

A stylized sun in the top right corner and several light blue clouds in the top left corner against a blue background with a grid pattern.

**EU values and Member States – between
unity and diversity: migration context**

**PECSA Roundtable Debate 2018
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Migrant crisis: Family Reunification and Child's Best Interests

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Migrant crisis: Family Reunification and Child's Best Interests

**“Protection of children in migration”
constitutes a priority in the policies of
the European Union as well as in the
policies of the Council of Europe**

- See COM(2017)211 final**



Migrant crisis: Family Reunification and Child's Best Interests

Protection of children is well-established in the United Nations Convention on the Rights of the Child and is currently recognised in Article 24 of the Charter of the European Union on Fundamental Rights



Migrant crisis: Family Reunification and Child's Best Interests

The vulnerable position of minors requires special attention to their needs and stronger forms of protection than other migrants. More accurately, it is important to stress that all unaccompanied minors need special safeguard



STATISTICAL DATA

Statistical Data, collected in the last years throughout the European Union also show the importance of this issue.



STATISTICAL DATA

Official data provided by the Italian Ministry of Internal Affairs reveal that in Italy, in 2016, 25.846 unaccompanied children disembarked; and, in 2017, a number of 15.731 children entered our country.



STATISTICAL DATA

In Italy, 181.436 migrants disembarked in 2016, and 119.310 migrants entered the country in 2017.

It follows that in 2016 and 2017 more than 13 per cent of migrants entering Italy by sea were unaccompanied children



STATISTICAL DATA

In 2015, 96.000 children entered the European Union and, in 2016, their number decreased to 63.000



COM(2017)211 final

The European Commission underlines that:

“The child’s best interests must be assessed as a primary consideration in all actions or decisions that concern him or her”



COM(2017)211 final

“(...) However, at present, the legislation of most Member States does not set out a process for identifying and implementing this requirement, including with regard to durable solutions for unaccompanied children based on an individual and multidisciplinary assessment. (...)”



COM(2017)211 final

“(...) It follows that, it is important for the European Union to provide further guidance on this topic, building upon international standards”



Family Reunification and Child's Best Interests

In this context the issue
related to family reunification
requires close attention



Family Reunification and Child's Best Interests

The relevance of family unity for refugees was recognised by the European Court of Human Rights in the interpretation of Article 8 of the European Convention of Human Rights



Family Reunification and Child's Best Interests

- “Family reunification is a vital element in enabling persons who have fled persecution to resume a normal life. It has made clear that the decision-making process should guarantee flexibility, promptness and effectiveness in order to secure refugees’ right to respect for family life”.
- Statement of the Commissioner of Human Rights of the Council of Europe



Family Reunification and Child's Best Interests

The Court of Justice of the European Union also shows a positive approach in the granting of Family Reunification in the light of the Child-best-interest Principle



Family Reunification and Child's Best Interests

As is well known Council Directive 2003/86 determines the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.



Family Reunification and Child's Best Interests

However, when the issue of reunification of minors is at stakes we have to consider also the principles set out in Articles 7 and 24 of the Charter of Fundamental Rights of the European Union.

Case A & S – 12 April 2017

- In the Judgment of 12 April 2018, A. & S, case C-550/16, the Court of Justice stated that:

“Directive 2003/86 pursues not only, in a general way, the objective of promoting family reunification and granting protection to third-country nationals, in particular minors (...) but, by Article 10, paragraph 3, (a) thereof, seeks specifically to guarantee an additional protection for those refugees who are unaccompanied minors”

Case A & S

While Directive 2003/86 does not explicitly determine the *moment until which a refugee must be a minor* in order to be able to benefit from the right to family reunification referred to in Article 10(3)(a), it follows however from the objective of that provision, the fact that it confers *no discretion on Member States* and the lack of a reference to the national law in that regard, that *the determination of that moment cannot be left to each Member State to assess*

Case A & S

The question, more precisely, as to what is the specific moment by reference to which the age of a refugee must be assessed in order for him or her to be regarded as a minor and be able therefore to benefit from the right to family reunification under Article 10(3)(a) of Directive 2003/86 must be answered by reference to the wording, general scheme and objective of that directive, *taking into account the regulatory context in which it is found and the general principles of EU law*



Case A & S

The Court stressed that: “Furthermore, taking into account the fact that the duration of an asylum procedure may be significant and that, in particular in periods of substantial surges in applications for international protection, the time limits laid down in that regard by EU law are often exceeded, to make the right to family reunification depend upon the moment when that procedure is closed would be likely to deny a substantial proportion of refugees who have submitted their application for international protection as an unaccompanied minor from the benefit of that right and the protection that Article 10(3)(a) of Directive 2003/86 is intended to confer on them”.

Case A & S

The EUCJ dealing with the national position of the Netherlands pointed out: “Moreover, instead of prompting national authorities to treat applications for international protection from unaccompanied minors urgently in order to take account of their particular vulnerability, a possibility which is already explicitly offered by Article 31(7)(b) of Directive 2013/32, such an interpretation could have the opposite effect, frustrating the objective pursued both by that directive and by Directives 2003/86 and 2011/95 of ensuring that, *in accordance with Article 24(2) of the Charter of Fundamental Rights, the best interests of the child is in practice a primary consideration for Member States in the application of those directives*”

Case A & S

For all these reasons the Court of Justice recognized that:

“Article 2(f) of Directive 2003/86/EC of 22nd September 2003 on the right to family reunification, read in conjunction with Article 10(3)(a) thereof, must be interpreted as meaning that a third-country national or stateless person who is below the age of 18 at the time of his or her entry into the territory of a Member State and of the introduction of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status must be regarded as a ‘minor’ for the purposes of that provision”



Family Reunification and Child's Best Interests

One last point that I would like to focus on is that currently some national legislations are not taking fully into account the Principle of the Best Interest of the Child.

See the statement of the Commissioner of Human Rights of the Council of Europe.



Italian Law 47/2017

Conversely, the new Italian legislation that passed last year, Law n° 47 of the 7th April 2017, provides a very important right for migrant minors.



Italian Law 47/2017

Article 1 of Law 47/2017 grants all unaccompanied minors the right to equal treatment as Italian and EU nationals.

Moreover, Law 47/2017 prohibits to repel unaccompanied minors



Italian Law 47/2017

In spite of the many difficulties faced by Italy in managing the Migrant Crisis, Law n. 47 of 2017 is a clear expression of the prevalence of the Child-best-interest Principle over political and economic issues.



Family Reunification and Child's Best Interests

**Thank you very much for
your attention**