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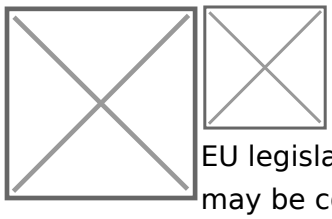
Section 5. Children and applicants with special needs



EU legislation contains provisions to address the special needs of applicants who may be considered especially vulnerable in the asylum system. These provisions ensure that vulnerable applicants receive adequate support to benefit from their rights and comply with the obligations which are defined under CEAS and that they can be on an equal footing with other applicants.

The recast Asylum Procedures Directive, Article 2(d) defines applicants in need of special procedural guarantees as those with a limited ability to benefit from rights and fulfil the obligations granted in the directive due to individual circumstances. Recital 29 gives examples of these circumstances: age; gender; sexual orientation; gender identity; disability; serious illness; mental disorders; consequences of torture, rape or other serious forms of psychological; and physical or sexual violence.

The term ‘unaccompanied minor’ refers to “a minor who arrives on the territory of the Member State unaccompanied by the adult responsible for them by law or by the practice of the Member State concerned, and for as long as they are not taken into the care of such a person. It includes a minor who is left unaccompanied after he/she has entered the territory of the Member State”.

The recast Asylum Procedures Directive, Article 24 outlines the special procedural guarantees for applicants in general, and Article 25 specifies the guarantees for unaccompanied minors. Member States are required to assess within a reasonable time whether there is a need to implement these guarantees for individual applicants and provide adequate support.

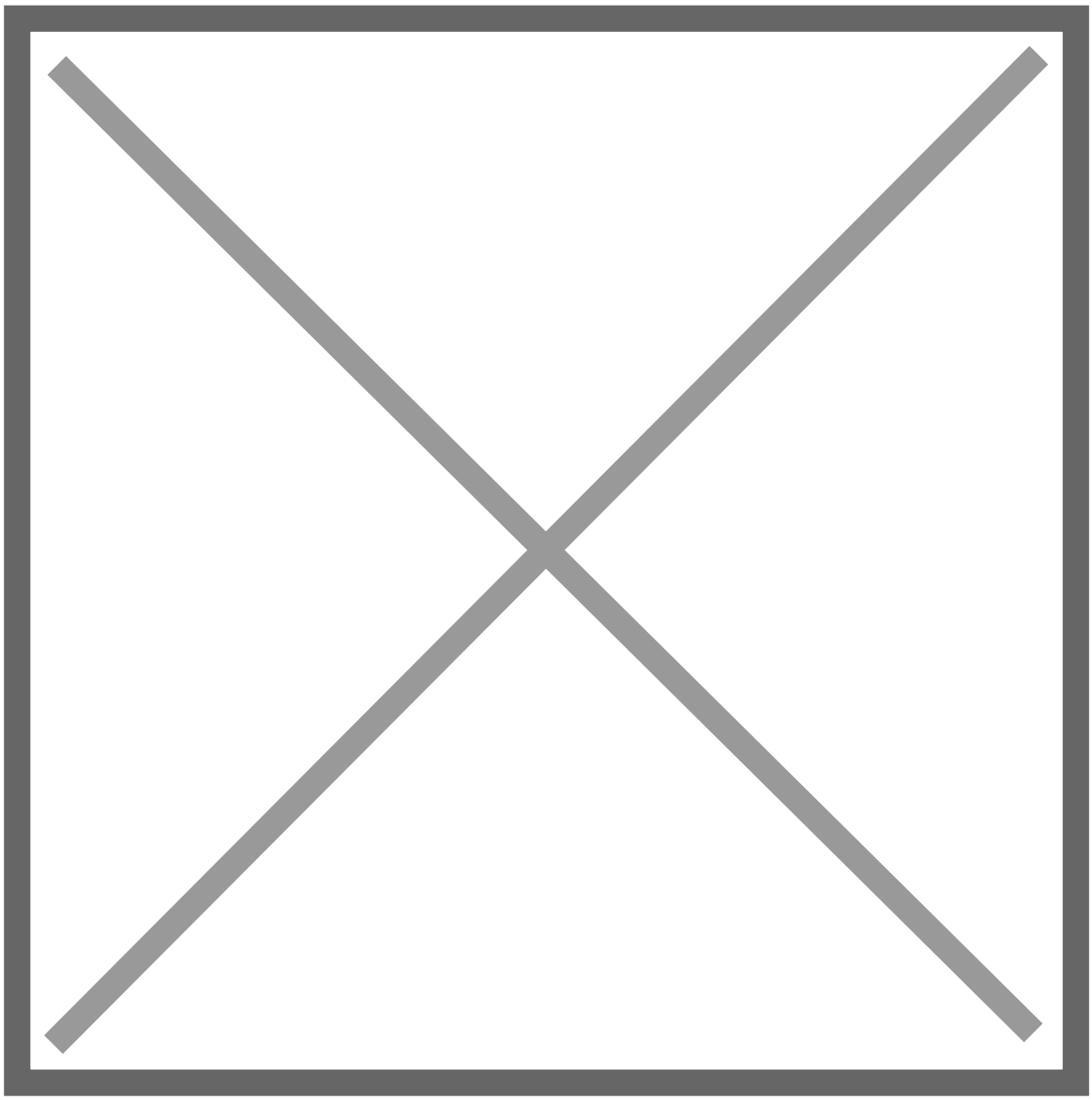
The recast Reception Conditions Directive defines applicants with special reception needs. It also lists examples, which are non-exhaustive, but they cover a slightly different scope. It explicitly mentions unaccompanied minors, single parents with minor children, victims of human trafficking and victims of FGM, but it does not refer to gender, sexual orientation or gender identity. Detailed provisions are listed in the recast Reception Conditions Directive, Chapter IV and require Member States to take into account the specific situation of a vulnerable applicant, assess vulnerabilities within a reasonable period and ensure that the needs are addressed. Chapter IV also lists specific provisions for minors, unaccompanied minors and victims of torture and violence. Article 11 lists

the conditions for detaining vulnerable persons and applicants with special reception needs.

All instruments of EU asylum acquis must be applied and interpreted by taking into consideration the Charter of Fundamental Rights of the European Union, as it is part of primary EU law. Article 24 of the Charter concerns the rights of the child and specifies that children have the right to protection and care as necessary for their well-being. The right to express their view freely and have them taken into consideration are also guaranteed. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child has the right to maintain a personal relationship and direct contact with both parents on a regular basis, unless it is contrary to his/her interests.

In 2020, EASO published judicial analysis, Vulnerability in the context of applications for international protection, as part of the EASO Professional Development Series for members of courts and tribunals. The report provides relevant case law examples and an overview of elements in CEAS which are particularly important to vulnerable applicants.[1264]

COVID-19

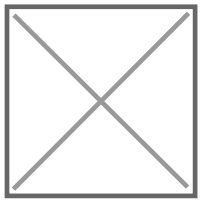


The interruptions in services and limitations on direct personal contact made the identification of applicants with special needs and addressing their special needs even more difficult than under usual circumstances.1265 Thus, vulnerable applicants were even more exposed during the pandemic, often starting early in the asylum procedure since age assessments, for example, were suspended in some countries and access to guardianship was delayed. Physical distancing and lockdown measures had a negative effect, for example, on providing information to children and support to parents, and had an overall negative impact on the mental health of applicants.1266

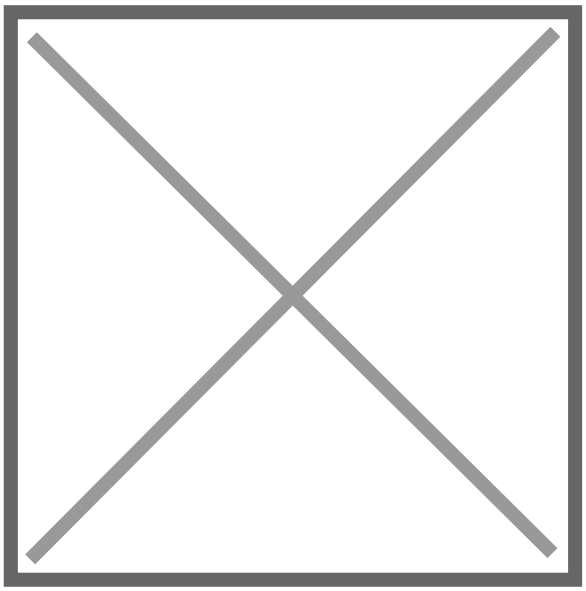
In reception facilities, children and applicants with special needs dealt with isolation due to social distancing measures and were devoid of the full range of support services, especially in-person assistance. Access to education in reception facilities was also hampered often due to connectivity issues for online classes and a lack of equipment, which had an impact on learning levels and the potential for a smooth integration into the host community *(see Section 4.7)*.1267

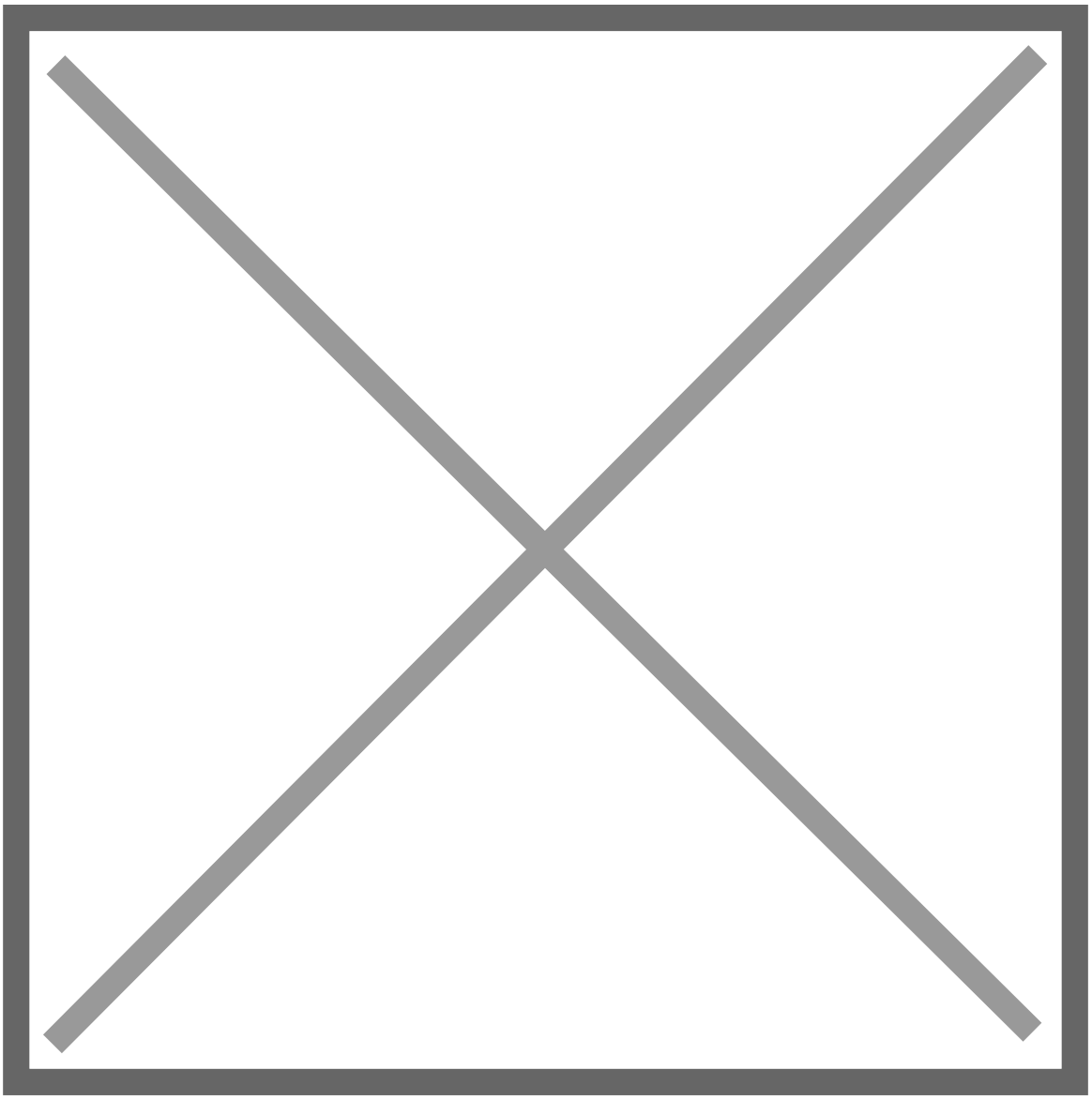
As visitations were halted in many places, civil society organisations could not provide support and outreach, such as counselling, psychological support or organising food distribution for potential and former applicants out of reception. Child protection teams also experienced difficulties in accessing reception centres.1268 The identification of victims of human trafficking or gender violence and persons with mental health problems seems to have been markedly delayed in some Member States.1269

Although staff training addressing applicants with special needs was planned during 2020, most activities were either adapted and carried out online or postponed.



Digitalisation





New communication channels and digital tools were increasingly used to provide information about the asylum procedure in general, and in particular, material was adapted to reach out to children and applicants with special needs. Updates on health measures and procedures in the country were provided through YouTube videos, phone hotlines, posters and online platforms in the absence of traditional face-to-face communication. While digital information provision was often a good alternative, communication had to be adapted to applicants without the necessary digital skills. In addition, digital tools do not replace human contact and interaction which are essential for guaranteeing the best interests of children and applicants with special needs.

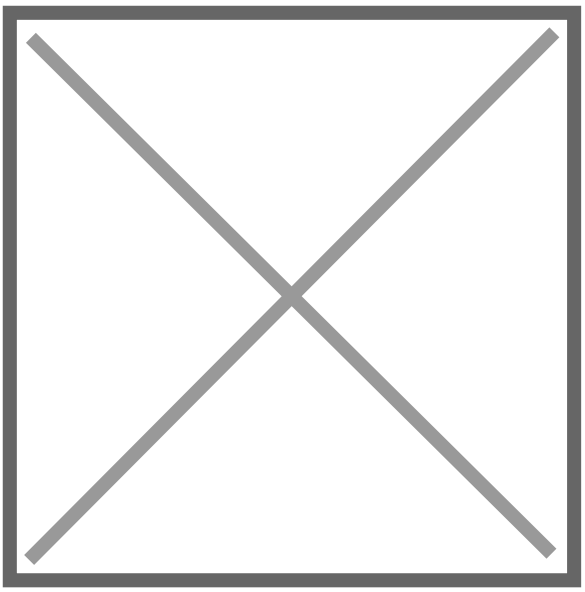
The new Pact on Migration and Asylum includes several provisions to ensure that the best interests of the child are considered, for example by strengthening family reunification and fostering a stronger solidarity mechanism for the relocation of unaccompanied children and applicants with vulnerabilities. The pact foresees a faster appointment of representatives with sufficient resources for unaccompanied minors and a strengthened role of the European Network on Guardianship.[lxxii]

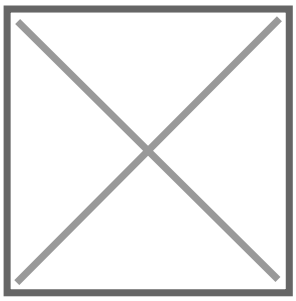
Several civil society organisations, such as Save the Children, Lumos, Picum and Missing Children Europe, issued a joint statement praising the strengthened role of the guardian in assessing the best interests of the child,[1270] but they were concerned about the proposed border procedures which may lead to a prolonged detention of children. The group called on the EU to introduce

procedural safeguards for all children across all procedures in a consistent way.

Human Rights Watch considered that the European Commission "lowered the protection standards" for minors by only exempting unaccompanied minors and children younger than 12 years from border procedures. The organisation recommended to prohibit migration-related detention of children, to allocate resources for non-custodial solutions and to increase safeguards during screening in order to detect and address more rapidly the health needs and vulnerabilities of migrants.1271

The Lumos Foundation mapped care arrangements for unaccompanied children in Bulgaria, France, Greece, Italy, the Netherlands and Spain and found that "there is an over-reliance on institutional care provision, without sufficient resources to respond to the needs and best interests of children, exposing them to harm".





[lxxii] The European Network on Guardianships brings together authorities and international and non-governmental organisations which promote good guardianship services for unaccompanied and separated children in the EU. European Commission. (23 September 2020). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum COM/2020/609 final*. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM:2020:609:FIN

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