

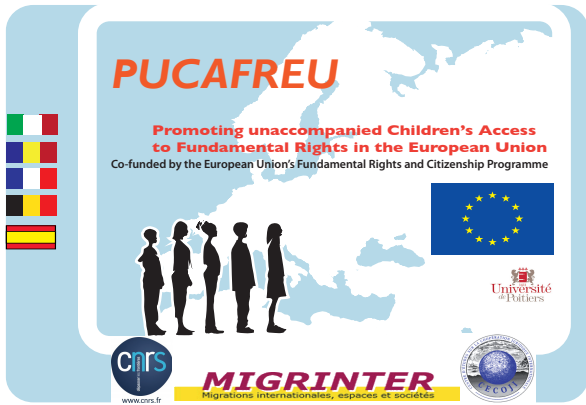
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PEMM- Platform of Experts on the Migration of Minors

COMMON DECLARATION ON THE SITUATION OF UNACCOMPANIED AND SEPARATED CHILDREN LACKING PROTECTION IN EUROPE

- 1- Unaccompanied and separated children migrating to the European Union are temporarily or permanently separated from their parents and/or legal representatives. This declaration adopts the double definition of unaccompanied and separated children provided by the Committee of the Rights of the Child¹.
- 2- Unaccompanied and separated children are entitled to all rights enshrined in International Human Rights law and, particularly, in the United Nations Convention on the Rights of the Child (hereinafter UNCRC). As the Charter of the Fundamental Rights of the European Union sets out, the best interests of the child shall be a primary consideration in all actions of public or private institutions relating to children.
- 3- As they are temporarily or definitively deprived of their family environment, unaccompanied children are entitled to special assistance and protection of the State where they are living, as stipulated in article 20 of the UNCRC. Unaccompanied and separated children must be received and cared in by relevant authorities of the concerned European Union Member States.
- 4- The Committee on the Rights of the Child, along with a number of international agencies and experts, stress the key importance of identifying a durable solution to respond to the lives and circumstances of unaccompanied and separated children. Nevertheless, as a recent joint report of UNICEF and the Office of the United Nations High Commissioner for Human Rightsⁱⁱ points out, European Union institutions and Member States appear to view the

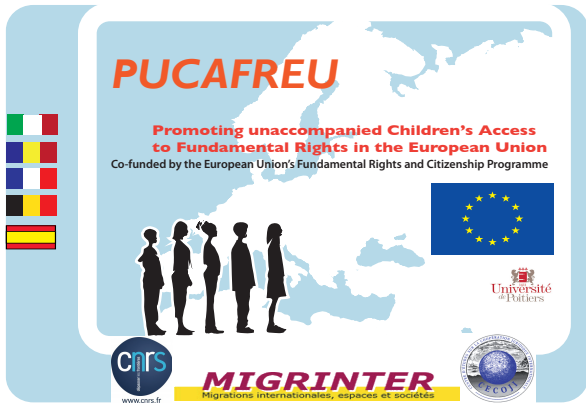


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return of unaccompanied children as preferred durable solution, presuming that is in the best interests of the child. Integration of the unaccompanied child in the host country is regarded as a subsidiary solution.

- 5- Despite the existing obligation of protection, it is a fact that a significant number of unaccompanied and separated children living in the European Union abandon - or are excluded from- institutional care. Official statistics and estimates indicate that the percentage of children abandoning or being excluded from institutional care in certain territories can reach 60% of the total number of received childrenⁱⁱⁱ. This percentage is likely an under-estimate as it does not account for unaccompanied and separated children who stay invisible and are unknown to public authorities.
- 6- Unaccompanied and separated children lacking protection in Europe are therefore a reality. Many of them combine periods within protection services with periods of lack of protection. While unprotected, many of these children alternate periods living in the street with periods where they are informally hosted by friends, extended family or compatriots. Other children stay under the control of networks of adults (more or less organized) and are exploited in different lucrative activities, which are often illegal.
- 7- While unprotected, unaccompanied and separated children face different obstacles and barriers to being able to assert their fundamental rights, particularly social rights such as adequate housing, education and access to health care.
- 8- The situations of lack of protection occur for many reasons. Some children voluntarily abandon care facilities after realizing the lack of options and opportunities for the future (particularly the scarce possibility of being granted an immigration status or international protection that they will face once they become of age). Other children refuse - or are excluded from- care under the influence of those from their communities of origin who live in the destination country or other adults trafficking them.



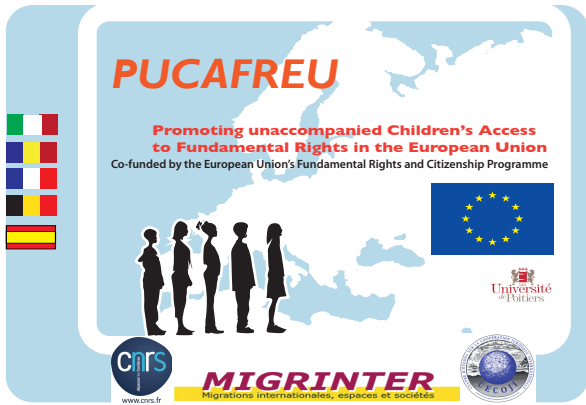
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- 9- If a number of children refuse or abandon institutional care willingly or under the influence of their entourage, certain immigration authorities or Children Welfare services in European Union Member States currently implement different practices that involve the exclusion of unaccompanied and separated children from care resulting in lack of protection. These practices of exclusion can include detention of unaccompanied and separated children at points of entry [in violation of the two conditions set out by the CRC: lack of other alternative measures and for the minimum amount of time possible]; arbitrary age-assessment practices [the results of which, despite their lack of accuracy, are given priority over any documentary evidence, including ID and travel documents, that children may possess to prove their age]; selective access to care [involving waiting periods to be cared in lasting several weeks or months during which children stay unprotected]; providing inadequate care or care *a minima* to certain categories of unaccompanied and separated children, etc.
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Concerned at the dire consequences for children that are linked to the above circumstances, the signing members of the international platform of experts on child migration address, to the relevant European Union institutions as well as to national, regional and local authorities dealing with unaccompanied and separated children within Member States territories, the following recommendations:

- a. Unaccompanied and separated children must first and foremost be considered as children and not as potential illegal immigrants.
- b. Unaccompanied and separated children should be adequately received and identified at points of entry by competent trained staff and be informed of their rights (particularly their right to seek asylum) in a child-friendly manner and using adequate and understandable language. In accordance with the provisions set out by article 37 of the UNCRC, detention of unaccompanied and separated children

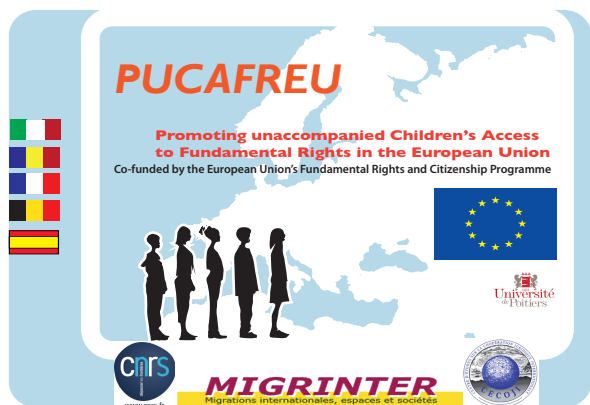


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should never take place exclusively for immigration or asylum purposes.

- c. When an unaccompanied child holds a passport or other identification documents (birth certificate or equivalent) providing evidence of his/her age, the results of an age assessment test should never outweigh the declared age on an official document. During the process of age disputed cases and until a definitive judicial decision is taken, a minority presumption must apply in order to preserve the child's best interests. An age-assessment process should not be implemented as a measure of migration control with the result of excluding unaccompanied and separated children from protection.
- d. Following the position of the Committee on the Rights of the Child^{iv}, unaccompanied and separated children are children temporarily or permanently deprived of their family environment and are therefore entitled to the States' special protection and assistance under article 20 of the UNCRC. Relevant authorities must ensure immediate access for all identified unaccompanied and separated children to adequate accommodation and care. Unfounded delays provoking selective or limited access to care provision or setting up different levels of care for different categories of children constitute a violation of article 20 of the UNCRC.
- e. Once an unaccompanied or separated child has been sheltered and his/her immediate needs covered, relevant authorities should conduct an individualised, complete evaluation of his/her needs of protection, as well as investigate the conditions of his/her migration (reasons, social and economic condition of his/her context of origin, tracing the family, migration path, etc.) Children's participation shall be ensured all along the process. This process should be followed at a second stage by a best interests determination process following the recommendations and guidelines set out by the United Nations High Commissioner for Refugees^v.
- f. Relevant authorities must ensure unaccompanied and separated children's access to their fundamental rights. Apart from adequate accommodation, full access to health care (including the evaluation and adequate treatment of mental health potential pathologies),

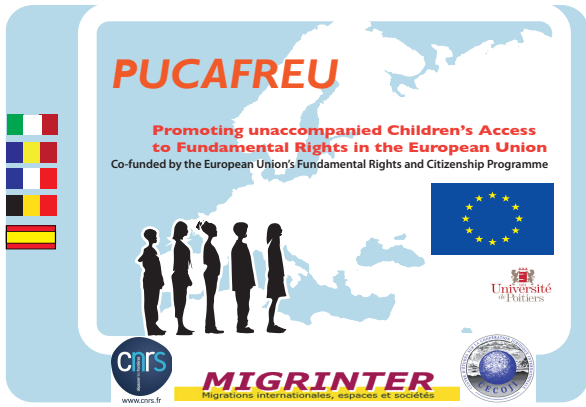


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regular education and/or vocational training must be guaranteed.

- g. A trained and independent guardian should be swiftly appointed for every unaccompanied or separated child, regardless of his/her status or category (asylum seeker or not). In all cases, but particularly when the guardianship system is linked to a public institution, unaccompanied and separated children should have access to a judicial procedure in case a conflict of interest occurs between the unaccompanied child and his/her guardian. Furthermore, unaccompanied and separated children must have free access to independent and specialized legal representation in any judicial or administrative procedure affecting them.
- h. In light of the results of the best interest determination process (see e), the durable solution that better respects the rights of the concerned child should be determined and implemented. If the best durable solution is the return of the child to his/her country of origin for family reunification purposes, this solution should always imply the lack of risks both for the unaccompanied child and his/her family and providing due consideration to their opinion. Forced returns to the country of origin are highly unlikely to be in the unaccompanied child's best interests and may result in the child's involvement in a new migration process. Furthermore, the situation of all returned children must be regularly monitored and evaluated by concerned authorities. In the case where the integration of the child into the host society is considered to be the best durable solution, this decision should involve granting the child a durable immigration status once he or she becomes of age. As the Committee on the Rights of the Child points out, other durable solutions as international adoption or resettlement can be envisaged if they are in the child's best interests.
- i. The European Union Institutions and Member States authorities shall effectively implement the contents of the United Nations Convention on the Rights of the Child to every child, including unaccompanied and separated children. Budgetary limitations or the control of migratory flows are legitimate State interests, but should



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never take precedence over the interest of an unaccompanied or separated child.

Brussels, 26th of March 2013

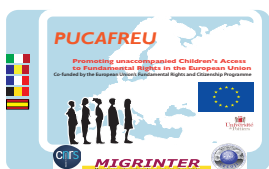
ⁱ See COMMITTEE ON THE RIGHTS OF THE CHILD (2005): General Comment n° 6 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6 of the 1st September 2005, paragraphs 7 & 8.

ⁱⁱ UNICEF & United Nations High Commissioner on Human Rights (2012): “*Judicial implementation of article 3 of the Convention on the Rights of the Child in Europe: The case of migrant children including unaccompanied children*”, 111 pages.

ⁱⁱⁱ See the statistics from the *Comitato Minori Stranieri* in Italy and the *Service de Tutelles* in Belgium. Sources: GIOVANNETTI, M. (2012): “*I comuni italiani e le politiche di accoglienza dei minori stranieri non accompagnati*” at ANCI Cittalia *I minori stranieri non accompagnati in Italia*, IV rapporto ANCI Cittalia, page 82 & 231; (2005): «*Rapport d'activité (mai 2004 à mai 2005) et Addendum (mai à décembre 2005)*», Service Public Fédéral de Justice, Direction de Législation, Libertés et Droits Fondamentaux- Service des Tutelles, Belgique, pages 67 & 79.

^{iv} COMMITTEE ON THE RIGHTS OF THE CHILD (2005): General Comment n° 6, *op.cit.*, paragraph 39.

^v UNHCR - United Nations High Commissioner for Refugees (2008): «*Guidelines on determining the best interests of the child*», 97 pages; UNHCR- UNHCR - United Nations High Commissioner for Refugees (2011): «*Field handbook for the implementation of UNHCR BID guidelines*», 135 pages.



PLATFORM OF EXPERTS IN THE MIGRATION OF MINORS
Common declaration on the situation of unaccompanied
and separated children lacking protection in Europe

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