adriatic ports. There are several profiles of illegitimacy in this agreement, **which also affects asylum seekers and unaccompanied minors**.

Observations and reports highlighted that most returns from Adriatic ports to Greece take place **under informal procedures**: practice shows that migrating people are indiscriminately rejected once intercepted on a ferry or on their arrival, **without properly assessing their individual situation** (e.g. unaccompanied children, vulnerability assessment, potential victim of trafficking)

23 National Ombudsman for detainees, Report of visits to Repatriation Accommodation Centres (CPR) (2019-2020), pp. 37-39, Available at <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/b7b0081e622c62151026ac0c1d88b62c.pdf>.

24 See: <https://altreconomia.it/respingimenti-e-riammissioni-via-mare-la-denuncia-del-network-porti-adriatici/>.

or their will to apply for asylum. The lack of individual assessment implies the risk of serious violation of the rights of unaccompanied minors, which must be granted with specific guarantees. Moreover, access to legal assistance and language mediation appear not to be systematically provided in clear violation of EU law. The European Court of Human rights case *Sharifi and others vs. Italy and Greece* ruled that European Union Member States cannot ignore or circumvent their obligations under the ECHR when implementing bilateral agreements relating to the return of asylum-seekers to another EU country. Furthermore, Italy was found to have unlawfully carried out collective expulsions of asylum seekers to an 'unsafe' country, given the serious structural deficiencies in the Greek asylum system, breaching three provisions of the ECHR (prohibition of collective expulsions, prohibition of inhuman or degrading treatment and the right to an effective remedy). As a direct consequence, in early 2020 the Committee of Ministers of the Council of Europe **rejected the request made by the Italian Government to close the supervision processes initiated following the *Sharifi* ruling**²⁵.

Throughout 2020, another interesting trend has been reported in the media: pullbacks to Italy carried out by the Hellenic Coast Guard at sea in response to the need to manage arrivals from Turkey²⁶. From data for civic accesses and from direct experience, it is evident that pushbacks and readmissions from Adriatic ports are increasing. Although there is no specific reference to unaccompanied minors, monitoring action, reports received by the Adriatic Sea Network and **testimonies collected both in Italy and in Greece by associations all confirm that pushbacks also involve unaccompanied minors.**

During 2020 and early 2021, NGOs received a significant number of reports of asylum seekers, including minors, who were prevented from being protected and granted protection under existing legislation, being turned away at Adriatic ports.

There are numerous cases. By way of a few examples, in December 2020 an unaccompanied Afghan minor asked for help after arriving at the port of Bari to avoid being readmitted to Greece despite having declared his age. **There was no contact with the border crossing service or a mediator.** On 14 August 2020, at the port of Brindisi, it was possible to prevent the "readmission" to Greece of a 15-year-old Afghan boy tracked down while he was hiding in a car. He claimed to be a minor, and showed a Greek document confirming his age. **The boy stated he was detained in a room inside the port and could not speak to anyone who spoke his language or English.**

Only after several hours in the transit area, he was taken to hospital for a swab and placed in a reception facility. In 2020, the testimonies recorded by the No Name Kitchen regarding readmissions to Greece from Italian Adriatic maritime borders were published by the Border Violence Monitoring Network²⁷. The NGO recorded the readmissions to Greece of many Afghans, including two unaccompanied minors, from Bari maritime border between October and November 2020; one minor, from Venice maritime border between September and October, and one in February 2020; one unaccompanied minor from Ancona maritime border in October 2020 and one in April 2020. On 29 May 2021, an unaccompanied minor was readmitted to Greece from the Brindisi maritime border and detained on arrival at the Greek port.

According to information collected by the NGOs, **rejections and readmissions take place in most cases through completely informal procedures**, without guaranteeing any legal information. The procedures are carried out without any of the protections envisaged for minors,

25 See: <https://www.asgi.it/notizie/respingimenti-italia-indagine-caso-sharifi/>.

26 See: <https://www.ekathimerini.com/news/256628/human-smugglers-shifting-route-from-greece-to-italy/>.

27 See: Border Violence Monitoring Network, "The Black Book of Pushbacks", p. 26 and following, accessible at: <https://www.borderviolence.eu/wp-content/uploads/September-2020-BVMN-Monthly-Report.pdf>.

without the presence of specialised operators, without the presence of a linguistic-cultural mediator who can ensure full awareness of what is happening and also to translate the exact date of birth in the presence of calendars with different dates (such as Afghan minors). **There are also many testimonies of detention on-board ships during pushbacks, use of force and degrading treatment** even in the case of unaccompanied minors. Very often, following readmissions to Greece, **minors are also detained in facilities together with adults.**

3_3 Unaccompanied Minors at the Internal Land Border with Slovenia

The border between Italy and Slovenia is a key entry area for migrants travelling the Balkan route to northern countries. Indeed, Italy is mainly perceived by migrating people as a transit country²⁸. In order to achieve an exhaustive picture of the condition of minors at the Italian-Slovenian border, one has to know the **context of application of the readmission agreements**. In 2020, **cases of readmissions** to Slovenia from Trieste and Gorizia – and more widely from the borders of Friuli Venezia Giulia region – **were massively implemented**²⁹ without any formal procedure or decision. In the Italian legislative system, local readmissions found their legal basis on the Readmission Agreement signed by the Italian and Slovenian Governments in 1996. Although this agreement is widely used and has political content, it has never been ratified by the Italian Parliament, contrary to Article 80 of Italian Constitution. **The systematic use of the agreement was confirmed** last 24 July when **the Ministry of the Interior**, responding with a written note to the urgent question presented by the Member of Parliament Riccardo Magi on the situation of the “informal readmissions” of foreign citizens at the Italian-Slovenian land border, **confirmed that these readmissions take place without formal provisions and** – above all – stated that readmissions against foreign citizens **are applied “even if the intention to claim international protection is expressed”** and that “if the conditions for the readmission request are met [...], the applicant is not sent to the responsible *Questura* [Police Headquarters] for the formalization of the asylum request”³⁰. A few months later – on 13 January 2021 – the Italian Minister of the Interior, in response to a second parliamentary request, stated that in the previous year **1,301 people were readmitted to Slovenia**³¹. Even though this procedure should not involve families and vulnerable people, **readmissions were also carried out against those who declared themselves to be minors at the border**, as reported by the network *Tavolo Minori Migranti*³². This practice has been legitimised by **two directives on the age assessment of minors sent by the Public Prosecutor to the attention of the Juvenile Court of Trieste** on 31 August and 21 December 2020. Contrary to the guarantees enshrined in Law 47/2017, these guidelines authorize security forces to carry out an age assessment of

28 Refugee Right Europe – Endpushback Campaign: “Pushbacks and rights violations at Europe’s borders – The state of play in 2020”, pp. 23-24.

29 See The New Humanitarian, “Europe’s chain of migrant expulsion, from Italy to Bosnia”, available at: <https://www.thenewhumanitarian.org/news-feature/2020/11/17/europe-italy-bosnia-slovenia-migration-pushbacks-expulsion> 17 November 2020.

30 See: <https://en.asgi.it/informal-readmissions-balkan-route-asgi-letter-government-unhcr/>

31 See intervention in Parliament by the Minister of the Interior, Lamorgese, minute 3:00, available at: <https://bit.ly/3tzqLgH>.

32 “Tavolo Minori Migranti” is a network coordinated by Save the Children, to which belong also AiBi, Amnesty International, ASGI, Caritas Italiana, Centro Astalli, CeSpi, CIR, CNCA, Defence for Children, Emergency, Intersos, Oxfam, Salesiani per il Sociale, SOS Villaggi dei bambini and Terre des Hommes. It was founded after the approval of Law 47/2017 with the aim at monitoring its full implementation regarding the effective defence of minors.

persons intercepted at the Italy-Slovenia border with a **de visu evaluation**: police can consider migrants as adults if there are no apparent doubts about the age of consent of the concerned person, regardless of the declaration of minor age and the consequent judicial review required by law. These directives assign a **discretionary power** to the Public Security authority in identifying the age of migrants and refugees subjected to border controls. A practice which is contrary to the provisions of Law 47/2017, which states that age assessment must be carried out taking into account identity documents and, if necessary, following a psychological and social examinations - through a multidisciplinary procedure - as part of a proceeding under the jurisdiction of the Juvenile Court³³. According to some media reports, **many unaccompanied children**³⁴, currently based in Bosnia-Herzegovina without any formal protection or accommodation facility, **went through this procedure once in Italy**: they have not only been informally readmitted to Slovenia and then pushed back from Croatia to Bosnia³⁵, but also informally considered adults without receiving any report regarding the denial of the minor age.

With regard to **detention**, the Guarantor for the rights of detained persons, who visited the border premises of the border police of Trieste and Gorizia in December 2020, reported **critical issues related to the procedure for the age assessment of minors**, still in “non application” of the provisions enshrined in Law 47/2017³⁶.

This unlawful application of the Italian provisions **has obvious consequences even in the field of reception of minors**. As reported by ASGI³⁷, three foreign citizens who declared themselves as minors were placed in the Government first reception centres (CARA) Centre at Gradisca from October 2020 to January 2021, sharing premises with adults, because of a lack of an age assessment procedure: in the identification reports, which expressly mention the minor age claimed by the migrants, **police, referring to the above-mentioned directives, assigned a conventional date of birth aimed at proving they had reached the age of consent** (as happens along other border areas)³⁸. UNHCR and the Children’s Ombudsman recommended the authorities involved to proceed with age assessment only when there is a well-founded doubt about the minor age, based on an individual and objective evaluation. **In 2020, in at least four cases, the Juvenile Court of Trieste ordered the fulfilment of the procedure for the age assessment of the persons involved**. This has been the outcome of an appeal lodged by minors who had been identified as adults with the result of being placed in adult facilities. The Court recognized the illegitimacy of the procedure and sent the procedural documents to the attention of the local Juvenile Prosecutor’s office.

33 See Ansa, Migranti: 12 associazioni contestano Procura Minori Trieste, 10 February 2021, available at <https://bit.ly/3uBXblw>; see also ASGI, “Accertamento dell’età, due direttive della Procura della Repubblica per i minori di Trieste in contrasto con la legge”, available at: <https://bit.ly/3hha0nL>, 10 February 2021 and “Nascosti in piena vista. Minori migranti in viaggio (attra)verso l’Europa”, Save the Children, available at <https://s3.savethechildren.it/public/files/uploads/pubblicazioni/nascosti-piena-vista.pdf>

34 Il Corriere della Sera», *A Bihac, la guerra nella neve ai fantasmi che l’Italia respinge*, 23 January 2021; «La Repubblica», *I ragazzi nel gelo di Lipa dopo i respingimenti: “L’Italia ci apra i confini”*, 30 January 2021, available at: <https://www.corriere.it/esteri/migranti-bihac-bosnia-game-over-dell-europa/index.shtml> <https://ricerca.repubblica.it/repubblica/archivio/repubblica/2021/01/30/i-ragazzi-nel-gelo-di-lipa-dopo-i-respingimenti-litalia-confini20.html>

35 See also Pushback report on children and unaccompanied children in Croatia, https://www.cms.hr/system/article_document/doc/647/Pushback_report_on_children_and_unaccompanied_children_in_Croatia.pdf

36 Guarantor for the rights of detained persons, report of 18 December 2020, available in Italian at: <https://bit.ly/3tCXNwr>.

37 See letter sent by twelve associations including ASGI, at <https://www.asgi.it/notizie/trieste-minori-eta/>.

38 In mid-January 2021, after a legal intervention with the support of ASGI, the three minors were transferred to facilities for unaccompanied minors.

3_4 Unaccompanied Minors at the Internal Land Border with France

Since 13 November 2015, France has **reintroduced border controls** in accordance with Article 25 of the Schengen Code³⁹. Notwithstanding the provision of Article 25 para. 4, border controls have been prolonged by the French government until now⁴⁰. An intensification of controls had been seen since the previous summer⁴¹: a **'temporary detention centre'** was established in June 2015 in the PAF (Police aux Frontières) station in Menton, consisting of **containers** in which people found while crossing into France are still held in places of *de facto* detention while waiting for a decision over refoulement⁴². Minors do not escape this fate, since **detention and pushback operations also regularly involve children**. According to reports by civil society groups⁴³, pushbacks of unaccompanied children which take place at the border often involve authorities **changing the date of birth on the 'Refus d'entrée' documents of minors** to identify them instead as adults⁴⁴. These incidents also could involve the confiscation of birth certificates, and inadequate age assessments based solely on appearance⁴⁵. According to several reports, people are locked up in a space made up of metal containers as well as a closed off courtyard until they are pushed back into Italy. The process can take anything from a few minutes to 24 hours.

The material conditions of the containers are described as absolutely undignified and no legal assistance⁴⁶ or translation support is provided. No possibility of social distancing suggested by Covid 19 public health guidance can be offered. In the above-mentioned context, it is evident that there is a high risk of **lack of access to international protection**, as highlighted in various reports. Since unaccompanied minors are often identified as adults, this implies that they are systematically placed in containers shared with adults.

In the case of pushbacks, the rejection procedure is completed after the issue of a "refus

39 Suspension actually requested until 31 October 2021.

40 In 2017 the [Conseil d'Etat](#) ruled on the proportionality of the reintroduction of internal border controls. The Conseil d'Etat that this decision is proportionate to the seriousness of the threat and rejected all the critics about the duration of the measures without referring a question to the Court of Justice of EU;

41 Amnesty International - La Cimade - Anafé, "Les manquements des autorités françaises aux devoirs élémentaires de respecter, protéger et mettre en œuvre les droits de mineur.e.s isolé.e.s étranger.e.s en danger", October 2020.

42 The Administrative Court of Nice found that, even in the absence of a specific legal basis, detention was permissible for a period not exceeding 4 hours, after which the police would be required to transfer the individuals concerned to a waiting zone, in this case the zone of Nice Airport. This interpretation was upheld by the [Council of State on 5 July 2017](#).

43 Refugee Rights Europe "Pushbacks and Rights Violations at Europe's Borders", November 2020; Human Rights Watch "France: La police refoule des enfants migrants", 5 May 2021.

44 Human Rights Watch "France: La police refoule des enfants migrants", 5 May 2021; Anafé, *Persona non grata - Conséquences des politiques sécuritaires et migratoires à la frontière franco-italienne*, Rapport d'observations 2017-2018, February 2019; Human Rights Watch, "Ça dépend de leur humeur" - Traitement des enfants migrants non accompagnés dans les Hautes-Alpes", 5 September 2019; Intersos, "Unaccompanied and separated children along Italy's northern borders", 2017.

45 Article L. 213-2 and following of *Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA) state that "any refusal of entry into France is the subject of a reasoned written decision taken, except in the case of an application for asylum, by an official in a category determined by regulation. [...] Special attention is given to vulnerable persons, especially minors, whether accompanied by an adult or not."

46 Conseil d'Etat on [23 April 2021](#) claimed in the decision that conditions of detention in the prefabricated units were "likely to undermine human dignity" but refused to order the closure of shelter facilities at the border police (PAF) stations in Menton and Montgenèvre.

d'entrée" and the order to cross the bridge (or the crossing point) where people on the move are intercepted by the Italian authorities who issue a provision (expulsion decree) or invite them to proceed on foot to the city of Ventimiglia⁴⁷. If third-country nationals are intercepted in border areas - but not in proximity of the border crossing points as listed and communicated to the European Commission - **they are informally readmitted** without any written provision. Serious concerns arise from testimonies reported by local organizations regarding the **lack of immediate communication of the presence of minors to the Juvenile Court Public Prosecution** from the public authority once minors are pushed back from France. This behaviour implies that both **no guardian can be appointed** and **no reception measures can be provided** as established by the Italian law⁴⁸. In many cases, only the intervention of a civil society organization was able to respond to the shortcomings of public authorities. Furthermore, as reported by NGO operators at the border, the Italian police no longer collaborate to facilitate the practice of requesting the taking back unaccompanied minors identified as such. This practice, after the identification, requires minors to be handed over to French police, guaranteeing the minor's right not to be refouled. Pushbacks, combined with the lack of reception conditions on the Italian side of the border, have caused congestion and a **humanitarian crisis in Ventimiglia** and other border points. Ventimiglia specifically came to a critical situation with the government decision to halt all new entries to '**Campo Roya**' due to the Covid-19 outbreak in March 2020. This transit reception camp **was fully closed down in August 2020**⁴⁹. Since then, **people deprived of any kind of reception facilities are subjected to inhuman conditions** characterized by a lack of basic sanitary facilities, a lack of drinking water, and virtually no access to health care, which is of course particularly dangerous during the ongoing pandemic. This means that all displaced people are still forced to sleep on the street or under the bridges, with a negative impact on the resident population⁵⁰. Local authorities are unable to reach an agreement to deal with the lack of a structured reception system, **leaving civil society organizations to take up the burden of identifying temporary solutions, including those for minors**. Only few places in shelters are available today for unaccompanied minors in apartments provided by the Diaconia Valdese association in accordance with "informal" agreements between the association and Ventimiglia Local Council. The conditions of migrating people in the border area have even worsened amid the **implementation of mixed Italian-French patrols** to operate along the border of Ventimiglia according to the provisions of bilateral police cooperation agreements based on the 1997 Chambéry agreements⁵¹. Over the last few weeks, favourable weather conditions have seen more and more migrating people reach the area, causing a very complex situation to handle, especially given the lack of implementation of basic public services. **Tough conditions for migrants take place as well on the Alps**. With the Italian-French border largely closed, young individuals often take more dangerous routes, through the Alps, motorway tunnels and other risky roads - **sometimes ending in tragic fatalities**. Last but not least,

47 ASGI, *La situazione al confine tra Italia e Francia: effetti della pandemia e tendenze consolidate*, available in Italian at: <https://bit.ly/2RDIdb9>, 22 February 2021.

48 Legislative Decree 142/2015, Article 18, 19, 19 bis as amended by Law 47/2017.

49 See: <https://www.primocanale.it/notizie/migranti-campo-roja-chiude-rischio-per-ventimiglia-come-nel-2016--221711.html>.

50 See: https://www.corriere.it/cronache/21_maggio_24/fu-picchiato-strada-ventimiglia-migrante-si-uccide-1b57c760-bc5c-11eb-abb7-46b8b952d96c.shtml.

51 Riviera time, "Una 'squadra mista' italo-francese: parte da Ventimiglia il progetto pilota della Polizia di Frontiera", available at: <https://bit.ly/3bd9bbM>, 21 December 2020.

detention-like conditions and violence by the police on the French side have been reported⁵². On 23 March, Italian authorities intervened in order to **evacuate the Refuge Chez Oulx**, which consisted of a carriage house occupied by grassroots volunteers providing reception to exiled persons. Many minors were reported to be temporarily hosted in the facility and subsequently have been displaced. Currently, accommodation facilities are definitely insufficient to respond to needs⁵³.

4_EU Pact on Asylum and Migration and related reforms, and their impact on unaccompanied minors

On 23 September, the European Commission presented the New Pact on Asylum and Immigration, declaring its intention to mark a 'new beginning' in migration policies. Together with the Pact, the Commission presented a comprehensive package of reforms⁵⁴.

In addition to these reforms, which contain several provisions that could have a **significantly negative impact on unaccompanied minors**, the Commission highlighted the importance of continuing the reform plan already launched in 2016 concerning the Qualification Directive, the Reception Conditions Directive and especially the Directive 115/2008/EC, better known as the **Return Directive**. Directive 115/2008/EC contains provisions on both expulsion and detention of minors and unaccompanied minors that are not directly affected by the recast proposals. However, the conditions of unaccompanied minors present in Member States which, unlike Italy, provide for the removal and detention of minors, could significantly worsen as a result of other proposals for amendment, primarily that relating to the border procedure. In Italy, the negative effects of these proposed amendments could be indirectly due to **wrong identification of minors as adults**. Moreover, unaccompanied minors could be victims of serious violations as a result of **readmission to Member States** such as Greece, where the detention of unaccompanied minors is not expressly prohibited by national law and where, also given the lack of reception places, the detention of minors is a widespread practice.

The following analysis focuses on the negative effects that the reform proposals presented in September 2020 by the Commission could have on unaccompanied minors.

4_1 Proposal for a Pre-screening Regulation

The pre-screening proposal, which would also apply to persons rescued at sea irrespective of the expression of willingness to seek international protection, has several critical aspects.

In particular: the provision concerning the **non-authorisation to enter the territory of the Member State** and the **generalised risk of detention at the border**⁵⁵.

According to the proposal, the procedure could, however, also be applied to foreign nationals found

52 MEDU - Medici per i Diritti Umani, "Rapporto sulla situazione umanitaria dei migranti in transito lungo la frontiera nord-ovest tra Italia e Francia", October 2020.

53 See: <https://mediciperidirittiumani.org/lo-sgombero-di-oulx-e-adesso/>.

54 Joint Statement: The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded.

55 ASGI, Proposta di regolamento sugli accertamenti nei confronti dei cittadini di Paesi Terzi - Osservazioni e proposte.

by the police in the territory of the Member State if they crossed the border irregularly. In this case, the screening would not take place on the border, but anywhere within the territory. During the screening process, the authorities would collect, through the compilation of a specific summary form, the information needed to direct foreign citizens towards removal or asylum procedures.

Minors and unaccompanied minors are not excluded from these procedures and the safeguards provided appear to be weak and insufficient.

The proposal includes the need for Member States to involve child protection authorities (recital 21, Article 6, Article 9) and for information to be given in an age appropriate manner (recital 27) but the formulation of the provisions does not seem to introduce effective obligations. In addition, **there is no provision for legal assistance or the appointment of a guardian.** This means that during a critical phase such as pre-entry screening, unaccompanied minors would be left without safeguards and adequate protection. Moreover, the proposal does not contain any reference to the *benefit of doubt* in the event of uncertainty regarding the minor's age.

The risk of systematic and generalised detention of all migrants during the entire pre-entry screening (up to ten days) and the provision for not authorising entry into the territory of the State during pre-screening procedures (Article 4) is against both international and national standards concerning minors⁵⁶.

Italian law prohibits the expulsion, refoulement at the border and detention of minors and unaccompanied minors: therefore, **the provisions of the proposal are incompatible not only with principles such as the best interests of the child, but also with provisions currently in force in the domestic legal system.**

In its General Comment n. 6, the Committee on The Right of The Child⁵⁷ stated some important principals including the followings:

- “State obligations under the Convention on the Rights of the Child apply to each child within the State’s territory and to all children subject to its jurisdiction (art. 2). These State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State’s territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State. Moreover, State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State’s jurisdiction while attempting to enter the country’s territory. Therefore, the enjoyment of rights stipulated in the Convention are not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness”;
“In affording proper treatment of unaccompanied or separated children, States must fully respect non-refoulement obligations deriving from international human rights, humanitarian and refugee law and, in particular, must respect obligations codified in article 33 of the 1951 Refugee Convention and in article 3 of the CAT”.
- “In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained”.
- “Asylum-seeking children, including those who are unaccompanied or separated, shall enjoy access to asylum procedures and other complementary mechanisms providing international protection, irrespective of their age. (...) Unaccompanied or separated children for whom

56 PICUM Recommendations on safeguarding children’s rights in the migration and asylum pact proposals.

57 Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, <https://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

there is no indication of being in need of international protection should not automatically, or otherwise, be referred to asylum procedures, but shall be protected pursuant to other relevant child protection mechanisms such as those provided under youth welfare legislation.

In general, the rights of all migrants, including unaccompanied minors, would be severely restricted and the risk of arbitrary exclusion from the asylum procedure on the basis of nationality would increase, as is already the case in Italian hotspots.

Although even in the current situation, in the Italian context, screening procedures are performed similar to those envisaged by the proposed new regulations, the disposition in Article 4, as already mentioned, defines that during pre-screening procedures persons are not authorized to enter national territory. This runs the risk of creating an even larger void as regards protection. In this context, the independent monitoring mechanism which, pursuant to Article 7 of the proposal, all States should ratify, could be vital – if properly implemented – for ensuring full respect of fundamental rights and the best interests of minors.

4_2 Proposal for a Regulation on Asylum and Migration Management

This proposal aims to replace the current Dublin Regulation and relaunches the reform of the Common European Asylum System (CEAS). The new approach to migration management also includes provisions to strengthen the return of irregular migrants and provides for a “new solidarity mechanism.”

The proposed regulation contains specific assurances for minors and unaccompanied minors with regard to the personal interview (Article 12), the appointment of a guardian and the procedures for transfer (Article 13), but also provisions that could contribute to worsening the situation of unaccompanied minors.

Generally speaking, it can be pointed out that the proposed Regulation does not overcome the main problems of the so-called “Dublin System”, which, as we know, is based on the criterion of the country of first entry as the most widely used criterion for determining responsibility.

The criterion of the country of first entry is not only strengthened, through several provisions, but also extended to unaccompanied foreign minors, who would have the duty to prove that the rule is not in their best interest. Article 15 of the proposal envisages in fact that “in the absence of a family member or relative, the Member State responsible shall be that where the unaccompanied minor’s application for international protection was first registered, unless it is demonstrated that this is not in the best interests of the minor.”

Recital n. 48 of the proposal highlights that this provision is aimed at dissuading secondary movements by unaccompanied minors. The monitoring on internal borders leads to the conclusion that **this provision will seriously harm unaccompanied minors willing to continue their plans to reach other European countries, exposing themselves to the risk of future transfers.**

Article 13, para. 5 provides that, before transferring an unaccompanied minor, the transferring Member State shall make sure that the Member State responsible or the Member State of relocation implements the measures referred to in the Reception Conditions Directive and Asylum Procedure Regulation without delay and that any decision to transfer an unaccompanied minor shall be preceded by an assessment of his/her best interests. Although this provision is to be welcomed, experience since the ruling of the European Court of Human Rights in *Tarakhel v. Switzerland*⁵⁸ has shown that the guarantees offered by States in the transfer procedure are often only formal.

58 Grand Chamber, Case of *Tarakhel v. Switzerland*, Application n. 29217/2012, Judgment 4 november 2012.

Article 29 defines the terms of the request for assuming responsibility. It envisages that if the applicant is an unaccompanied minor, the Member State that initiated the determination procedure may, if it considers it to be in the best interests of the child, continue the determination procedure of the competent Member State and ask another Member State to take care of the applicant despite the expiry of the deadlines it has set. **This requirement could bring about benefits for minors but may also be counter-productive**, given the risk of uncertainty over the times needed to determine the competent Member State.

As regards the solidarity mechanisms envisaged by the proposed regulation, unaccompanied minors, like adults, may be involved in relocation procedures. In general, however, **the solidarity mechanisms envisaged in the event of landings following search and rescue operations are unclear as regards the conditions of application** (Articles 45 and 47) and **are mainly based on voluntary contributions**, with the consequence that the main burden of examining applications for protection of individuals will continue to fall largely on border states, especially Italy, Spain and Greece. The relocation mechanism also involves several critical aspects, first of all the fact that the requirement always to take into account the best interests of the child in relocation procedures is not clearly mentioned.

Moreover, as regards the application of the criteria of competence, it is envisaged that the country of relocation will examine these criteria and, therefore, determine the competent State for examining the application. **The consequence is the risk, even for minors, of an unjustified double transfer of an asylum seeker involved in this procedure.**

In addition, the contents of the right to information and defence for asylum seekers in the context of redistribution procedures are not clear. Nor is it clear whether and how asylum seekers are detained during the redistribution procedures, with the risk of evident restrictions of personal freedom for people affected by relocation.

In relation to the repatriation sponsorship system, there are no express exceptions for minors and unaccompanied minors, with the risk that they may be subject to these procedures themselves. Although the Italian legal system envisages the prohibition of refoulement and expulsion of minors, the dispositions of this system generate many concerns given both the greater risks arising from incorrect age assessment procedures and the timing of procedures, especially with reference to foreign citizens who arrive close to reaching the age of majority.

4_3 Proposal for an Asylum Procedures Regulation

The proposal intends to launch a “truly common procedure for international protection which is efficient, fair and balanced”, to limit “elements of discretion” and to achieve “a higher degree of harmonisation.” However, the practical effects of the Dublin Regulation highlight that relevant differences in European Countries still persist. In this context, some of the rules which will be examined are not only critical in their literal meaning, but will have an even more dangerous impact on the Italian system. With regard to unaccompanied minors, the regulation proposal introduced by the Commission in 2020 - in line with the 2016 proposal - contains specific rules for minors and others which also seem to be applicable to them.

To this effect, for example, **Article 7, as regards rights and obligations for asylum seekers, does not differentiate the condition of minors**, even when it envisages that in case of a lack of collaboration (denial to provide information or to be identified with biometric data collection) the effect could be that “his or her application shall be rejected as abandoned in accordance with the procedure referred to in Article 39.”

Similarly, **the articles related to the inadmissibility of the asylum application (Article 36) and the implicit withdrawal of the application (Article 39) seem to be applicable even to unaccompanied minors.**

The proposal also envisages specific provision for applicants in need of special procedural guarantees and for unaccompanied minors. However, these provisions could be inadequate and insufficient given the factual situations that could take place in ports of disembarkation or detention centres, especially in the event of mass arrivals.

Article 22 of the proposal envisages that competent authorities shall, as soon as possible and no later than five working days from the moment when an unaccompanied minor makes an application, appoint a person or an organisation as a guardian. However, according to the Italian situation, the timing to appoint guardians is definitely much longer. Delays could have negative effects even in relation to the asylum procedure. Indeed, Article 32 envisages that in the case of an unaccompanied minor, the ten working-day period for lodging the application provided for in Article 28(1) *shall only commence from the moment a guardian of the unaccompanied minor is appointed and has met him or her*. Where his or her guardian does not lodge an application on behalf of the unaccompanied minor within those ten working days, the determining authority shall lodge an application on behalf of the unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, it is of the opinion that the minor *may need international protection*. Serious concerns also arise from the content of Article 24 with regard to the medical examination that could be performed in order to assess the age of the minor if there are doubts as to whether or not the applicant is under the age of 18. The formulation of the article could lead to different practices that seem to be less effective in terms of protecting minors and their rights.

In comparison to the 2016 proposal, the new text introduces a possible new accelerated procedure for unaccompanied minors. In particular, Article 40 states that the accelerated examination procedure may be applied to unaccompanied minors only where:

- (a) the applicant comes from a third country considered to be a safe country of origin in accordance with the conditions defined in Article 47;
- (b) the applicant may for serious reasons be considered as a danger to national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law;
- (c) the applicant is of a nationality or, in the case of stateless persons, a former habitual residence of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower, unless a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or the applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs.

With regard to the border procedure (new Article 41, para. 5), this could take place as well for unaccompanied minors and for minors below the age of 12⁵⁹ when accompanied only if (Article 41, para. 5b) the applicant can, for serious reasons, be considered a threat to national security and public policy of the Member State, or the applicant has been expelled with executive effect for national security reasons or public policy in the light of its internal law.

The possibility envisaged by the proposed directive to arrange the detention of minors and

59 In *TQ v Staatssecretaris van Justitie en Veiligheid*, the CJEU found that member states may not distinguish between children solely on the basis of their age (see: [PICUM Recommendations on safeguarding children's rights in the migration and asylum pact proposals](#)).

unaccompanied minors for up to 24 weeks seems to be in contrast with a number of provisions in internal and international law, as well as with the principle of the best interests of minors which cannot be sacrificed because of the need for migration control.

Article 44 states that the concept of “first country of asylum” can be applied to unaccompanied minors only where the authorities of Member States have first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by those authorities and that he or she shall immediately benefit from one of the forms of protection referred to in paragraph 1. The following Article 45 envisages that the concept of safe third country may only be applied to unaccompanied minors where the authorities of the Member States have first received from the authorities of the third country in question confirmation that the unaccompanied minor shall be taken in charge by those authorities and that he or she shall immediately have access to one of the forms of protection referred to in paragraph 1 e).

The critical aspects of these provisions are quite evident; on a par with what is stated as regards the assurances that must be provided during the transfer stage, even in this case the risk is that the assessment made by third-country authorities concerning the possibility of taking minors in charge and offering them appropriate protection is an entirely formal assessment, i.e. devoid of effectiveness and with the consequence of exposing minors to the danger of being sent back to unsafe countries.

4_4 Proposed Regulation to Address Situations of Crisis and Force Majeure in the Migration and Asylum Field

The European Commission Com(2020)613 proposes to adopt a Regulation to face situations of crisis and force majeure in migration and asylum. The purpose of the Commission is to manage unpredictable events that could significantly affect the management of migration in the common European space and to avoid the implementation of ad hoc responses. The regulation would apply in three circumstances: (i) *crisis*, (ii) risk of an imminent *crisis* and (iii) *force majeure*. The proposal introduces derogations to the general System in these three circumstances, that may allow States to:

- extend the asylum applications registration time;
- expand the scope of border procedures in the analysis of asylum applications;
- multiply the circumstances under which it will be possible to detain foreign nationals at the border and extend the maximum terms for detention.

In other words, if the proposal were to be accepted, crisis situations would be managed mainly at the border thanks to the extension either of the detention regime and the use of accelerated procedures for asylum applications, with restrictions of guarantees.

The Commission argues that “the rights of the child are protected in the proposal by excluding minors from the asylum crisis management procedure except in very limited circumstances, namely in cases where they would represent a danger to the national security or public order of the Member State concerned.” However, **there are further exceptions from which children are not excluded and which may lead to limitations of their rights**. In fact, minors are excluded from the exemptions provided for in this Proposal to the same extent as they are excluded from the procedure of examining the application at the border (in relation to the time extension of the border procedure). **However, they are not excluded from the derogation concerning the extension - up to four weeks - of the deadline for registering the asylum application**. In fact, in a situation of risk - or imminent risk of crisis - Member States could delay the registration of the application for

asylum for a period of four weeks. Despite the fact that the rights of asylum seekers should not be affected by delayed registration, there is the risk that this proposal hampers access to their rights. The delayed registration could create a barrier for asylum seekers who have to prove their status to obtain access to their rights: the right to hospitality, protection from pushbacks and other rights connected to the status of asylum seeker would be limited. The dangerous consequences of this delay in registering applications could have an even greater impact on children and their right to access places and procedures appropriate to their age and condition.

4_5 Conclusions

This analysis of the impact that the proposals linked with the Pact would have on the situation of minors allows us to highlight two main critical aspects.

On the one hand, some of the innovations included in the new proposals would be poses several problems with regard to the principle of the best interest of the child and would **contrast with International law, in particular with the following provision of the United Nations Convention on the Rights of the Child:** article 2 (non discrimination), article 3 (best interests of the child), article 6 (right of life, survival and development), article 12 (right of the child to express his or her views freely), article 18 (appointment of a guardian or adviser and legal representative), article 20 (care and accommodation arrangements), article 22 (refugee children), article 24 (right of health), article 27 (right to an adequate standard of living), article 37 (inhumane treatment and detention). Moreover, the proposals would be in contrast with Italian law which, as a general rule, prohibits the expulsion and detention of minors. The prohibition of entry is also in contrast with the rule whereby minors should be accommodated in first reception centres.

On the other hand, the Proposals leave broad margins of discretion to Member States, for instance with regard to the appointment of guardians, which is not prescribed as mandatory during the screening procedure. This might allow the consolidation of Italian practices in contrast with the rights of minors and their best interests: as already seen, one of the main obstacles standing between minors and their right to safeguards and protection is their timely identification as minors. While the Pact says nothing about the methods for identifying minors and the procedural assurances that must accompany the procedure, States - including Italy - can adopt and maintain illegal procedures. Lastly, the possibility of applying, in some cases, first country of asylum and safe third country concepts may expose minors to the risk of expulsion to countries where they could be subjected to inhuman and degrading treatment.

5_Recommendations

5_1 On Unaccompanied Minors at Border Areas

In view of the foregoing, ASGI recommends that the competent authorities take urgent action to ensure that, in order to safeguard the protection and assistance needs of individuals, the identification of minors, during border procedures and any subsequent assessment of their age, are carried out in accordance with the procedures defined by law. This is to ensure respect for the guarantees recognised by the law in favour of unaccompanied minors, since they are exposed to the real risk of a generalised undue impairment of the rights to which they are entitled, starting with the right to personal freedom, and are subject to illegal removal procedures. More specifically, ASGI recommends that the competent authorities:

- immediately cease readmissions, rejections and expulsions of foreign citizens who declare themselves to be minors at borders in compliance with Italian law and the principle of *non-refoulement*;
- in any case, ensure timely, full accessible, diversity-sensitive and age-appropriate legal information to minors about their rights and the protection envisaged by current legislation, as well as access to the procedure for acknowledging international protection in a language they understand, with the help of a cultural mediator and in accordance with their degree of maturity;
- always allow minors to contact protection bodies, associations and organizations that can promote appropriate care, information and legal protection for them, ensuring their right to be heard and their participation in legal proceedings;
- ensure that identification procedures and any age assessments take place as quickly as possible, in accordance with the procedures and timelines envisaged by current legislation and with the primary criterion of the best interests of these minors as the guiding principle in all procedures concerning them;
- arrange the socio-sanitary age assessment only in cases of justifiable doubts over the declared age and the impossibility of ascertainment against a personal data document and in any case in compliance with the law, therefore following a written decision to that effect by the Public Prosecutor's Office at the Court for Minors and not only on the part of police forces;
- ensure that guardians are appointed quickly, even if age assessment is still pending, in order to guarantee appropriate support for minors as well as access, if necessary, to legal assistance;
- envisage rapid placement of minors in appropriate facilities in relation to their condition in full application of the legislation, even if age assessment is still pending, in accordance with the children's best interests and existing human rights standards;
- comply with the ban envisaged by current national and by Article 37 of the CRC ("no child shall be deprived of his/her liberty unlawfully or arbitrarily") concerning the detention of minors and their placement in structures characterized by conditions of promiscuity or forms of *de facto* detention, such as hotspots, CARAs and CAS;
- ensure that reports concerning persons who declare themselves to be minors and who are present in CPRs, hotspots, CARAs and CASs for adults or other facilities, including those prepared for the epidemiological emergency such as quarantine ships, are immediately taken in charge by competent authorities and that transfer to suitable structures is immediately arranged.

5_2 On EU Pact on Asylum and Migration and related reforms

In light of these conclusions, ASGI stresses that border procedures envisaged in the new proposals attached to the New Pact shall comply with international and European human rights standards on children rights (in particular with the United Nations Convention on the Rights of the Child), and should not be in contrast with Italian Law n. 46/2017 on protection measures for unaccompanied children. Therefore, ASGI recommend that:

- The **Proposal for a Screening Regulation** is amended to ensure that persons arriving at external borders are accommodated within a reception system capable of addressing their precarious material and psychological conditions. This is only possible by removing the provision on the prohibition of entry and by allowing migrants into the territory of Member States. With specific regard to children, ASGI urges the introduction of a provision on the assessment of the best interests of the child during the entire procedure. Children – either accompanied and unaccompanied – should be automatically considered as a vulnerable group and their needs should be immediately addressed on arrival by competent authorities and organisations with specific backgrounds. To do so, they are to be accommodated in suitable reception centres: therefore, an explicit provision prohibiting detention of all minors (both accompanied and unaccompanied) shall be included in the Proposal. Moreover, the Regulation shall ensure that unaccompanied children are appointed a guardian already during the screening procedure and that the benefit of doubt applies when the age of the person is unclear and for the entire duration of the age assessment procedure. Finally, detailed safeguards shall be addressed: the Proposal must encompass a right of every person subjected to the screening to receive a copy of the debriefing form and a right to effective remedy and to appeal against the outcome of the screening. The access of children to free legal aid shall be explicitly provided for in order to grant the effectiveness of the right to a remedy. As regards the independent monitoring mechanism established by Article 7 of the Proposal, it must be ensured that it can also consider cross-border events and can take into account and act upon relevant information provided by individuals who find themselves outside the territory of the state and by international organisations, non-governmental organisations, journalists, EU agencies and institutions even if they are not part of the mechanism⁶⁰.
- The **Proposal for an Asylum and Migration Management Regulation** is amended in order to fully comply with the principle of the best interests of the child. It must follow that minors are excluded from the generalised application of the criteria of first country of entry and that the decision shall be based solely on the assessment of their best interests. In this regard, the detailed safeguards enshrined in relation to unaccompanied minors should be extended to minors with families. Moreover, the Proposal should include a clear provision prohibiting the detention of children during the relocation procedure and children should be explicitly excluded from the scope of the “return sponsorship” procedure.
- The **Amended Proposal for an Asylum Procedure Regulation** introducing an asylum and return procedure at the border, in the manner in which it is currently drafted, is withdrawn.

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See also: ECRE, Amnesty International, Human Rights Watch, Danish Refugee Council, Oxfam, **Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability.**

If the Regulation is nevertheless retained, children - both accompanied and unaccompanied - shall be mandatorily excluded from both procedures. They are always to be admitted into the territory of the Member State and their asylum application shall follow the general procedure. A return procedure for children shall be avoided as a general rule: expulsion is only possible when it is proven to be in the best interests of the child, following a detailed procedure and a decision motivated on the best interest assessment. In no case should children be detained under the (regular) asylum or return procedure: an explicit provision prohibiting detention of all minors (both accompanied and unaccompanied) shall be included in the new Proposal for the Asylum Procedure Regulation. Moreover, the concepts of first country of asylum and safe third country shall never be applied to minors, to avoid the risk of violation of article 3 ECHR and 4 CFD.

- The **Proposal for a Crisis Regulation** should reiterate that children are excluded from the border procedures, and therefore all the timelines defined in the Regulation should not apply to them. In addition, under the Regulation, solidarity mechanisms regulating secondary movements of asylum seekers should be reinforced; Member States should cooperate to grant rapid reunification of children with their families, following a best interest assessment.



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sull'Immigrazione