PROTECTION OF THE RIGHTS AND BEST INTERESTS OF THE CHILD IN CARE PROCEEDINGS



Checklist for policy makers for the implementation of Recommendation CM/Rec(2025)5

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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All other correspondence concerning this document should be addressed to the Children's Rights Division, Directorate General of Democracy and Human Dignity (children@coe.int).

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Checklist for policy makers for the implementation of Recommendation CM/Rec(2025)5

The purpose of this checklist is to assist policy makers by proposing questions they may wish to consider when appraising their national framework concerning care proceedings in the light of the standards set out in Recommendation CM/Rec(2025)5 of the Committee of Ministers to member States on the protection of the rights and best interests of the child in care proceedings and the guidelines set out in its appendix.

Assessing the best interests of the child

1. Does national law and/or policy ensure that the assessment of the best interests of the individual child is carried out in care proceedings, including alternative dispute resolution processes?

2. Are training courses, practical tools or guidelines on the best interests determination procedure available to the competent authorities[1] and service providers (such as social and child protection services) to help them assess and give due consideration to the best interests of the child in care proceedings? If so, do they provide guidance on:

- the factors, set out in law or policy, to be considered in the best interests assessment;
- the need to carefully balance all relevant factors in case of conflicting conclusions;
- the use of a multidisciplinary and interagency approach;
- the use of specific assessment tools;

1. In line with Recommendation CM/Rec(2025)5, the expression "competent authority" refers to a judicial or an administrative body that is competent to make a decision or take action about the arrangements concerning a child involved in care proceedings.

- the approach to take in proceedings concerning young or very young children, children with specific needs, or in situations where a decision is being taken in respect of more than one child.

3. What mechanisms exist to update training in this field (continuous professional development)?

Right to be heard

1. What kind of child-friendly mechanisms and procedures are in place in the context of care proceedings to give every child a genuine and effective opportunity to express his or her views? What services are in place for a child who needs assistance to form and express his or her views or to ascertain a child's perspective on relevant issues?

2. Does a child have the right to be heard in care proceedings irrespective of his or her age? If your national law prescribes an age limit below which a child is not considered to have a sufficient level of understanding to express his or her views, is this age limit subject to periodic review? Is removing it envisaged or otherwise leaving a margin of discretion to the competent national authorities to assess the child's level of understanding on a case-by-case basis?

3. Are the competent officials and professionals involved in care proceedings trained to assess the child's level of understanding?

4. What kind of settings are available so that a child can be heard in a child-friendly environment to prevent undue stress and discomfort? Do these settings use a multidisciplinary and interagency approach?

5. In care proceedings involving a parent or a child with a disability or with special or additional needs or vulnerabilities, are appropriate arrangements in place to enable the meaningful participation of the child or parent in the proceedings (for example facilitating accessibility and transport, provision of interpretation services, provision of relevant documents in a language which he or she can understand or access to specially trained legal representatives)?

Right to information and assistance

1. What information services are in place to ensure that a child concerned by care proceedings or an alternative dispute resolution process receives information on the proceedings (reasons for the proceedings, different stages, duration, his or her rights and role in the proceedings and role of other actors,

etc.) in a manner adapted to the child's age and maturity, in a language which he or she can understand and which is gender and culture sensitive?[2]

2. Can a child concerned by care proceedings benefit from independent support and legal advice? Can the child also benefit from legal representation separate from that of the parents in accordance with the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* where needed?

3. Can the child be assisted by a person of trust, of his or her choice, whenever possible, throughout the procedure?[3]

4. Is legal aid available to the child and parents involved in the proceedings? How is access to free legal aid facilitated the child, where needed?

5. Are there mechanisms in place to ensure that a special guardian *ad litem* or a separate legal representative is appointed to represent the child's views and interests in court proceedings?

6. What independent non-judicial complaints mechanism, such as an ombudsperson for children, is made accessible to the child to report interferences with his or her rights in care proceedings or to complain about misconduct by service providers or professionals working with him or her?

Conduct of care proceedings

1. Does national legislation and/or policy refer to the rights, duties and responsibilities of parents, as well as an obligation of the state to provide appropriate support to the parents and the child as a way to avoid having to initiate care proceedings?

2. What services are in place to inform and support children and parents before, during and after care proceedings? What services are in place to strengthen and stabilise families, to support parents in exercising their responsibilities towards the child and to support positive parenting in accordance with the rights and best interests of the child? How are children and parents informed of the availability of such services and the ways of accessing them?

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2. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010) IV.A.1.2.
3. The person of trust should be able to advise and accompany the child, help the child to understand the procedure, provide reliable and relevant information, ascertain his or her wish to exercise the right to be heard, accompany the child during the hearing and, where appropriate, during the appeal procedure. The child should be able to contact this person directly at any reasonable time for information and advice.

3. What are the mechanisms in place for professionals to report cases of violence against children? Have any barriers to reporting such cases been removed, in accordance with the standards laid down in Recommendation CM/Rec(2023)8 of the Committee of Ministers to member States on strengthening reporting systems on violence against children?

Before proceedings

4. What mechanisms are in place to enable the timely identification of families and children in need of support and to ensure their referral to appropriate support? Where concerns about the care of a child exist, is the provision of services regulated by a pre-proceedings family intervention plan?

5. Are specialised services in place to inform and support children in reporting situations of risk and seeking help, including without prior knowledge or participation of their parent(s)?

Best interests determination procedure

6. Is the best interests determination procedure conducted through a multidisciplinary and interagency approach in the context of care proceedings?

Emergency and interim measures

7. In situations of imminent risk to the health or safety of the child, does your national law provide for urgent referral and accelerated procedures to obtain emergency decisions or interim protective measures to safeguard the child's rights and best interests? How are such procedures made child friendly?

Decision

8. Does national law provide that any decision to limit parental responsibility in care proceedings should only be made when necessary to protect the child from significant harm where the parents are unwilling or unable to do so, even with appropriate support?

9. Where the best interests assessment indicates that unrestricted contact may be contrary to the child's best interests, what appropriate services (such as supervised direct contact with the parent concerned) are available and accessible to the child and the parents? Is it possible for the observations made during supervised contact to be taken into account in the best interests assessment, for example to help assess the quality of the relationship between a parent and the child?

Alternative dispute resolution processes

10. Are matters that are likely to benefit from alternative dispute resolution in care proceedings identified in national law or policy? Are there alternative dispute resolution processes available to resolve specific concerns about the care of a child or reach agreements on specific measures to be taken in care proceedings? If not, is the identification of matters where such processes can be beneficial, and the development of such processes, under consideration?

Implementation and enforcement

11. What services are available to support the child and the parents in implementing decisions, including, where appropriate, for parents to develop their capacities and skills to care for and meet the needs of the child?

12. Does your national law provide for specific measures in the event of non-compliance with a decision concerning a parent or a child?

Administrative and judicial oversight and review

13. According to national law, are decisions concerning a child in the context of care proceedings subject to effective administrative or judicial oversight and, in the event of a change in circumstances, to review?

14. Are mechanisms in place to ensure that decisions taken in care proceedings are subject to periodic review and adaptation to continue securing the best interests of the child in view of the child's development and the evolving situation of the child and family?

Alternative care placements

1. Where the decision to place a child in alternative care has been established to be in the best interests of the child, does your law or policy set out principles to ensure that:

- a placement is chosen as close as possible to the child's family and social environment;
- the possibility of placement in kinship care is always assessed;
- placement in family-based or family-like care is considered as a priority, where consistent with the best interests of the child;
- siblings are placed together, except where it is contrary to the best interests of one of them?

Individual care plan

2. Are the development, review and adaptation of an individual care plan regulated by law? Do individual care plans ensure:

- measures and services for the child and family that are planned and provided in accordance with the best interests of the child, stability and continuity of care and the development and implementation of a sustainable solution in the best interests of the child;
- effective access to support for the child's transition to adulthood and independent life in accordance with his or her individual needs?

3. Are individual care plans subject to periodic review and adaptation by the competent authority in consultation with the child and parents or other family members, as appropriate in the circumstances of the case?

Support for family reunification

4. How does the care planning procedure operate to ensure that parents receive multidisciplinary services and support in developing their abilities to care for and meet the needs of the child and assume their responsibilities towards the child to enable family reunification in accordance with the best interests of the child?

Support for providers of alternative care

5. Do national laws or policies ensure that providers of alternative care receive support and assistance in providing care for the child, taking account of the individual needs and the best interests of the child? Is such support regulated and adjusted to each form of care, such as kinship or foster care or residential care?

Safeguarding children in alternative care

6. Are professional and non-professional providers of services and care subject to vetting and supervision? Are professional providers of alternative care and other services for children and families subject to accreditation, as well as regular monitoring, including by an independent body?

7. Is there regular monitoring, including by an independent body, of the situation of the child in alternative care? What steps are taken to ensure that the findings of the monitoring are effectively used to address any concerns about the child's care?

8. Is it mandatory for professional providers of alternative care to have child-safeguarding and well-being protocols in place? Are there quality standards regulating the development, evaluation and periodic review of such protocols?

Care proceedings involving placement outside the state jurisdiction

1. Does national law provide that the decision to place a child outside the state jurisdiction is made following a best interests determination procedure, exercising exceptional care and vigilance?

2. What safeguards are in place to secure contact rights, in accordance with the best interest of the child, for the entire duration of such placement (as a minimum, preservation of the child's family and social environment, personal relations and direct contact on a regular basis)?

3. What appropriate mechanisms are in place for the competent authority to satisfy itself that the quality of care to be provided and the levels of expertise in the receiving state meet the required standards, including through the provision of evidence of appropriate accreditation, competence and supervision?

Data protection

1. What measures are in place to protect data relating to the child processed in the context of care proceedings and alternative dispute resolution processes? At the same time, what measures are there to ensure that the child's personal data are shared between the relevant competent authorities and professional service providers, where this is in the best interests of the child?

2. What safeguards are in place to ensure that children involved in care proceedings cannot be identified or identifiable in media reports?

Recommendation CM/Rec(2025)5, accompanied by its explanatory memorandum, aims to improve the protection of the rights and best interests of the child in the context of care proceedings. It contains principles that member States of the Council of Europe are invited to follow in the course of these proceedings dealing with the placement of children into care.

When children have to be placed into care, even with appropriate support, authorities are often faced with decisions that have a significant impact on children and those close to them. The consequences of such decisions can be life changing and reach well beyond childhood.

This Recommendation provides national authorities with guidance for considering all circumstances that may be relevant when assessing a child's best interests in care proceedings. They also ensure that the substantial and procedural rights of children affected by such proceedings, including the right to be informed and to be heard, are fully implemented, and the principles of the rule of law, non-discrimination and the timeliness of proceedings are respected.

This practical implementation tool was specifically designed for policy makers to facilitate and optimise the implementation of the Recommendation and the principles it contains in the designing of policies in the area of care so that the rights and best interests of the child are adequately taken into account and protected.

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