

Children in Migration

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EMN Luxembourg & L'Ombudsman fir Kanner a Jugendlecher (OKaJu) Joint Event

Luxembourg, 20 June 2024

European Migration Network (EMN)



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Established in 2008 by the European Commission on behalf of the European Council (Council Decision 2008/381/EC).

33 national contact points, 26 of which are located in EU member states (Denmark does not participate), plus Armenia, Georgia, Moldova, Montenegro, Norway, Serbia and Ukraine.

The aim of EMN is to

- provide European and national institutions and agencies, as well as the general public, with up-to-date, objective and comparable data and information on migration and asylum;
- provide impartial information to support the current discourse on migration; and
- support political decision-making processes within the EU and at the national level.

EMN activities and outputs

EMN activities:

- European and national conferences
- Workshops
- Capacity-building events

EMN outputs are:

- Ad-hoc queries
- Annual Report on Migration and Asylum (ARM)
 - Country factsheets, Statistical Annex
- Thematic studies
- EMN Informs
- EMN Asylum and Migration Glossary

Information collection

- EMN activities are set out in a three-year work programme;
- Specific topics are decided by the Steering Board and EMN NCPs;
- Data/information for EMN outputs is mainly gathered through desk research;
 - already available information published at national or international level, including national statistics, legal texts, reports, etc;
- This research, where necessary, is supported by interviews with various stakeholders in the field of migration, asylum, statelessness and integration;
- This information gathering is carried out within a very short timeframe (depending on the output) to ensure that the information remains relevant.

EMN Luxembourg Inform

Guardianship of unaccompanied minors

Guardianship of unaccompanied minors

EU Member States must ensure the protection of children who are without parental care, no matter their nationality or residence status

EU acquis acknowledges importance of guardianship and legal representation to protect the well-being of UAM the concept of guardian is not universally defined

Terminology used by EU Member States varies (e.g. guardian, representative, ad-hoc administrator)

At the request of the Luxembourgish Ombudsman for Children and Youth -> EMN Luxembourg launched an AHQ on this topic

- Main objective -> mapping exercise of guardianship systems in the EU
- 22 EU Member States & NO provided their answers

Background

The institution of guardianship dates back to Roman times -> Code of Justinian (Book V, Titles 30 to 75)

Later it was coded in the Napoleon Civil Code in 1804 -> adopted by most European and Latin-American countries

Definitions

Unaccompanied minor (UAM) -> someone ***"who arrives on the territory of an EU Member State unaccompanied by the adult responsible for them by law or by the practice of the EU Member State concerned [...] for as long as they are not effectively taken into care of such a person or who are left unaccompanied after they have entered the territory of the EU Member State."*** [EMN Glossary]

Guardian -> ***"an independent person appointed to act on behalf of a child, in the absence of (both) parents or the adult responsible for the child by law or by practice, who safeguards the best interests of the child (BIC) and general well-being, and to this effect complements the limited legal capacity of the child, when necessary, in the same way that parents do."*** [EMN Glossary]

- More restrictive than the definition of the civil codes
- Limited to the migration context

Representative-> ***"a person or an organisation appointed by the competent bodies in order to assist and represent a child in different procedures (such as in procedures for international protection) with a view to ensuring the best interests of the child (BIC) and exercising legal capacity for the minor where necessary."*** [EMN Glossary]

Definitions (2/2)

Guardian -> "a person who is appointed or designated to support, assist and, where provided by law, represent unaccompanied or separated children in processes concerning them. [...] The guardian acts independently to ensure that the child's rights, best interests and well-being are guaranteed. The guardian acts as a link between the child and all other stakeholders with responsibilities towards him or her." [Council of Europe]

Ad-hoc administrator -> "is a representative duly appointed either by an administrative body or judge." [FR, LU]

Depending on the MS where the UAM resides, residence status, type of procedure and personal circumstances -> tasks and responsibilities of the guardian or representative changes.

Mapping results (1/3)

Main key points

- No clear and unambiguous definition in the EU MS & NO of the term « guardian » for UAM in the migration context -> confusion
- The terms guardian representative may be used interchangeably, however, they are not synonyms and their use depend on the legal framework
- Appointment procedure (guardian, representative, ad-hoc administrator) varies as well
 - Most MS -> appointment is done by judicial decision (14 MS) but in other MS it is done by the supervising administrative body
 - Also the requesting authority varies between MS
- Legal framework also varies between MS
 - specific laws and suppletorily by the Civil Code (11 MS)
 - Civil Code only (8 MS)
 - Specific laws (4 MS)

Mapping results (2/3)

- Even though there is no common definition regarding guardian in the migratory context -> most MS appoints specific guardians, representatives, ad-hoc administrators to deal with the procedures
 - Some MS, appoint guardians to manage the day-to-day life of the UAM
 - Other appoint guardians to oversee the relevant procedures and to manage the day-to-day life
- Most MS stated that there is no clear or specific criteria for appointing a guardian besides the general requirements of the Civil Code
 - E.g. of age, resident of the country, no conflict of interest, no criminal record, no financial problems, enjoying civil and political rights
- Most MS allows family members to be appointed as guardians (most MS that allow this -> UAM remains eligible for family reunification)
 - Some do not allow it -> the family member it is not capable to deal effectively with the task the guardian must fulfil
- Only 9 MS require that guardians receive specific training focused on UAM-related issues

Mapping results (3/3)

- 13 MS have national-level quality standards, guidelines or official recommendations for the handling of UAM to be followed by the guardian or representative
- Most MS do not have monitoring mechanisms regarding the deadlines for the appointment of guardians or representatives.
- Large majority of MS have complaint mechanisms for removing or changing the guardian or representative
- Only 9 MS have monitoring mechanisms
- 17 MS provide free interpretation so that the guardian or representative can communicate with the UAM
 - Only one MS reported the use of intercultural mediation for this purpose

Mapping results (4/4)

- Number of UAM that can be handled by a guardian/representative
 - 16 MS stated that there are not legal limits to the number of children that can be assigned to a guardian/representative
 - Some MS imposed limitations
 - NL each guardian can have between 21 and 24 (2019)
 - DE no more than 50 minors per guardian (full-time employee of the Youth Welfare Office)
 - LU the family affairs judge -> do not appoint the same lawyer for too many children
 - NO the County Governor through internal practice limits the number of UAM
 - Self-limitation
 - FI it is up to the representative to decide how many UAM s/he can represent
 - IE no standardized case load per social worker exists -> the number of guardianships depends on the experience and post-qualification practice of each social worker
 - 6 MS stated that they have specific regulations limiting the number of UAM per guardian
 - BE -> number varies on the type of guardian (voluntary status (8 max.), self-employed (more than 8) and employee guardians (associations or NGOs -> up to 25)
 - CY -> no more than 20
 - EL -> up to 15
 - HU -> no more than 30
 - IT -> no more than 3 per volunteer guardian to ensure principles of proximity and effectiveness (law allows that the limit can be waived for urgent reasons)
 - LT -> limit of 3 foster children per family (can be exceeded to avoid sibling separation)
 - 2 extreme cases: EE -> very few cases to overload a guardian; SE -> criticised as guardians are allowed to have too many cases

Conclusions

- There is no common definition in the EU & NO of “guardian” or representative -> making that the tasks and responsibilities vary between MS
- The EU acquis acknowledges the importance of guardianship and legal representation but there is no common definition
- The appointment system varies not only by the authority which requires the appointment but also the authority that makes the appointment
- There are not clear requirements to become a guardian and there is no sufficient training for guardians/representatives
- Most MS allows that a family member becomes the guardian of an UAM -> without affecting their right to family reunification
- Most legislations in the EU does not put a limit to the amount of children that a guardian/representative can manage at the same time

THANK YOU FOR YOUR ATTENTION!



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