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# **Steering Committee for the Rights of the Child (CDENF)**

## **REPORT**

### **Implementation Review of Recommendation CM/Rec(2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration**

*Adopted by the CDENF during its 10<sup>th</sup> plenary meeting (3-5 December 2024)*

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## LIST OF ACRONYMS

CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CDENF	Council of Europe Steering Committee for the Rights of the Child
CMW	UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CoE	Council of Europe
CRC	UN Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court for Human Rights
EGN	European Guardianship Network
EMN	European Migration Network
ESC	European Social Charter
EU	European Union
EUAA	European Union Agency for Asylum
GREVIO	Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence
IOM	UN International Organization for Migration
NGO	Non-Governmental Organisation
UNHCR	The Office of the United Nations High Commissioner for Refugees
UNICEF	The United Nations International Children's Emergency Fund

## EXECUTIVE SUMMARY

1. In recent decades, children on the move have regularly arrived in Europe and moved across its borders, and the challenges related to their protection are a common concern for all Council of Europe member states.
2. Unaccompanied and separated migrant children face situations of aggravated vulnerability and are at higher risk of having their rights violated due to their age, their migratory status, and the absence of a legal or customary primary caregiver accompanying them during their migration journey. Consequently, host states should have the necessary legal and policy frameworks in place to ensure that these children have access to all their rights in accordance with international and European human rights standards.
3. In this context, access to effective guardianship is considered as an essential safeguard for the protection of the rights of unaccompanied and separated children on the move, and guardians play a key role in safeguarding the best interests of children and supporting them in the exercise of their rights.
4. Recommendation CM/Rec(2019)11 on effective guardianship for unaccompanied and separated children in the context of migration and its Appendix, adopted by the Council of Europe's Committee of Ministers in 2019, together with the Explanatory Memorandum to the Recommendation, adopted by the Council of Europe's Steering Committee for the Rights of the Child (CDENF) in 2022, provide detailed guidance to member states on the requirements for an effective guardianship system and its implementation, so that the specific needs of migrating children are met at all levels, through nine guiding principles and implementing guidelines.
5. Five years after its adoption, this report presents the results of the implementation review of the Recommendation initiated by the Children's Rights Division of the Council of Europe in May 2023. The analysis is based on a questionnaire<sup>1</sup>, to which a total of twenty-two member states replied.<sup>2</sup> Consultations were held with relevant partners<sup>3</sup> throughout the drafting process.
6. The aim of the report is to assess the extent to which member states have complied with the Recommendation and to identify promising practices in terms of legislation and policies that contribute to the implementation of the nine guiding principles, in line with the implementing guidelines and the Explanatory Memorandum. It also includes a section on specific measures adopted by member states in relation to the guardianship of unaccompanied and separated

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<sup>1</sup> CDENF(2023)12rev3, *Outline and questionnaire for the implementation review of Recommendation CM/Rec(2019)11 on Effective guardianship for unaccompanied and separated children in migration*, 18 April 2023, available [here](#)

<sup>2</sup> Replies to the questionnaire were collected between June and September 2023 and thus reflect the situation at this given time in the following respondent member states: Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Germany, Greece, Hungary, Latvia, the Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Switzerland, and Turkey.

<sup>3</sup> Namely the Office of the United Nations High Commissioner for Refugees, the European Union Agency for Fundamental Rights, the European Migration Network and the European Guardianship Network.

children fleeing Ukraine. In addition, the report contains suggestions to inspire states in their efforts to align their guardianship frameworks with the Recommendation, and to inform possible Council of Europe actions to support implementation.

7. The report underlines that general overarching implementation measures appear to be underdeveloped in most of the responding states. There is therefore a need for greater efforts to translate and disseminate the Recommendation, as well as for a review of the existing legal and policy frameworks on the legal status of guardians to identify gaps in national frameworks.
8. One of the main challenges reported by countries is the diversity of guardianship models as well as the diversity of the legal nature or of the name given to the guardians, both between and within countries. In particular, while some member states apply specific regimes for unaccompanied and separated children, others apply the civil code under the same conditions as for national orphans or have a mixture of the two regimes. However, the analysis shows that all guardianship models have the potential to comply with the Recommendation as long as they comprehensively address all situations in which children may find themselves, regardless of their age or residence status. In this sense, the report shows the need to ensure that the guardianship model incorporates a child rights-based approach, taking into account the specific migratory situation of the child in a gender-sensitive and cross-cutting manner, and that it addresses the specific protection needs of separated children.
9. It is noteworthy that while a guardian is generally appointed without undue delay, obstacles are still identified in some member states in cases of doubt as to the minority status of a person, contrary to the principle of the presumption of minority, and in the case of non-asylum-seeking unaccompanied and separated children.
10. The analysis also highlights the importance of the guardianship framework clearly identifying the entities of the guardianship authority and the guardians, their roles, and responsibilities. In this respect, the report encourages member states to make their guardianship systems more accessible, by simplifying and standardising procedures, adapting them to the needs of migrant children and providing child-friendly information material to encourage their active participation.
11. Responding states reported a lack of financial and human resources as an ongoing challenge, particularly in the face of increasing numbers of unaccompanied and separated children entering their territory. The findings of the study highlight the need for regular disaggregated quantitative and qualitative data collection to support the identification and allocation of sufficient resources to the guardianship system, as well as the importance of providing specialised training and continuous education to guardians.
12. Although multidisciplinary and inter-agency co-operation and co-ordination at national level have been established and are being continuously strengthened, a need has been identified to clarify the division of roles and tasks between child

protection authorities and asylum or immigration authorities. In addition, member states should make greater efforts to establish international co-operation mechanisms in relation to unaccompanied and separated children, including for family tracing or tracing missing children, among other situations.

13. Finally, 15 out of the 22 responding states reported having adopted specific measures to protect unaccompanied and separated children fleeing Ukraine, such as specific legal or policy frameworks, co-ordination mechanisms, specific protocols, flexibility measures in the appointment of guardians, and specific information provision mechanisms.
14. This report therefore aims to further support member states in their ongoing process of improving their guardianship systems so that all unaccompanied and separated children in Europe can effectively access their human rights.
15. In order to comply with the nine guiding principles and implementing guidelines set out in Recommendation CM/Rec(2019)11 on effective guardianship for unaccompanied and separated children in the context of migration and its Appendix, this report highlights the areas where there is a need for further action. The main suggestions are the following:
  - 1) Translate and disseminate the Recommendation and its Explanatory Memorandum to key authorities and relevant stakeholders involved in the protection of unaccompanied and separated children and develop child-friendly materials.
  - 2) Initiate a process of reviewing existing legal and policy frameworks and practices in order to bring them into line with the Recommendation and to ensure the participation of children in this process.
  - 3) Develop guidelines for the assessment and determination of the best interests of the child and vulnerability and risk assessment procedures adapted to unaccompanied and separated children in migration.
  - 4) Ensure that the guardianship system applies to all unaccompanied and separated children, regardless of their residence or immigration status.
  - 5) Include the concept of separated children explicitly in the guardianship framework and provide clear guidelines for assessing the suitability of the accompanying adult as guardian.
  - 6) Establish legal or policy provisions that clearly identify the guardianship authority and the guardian, explicitly define their role, tasks, and responsibilities, and distinguish them from other authorities involved in the protection of unaccompanied and separated children in the national context.
  - 7) Ensure the appointment of a guardian without undue delay and consider setting a timeframe for the appointment of a guardian, irrespective of the influx of migrants, providing children with a temporary guardian in case of need and always applying the principle of presumption of minority.

- 8) Ensure the independence and impartiality of guardians and the guardianship authority, through mechanisms such as the avoidance of instructions from immigration authorities or monitoring by an independent authority such as an ombudsperson or a court.
- 9) Ensure that unaccompanied and separated children are provided with information on guardianship arrangements and any other procedures affecting them in a manner appropriate to their age and maturity, in a language they understand, and in a gender and culturally- sensitive manner.
- 10) Ensure access to effective complaint and redress mechanisms related to guardianship arrangements for unaccompanied and separated children in migration.
- 11) Develop policy instruments, including provisions for the allocation of financial, human and technical resources, that anticipate different scenarios in order to ensure effective guardianship for unaccompanied and separated children, regardless of the influx of migrants, including in emergency situations. Ensure that guardians are responsible for a manageable number of cases through the setting of a maximum number of children per guardian.
- 12) Develop a database on unaccompanied and separated children, regardless of their immigration status, which collects comprehensive quantitative and qualitative data, including the procedures in which children have been involved, their specific protection needs, and information on the manner in which services have been provided.
- 13) Ensure high professional standards for guardians by setting out qualification requirements for appointment and by providing adequate initial and in-service education and training in relevant areas of children's rights and migration-related expertise.
- 14) Establish national co-ordination mechanisms, such as an agency, protocol, SOPs or referral mechanism, which clearly identify the role of each competent authority involved in the protection of migrant children.
- 15) Establish international co-operation mechanisms, including for family tracing, family reunification, the transfer of care and custody, the establishment of a durable rights-based solution, the prevention and combating of trafficking and exploitation of children, the prevention of disappearances, or the search for missing children.
- 16) Initiate a reflection process on successful mechanisms that have been implemented in relation to unaccompanied and separated children fleeing Ukraine and their possible extension to other unaccompanied and separated children.

## CONCEPTS AND TERMINOLOGY

16. According to the appendix to the Recommendation CM/Rec(2019)11, for the purpose of the Recommendation and therefore this report:

- 1) **“child”** refers to any human being below the age of 18 years.
- 2) **“unaccompanied child”** refers to a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.
- 3) **“separated child”** refers to a child who has been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.
- 4) **“guardian”** refers to a person who is appointed or designated to support, assist and, where provided by law, represent unaccompanied or separated children in processes concerning them. Where an institution or organization is appointed or designated as a guardian to support, assist and exercise the legal capacity for a child, it should designate a natural person to carry out the duties of guardian as set out in these guidelines. 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. This operational definition takes into account that the term used, as well as the function and manner of appointment of a guardian, vary from jurisdiction to jurisdiction.
- 5) **“guardianship authority”** refers to an authority exercising its responsibility for the management of guardianship for unaccompanied and separated children in migration, including case management and support. This definition takes into account that there are different ways in which States define “guardianship” and organise the discharge of guardianship.
- 6) **“sustainable, rights-based solution”** refers to a comprehensive, secure and sustainable solution which ensures that the child is able to develop into adulthood, in an environment which will meet their needs, and safeguards their rights, as defined by the United Nations Convention on the Rights of the Child, and will not put the child at risk of discrimination, violence, persecution or any other serious harm. Such a solution involves that a thorough best-interests determination be carried out and that the child’s views be taken into account in the development and implementation of a durable solution.
- 7) **“life projects”** are individual tools, based on a joint undertaking between the unaccompanied migrant child and the competent authorities for a limited duration. They define the child’s future prospects, promote the best interests of the child without discrimination and provide a long-term response to the needs of both the minor and the parties concerned. They shall be an integrated policy tool available to member states in order to meet the needs of such minors and to tackle the many difficulties arising



out of this migration, as set out in Recommendation CM/Rec(2007)9 of the Committee of Ministers to member States on life projects for unaccompanied migrant minors.

## I. INTRODUCTION.

17. In recent years, the number of unaccompanied and separated children arriving in Europe has increased. According to UNHCR, UNICEF and the IOM, the number of children arriving in Europe is up 46% in 2022 compared to 2021. In 2022, approximately 35,170 children arrived in Greece, Italy, Bulgaria, Spain, Cyprus and Malta of which 23,514 (67%) were unaccompanied or separated children.<sup>4</sup>
18. Over the past decades, numerous reports and studies have been published showing that unaccompanied and separated children are a particularly vulnerable group who are at higher risk of having their rights violated due to their age, their migratory status, and the lack of a relative or caregiver accompanying them during their migration journey.<sup>5</sup>
19. Regardless of their reasons for travelling, unaccompanied and separated children are entitled to special protection and assistance and should always be treated primarily as children. European host countries should have the necessary legal and policy frameworks in place to ensure that these children have full access to their rights.
20. In this context, unaccompanied and separated children also face additional barriers and vulnerabilities that require specific protections and safeguards in guardianship systems to ensure that their rights are fully respected. These specific protections and safeguards are enshrined in both international and European law and are further operationalised in policies and guidelines in the European context.

### a. Relevant international and European standards.

21. At the **international level**, the UN Committee on the Rights of the Child (CRC Committee) has clarified states' obligations under the UN Convention on the Rights of the Child (CRC), with regard to the human rights of unaccompanied and separated children in the context of migration, in its jurisprudence<sup>6</sup> and in three landmark General Comments: General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin;<sup>7</sup> Joint General Comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and No. 22 of the CRC

<sup>4</sup> UNHCR, UNICEF and IOM (2023) *Refugee and Migrant Children in Europe: Accompanied, Unaccompanied and Separated: Overview of Trends* (January - December 2022). Available [here](#).

<sup>5</sup> Among others: UNHCR (2014) *Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*. Available [here](#); IOM, UNICEF (2017) *Harrowing Journeys: Children and Youth on the Move Across the Mediterranean Sea, at Risk of Trafficking and Exploitation*. Available [here](#); International Federation of Red Cross and Red Crescent Societies (2018) *Alone and Unsafe: Children, migration and sexual and gender-based violence*. Available [here](#). International Federation of Red Cross and Red Crescent Societies (2017) *Protection and Assistance for Children on the Move*. Available [here](#); UNHCR (2017) *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*. Available [here](#).

<sup>6</sup> Among others: *R.Y.S. v. Spain* (No. 76/2019); *D.D. v. Spain* (No. 4/2016); *A.L. v. Spain* (No. 16/2017); *J.A.B. v. Spain* (No. 22/2017); *M.T. v. Spain* (No. 17/2017); *R.K. v. Spain* (No. 27/2017); *H.B. v. Spain* (No. 25/2017); *A.D. v. Spain* (No. 21/2017); *M.B.S. v. Spain* (No. 26/2017); *M.B. v. Spain* (No. 28/2017).

<sup>7</sup> Committee on the Rights of the Child (2005), *General Comment No. 6 on Treatment of unaccompanied and separated children outside their country of origin*. Available [here](#).

Committee (2017) in the context of International Migration: General principles;<sup>8</sup> and Joint General Comment No. 4 of the CMW and No. 23 of the CRC Committee (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.<sup>9</sup>

22. International standards relating to unaccompanied or separated girls can also be found in the jurisprudence of the Committee on the Elimination of Discrimination against Women (CEDAW), in particular General Recommendation No. 32 on gender dimensions of refugee status, asylum, nationality, and statelessness of women<sup>10</sup> and General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration.<sup>11</sup>
23. In addition, specific references to the protection of unaccompanied and separated children can be found in relevant policy documents such as the 2016 New York Declaration,<sup>12</sup> the Global Compact for Safe, Orderly and Regular Migration<sup>13</sup> or the global Compact on Refugees,<sup>14</sup> as well as in several OHCHR<sup>15</sup> reports UNHCR Executive Committee conclusions.<sup>16</sup>
24. At the **European level**, the European Court of Human Rights (ECtHR) has developed an important case law on unaccompanied and separated children, mainly on detention and non-refoulement, but also on age assessment and

<sup>8</sup> Joint General Comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 of the Committee on the Rights of the Child (2017), *in the context of International Migration: General principles*. Available [here](#).

<sup>9</sup> Joint General Comment No. 4 of the CMW and No. 23 of the Committee on the Rights of the Child (2017) *on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*. Available [here](#).

<sup>10</sup> UN CEDAW (2014), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women* (14 November 2014) UN Doc CEDAW/C/GC/32 para 46. Available [here](#).

<sup>11</sup> UN CEDAW (2020), *General recommendation No. 38 on trafficking in women and girls in the context of global migration* (20 November 2020) UN Doc CEDAW/C/GC/38, paras. 24 and 96. Available [here](#).

<sup>12</sup> UN General Assembly (2016), *New York Declaration for Refugees and Migrants* (3 October 2016) UN Doc A/RES/71/1, Para 52 and Annex II para 8. Available [here](#).

<sup>13</sup> UN General Assembly (2019), *Global Compact for Safe, Orderly and Regular Migration* (11 January 2019) UN Doc A/RES/73/195. Available [here](#).

<sup>14</sup> UN General Assembly (2018), *Global Compact on Refugees* (13 September 2018) UN Doc A/RES/73/12 (Part II) paras 75-77. Available [here](#).

<sup>15</sup> For example, see: OHCHR (2017), Thirty-sixth session 11-29 September 2017 *Global issue of unaccompanied migrant children and human rights. Final report of the Human Rights Council Advisory Committee* (24 July 2017) UN Doc A/HRC/36/51; OHCHR (2019), Forty-first session 24 June – 12 July 2019, *The impact of migration on migrant women and girls: a gender perspective. Report of the Special Rapporteur on the human rights of migrants* (15 April 2019) UN Doc A/HRC/41/38; OHCHR (2017), Thirty-fourth session 27 February-24 March 2017 *Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations. Report of the United Nations High Commissioner for Human Rights* (26 January 2017) UN Doc A/HRC/34/31 para 18; OHCHR (2017), Thirty-sixth session 11-29 September 2017 *Report on the compendium of principles, good practices and policies on safe, orderly and regular migration in line with international human rights law* (5 October 2017) UN Doc A/HRC/36/42; OHCHR (2018), Thirty-seventh session 26 February-23 March 2018 *Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations. Report of the United Nations High Commissioner for Human Rights. Addendum* (7 February 2018) UN Doc A/HRC/37/34/Add.1, 38-40.

<sup>16</sup> UNHCR (2006), *Conclusion on Women and Girls at Risk No. 105 (LVII)* (6 October 2006) UN Doc A/AC.96/1035 para (i) and UNHCR (2007), *Conclusion on Children at Risk No. 107 (LVIII)* (5 October 2007) UN Doc A/AC.96/1048 para (f)

guardianship.<sup>17</sup> In addition, the European Committee of Social Rights has developed relevant case law on the protection of unaccompanied and separated children, including access to guardianship.<sup>18</sup>

25. Other Council of Europe conventions are also relevant to unaccompanied and separated children. The Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention<sup>19</sup>) adopted a Declaration on protecting refugee and migrant children against sexual exploitation and sexual abuse.<sup>20</sup> This Declaration was recalled in the context of the Lanzarote Committee's statement on protecting children from sexual exploitation and sexual abuse resulting from the military aggression of the Russian Federation against Ukraine.<sup>21</sup> In addition, based on the Committee's monitoring findings, the following tools have been developed: a checklist on States' main obligations to protect children affected by the refugee crisis from sexual exploitation and sexual abuse<sup>22</sup> and a Handbook on the protection of children against sexual exploitation and sexual abuse in crisis and emergency situations.<sup>23</sup>
26. The Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) has produced a thematic factsheet<sup>24</sup> on the application of the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)<sup>25</sup> to the protection of migrant, refugee and asylum-seeking women from gender-based violence,

<sup>17</sup> Among others: *O.R. v. Greece* (no. 24650/19), 23 January 2024; *Darboe and Camara v. Italy* (no. 5797/17), 21 July 2022; *Khan v. France* (no. 12267/16), 28 February 2019; or *Rahimi v. Greece* (no. 8687/08) 5 July 2011; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (no. 13178/03), 12 October 2006; *Mohamad v. Greece* (no. 70586/11), 11 December 2014; *Abdullahi Elmi and Aweys Abubakar v. Malta* (no. No. 25794/13 and 28151/13), 22 February 2017; *H.A. and Others v. Greece* (no. 19951/16), 28 February 2019; *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* (no. 14165/16), 13 June 2019; *Moustahi v. France* (no. 9347/14), 25 June 2020.

<sup>18</sup> For instance: *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018. Available [here](#); *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, Complaint No. 114/2015. Available [here](#); or *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011. Available [here](#).

<sup>19</sup> Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), CETS No. 201, 2007.

<sup>20</sup> Declaration of the Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) on protecting migrant and refugee children against sexual exploitation and sexual abuse, adopted by the Lanzarote Committee on 28 June 2018. Available [Here](#).

<sup>21</sup> Statement on protecting children from sexual exploitation and sexual abuse resulting from the military aggression of the Russian Federation against Ukraine, Adopted by the Lanzarote Committee on 10 March 2022. Available [here](#).

<sup>22</sup> Lanzarote Committee, *Checklist on the Protection of children affected by the refugee crisis from sexual exploitation and sexual abuse: States' main obligations under the Lanzarote Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse*. Available [here](#).

<sup>23</sup> Lanzarote Committee (2022), *Handbook on the protection of children against sexual exploitation and sexual abuse in crisis and emergency situations. States' main obligations under the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*. Available [here](#).

<sup>24</sup> GREVIO, *Factsheet on Protecting migrant women, refugee women, and women asylum seekers from gender-based violence under Convention on Preventing and Combating Violence against Women and Domestic Violence*. Available [here](#).

<sup>25</sup> Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), CETS No. 210, 2011.

with specific references to children. In addition, the Convention on Action against Trafficking in Human Beings shall be considered by all the member states,<sup>26</sup> as well as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, under which the European Committee for the Prevention of Torture (CPT), in its 19<sup>th</sup> Annual Report, identified guardianship as a necessary protection for migrant children in detention.<sup>27</sup>

27. In addition, the following Recommendations of the Committee of Ministers are also relevant:

- 1) Recommendation CM/Rec(2022)22 on human rights principles and guidelines on age assessment in the context of migration,<sup>28</sup>
- 2) Recommendation CM/Rec(2022)17 on protecting the rights of migrant, refugee and asylum-seeking women and girls,<sup>29</sup>
- 3) Recommendation CM/Rec(2019)4 on supporting young refugees in transition to adulthood,<sup>30</sup> and
- 4) Recommendation CM/Rec(2007)9 on life projects for unaccompanied migrant minors.<sup>31</sup>

28. It is also important to note the following resolutions and recommendations of the Parliamentary Assembly (PACE):

- 1) Resolution 2354 (2020) and Recommendation 2190 (2020) on Effective guardianship for unaccompanied and separated migrant children,<sup>32</sup>
- 2) Resolution 2243 (2018) and Recommendation 2141 (2018) on Family reunification of refugees and migrants in the Council of Europe member States,<sup>33</sup>

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<sup>26</sup> Convention on Action against Trafficking in Human Beings, CETS No. 197, 2005.

<sup>27</sup> CPT (2009) 19th General Report on the CPT's Activities (2008-2009) (includes a section on safeguards for irregular migrants deprived of their liberty). Available [here](#).

<sup>28</sup> Recommendation CM/Rec(2022)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration (Adopted by the Committee of Ministers on 14 December 2022 at the 1452nd meeting of the Ministers' Deputies). Available [here](#).

<sup>29</sup> Recommendation CM/Rec(2022)17 on protecting the rights of migrant, refugee and asylum-seeking women and girls (Adopted by the Committee of Ministers on 20 May 2022 at the 132nd Session of the Committee of Ministers). Available [here](#).

<sup>30</sup> Recommendation CM/Rec(2019)4 on supporting young refugees in transition to adulthood (Adopted by the Committee of Ministers on 24 April 2019 at the 1344th meeting of the Ministers' Deputies). Available [here](#).

<sup>31</sup> Recommendation CM/Rec(2007)9 on life projects for unaccompanied migrant minors (Adopted by the Committee of Ministers on 12 July 2007 at the 1002nd meeting of the Ministers' Deputies). Available [here](#).

<sup>32</sup> Resolution 2354 (2020) Effective guardianship for unaccompanied and separated migrant children; and Recommendation 2190 (2020) Effective guardianship for unaccompanied and separated migrant children (Adopted by the Standing Committee, acting on behalf of the Assembly, on 4 December 2020). Available [here](#).

<sup>33</sup> Resolution 2243 (2018) Family reunification of refugees and migrants in the Council of Europe member States; and Recommendation 2141 (2018) Family reunification of refugees and migrants in the Council of Europe member States (Adopted by the Assembly on 11 October 2018 (35th Sitting). Available [here](#).

- 3) Resolution 2195 (2017) and Recommendation 2117 (2017) on Child-friendly age assessment for unaccompanied migrant children,<sup>34</sup>
  - 4) Resolution 2136 (2016) Harmonising the protection of unaccompanied minors in Europe,<sup>35</sup>
  - 5) Resolution 1996 (2014) Migrant children: what rights at 18?,<sup>36</sup>
  - 6) Resolution 2020 (2014) and Recommendation 2056 (2020) The alternatives to immigration detention of children,<sup>37</sup>
  - 7) Resolution 1810 (2011) and Recommendation 1969 (2011) on Unaccompanied children in Europe: issues of arrival, stay and return,<sup>38</sup> and
  - 8) Recommendation 1703 (2005) Protection and assistance for separated children seeking asylum<sup>39</sup>
29. In relation to the Council of Europe's policy on the protection of the rights of refugee and migrant children, action in this area is guided by the Council of Europe's Strategies for the Rights of the Child,<sup>40</sup> in particular the Strategy for 2022-2027,<sup>41</sup> the Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025)<sup>42</sup> and the Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019)<sup>43</sup>.
30. While all these standards apply to all Council of Europe member states, due attention can also be paid to provisions developed within the European Union, applicable to 27 of the Council of Europe member states.<sup>44</sup>

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<sup>34</sup> Resolution 2195 (2017) Child-friendly age assessment for unaccompanied migrant children; and Recommendation 2117 (2017) Child-friendly age assessment for unaccompanied migrant children (by the Standing Committee, acting on behalf of the Assembly, on 24 November 2017). Available [here](#).

<sup>35</sup> Resolution 2136 (2016) Harmonising the protection of unaccompanied minors in Europe (Adopted by the Assembly on 13 October 2016 (35th Sitting). Available [here](#).

<sup>36</sup> Resolution 1996 (2014) Migrant children: what rights at 18? (Adopted by the Standing Committee, acting on behalf of the Assembly, on 23 May 2014). Available [here](#).

<sup>37</sup> Resolution 2020 (2014) The alternatives to immigration detention of children; and Recommendation 2056 (2020) The alternatives to immigration detention of children (Adopted by the Assembly on 3 October 2014 (36th Sitting). Available [here](#).

<sup>38</sup> Resolution 1810 (2011) Unaccompanied children in Europe: issues of arrival, stay and return; and Recommendation 1969 (2011) Unaccompanied children in Europe: issues of arrival, stay and return (Adopted by the Assembly on 15 April 2011 (18th Sitting). Available [here](#).

<sup>39</sup> Recommendation 1703 (2005) Protection and assistance for separated children seeking asylum (Adopted by the Assembly on 28 April 2005 (15th Sitting) Available [here](#).

<sup>40</sup> Previous Strategies of the Council of Europe. Available [here](#).

<sup>41</sup> Council of Europe Strategy for the Rights of the Child (2022-2027). Available [here](#).

<sup>42</sup> Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025). Available [here](#).

<sup>43</sup> Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019). Available [here](#).

<sup>44</sup> See in particular: Council of Europe and FRA (2023) *Children in migration: fundamental rights at European borders*. Available [here](#). European Union Strategy on the rights of the child, available [here](#), and its Annexes I 'Rights of the Child - EU and international frameworks', available [here](#) and II 'Rights of the Child - EU acquis and policies', available [here](#); Communication from the European Commission to the European Parliament



**b. The Recommendation CM/Rec(2019)11 on effective guardianship for unaccompanied and separated children in the context of migration.**

31. The Recommendation CM/Rec(2019)11 on effective guardianship for unaccompanied and separated children in the context of migration (the “Recommendation”), adopted by the Council of Europe’s Committee of Ministers in 2019, is *“a ground-breaking soft law instrument firmly anchored in international and European human rights standards, setting clear guiding principles for the protection, assistance and safety of children on the move through guardianship”* as described by the Council of Europe’s Director of Democracy and Human Dignity, Marja Ruotanen.<sup>45</sup>
32. The appendix to the Recommendation provides detailed guidance to member states on the requirements for an effective guardianship system as well as for its implementation so that the specific needs of children on the move are met at all levels, through nine guiding principles and implementing guidelines:
- Principle 1 – Protection of the rights of unaccompanied and separated children in migration through guardianship.
  - Principle 2 – Guardianship frameworks and measures.
  - Principle 3 – Appointment or designation of guardians without undue delay.
  - Principle 4 – Legal responsibilities and tasks of guardians.
  - Principle 5 – Information, access to justice and remedies, including child-friendly complaint mechanisms.
  - Principle 6 – Institutional measures.
  - Principle 7 – Resources, recruitment, qualifications and training.
  - Principle 8 – Co-operation and co-ordination at national level.
  - Principle 9 – International co-operation.
33. The Explanatory Memorandum to the Recommendation, adopted by the CDENF in 2022, elaborates on the guiding principles and implementing guidelines by illustrating different ways of organising guardianship in member states for unaccompanied and separated children in migration.

**c. The implementation review of Recommendation CM/Rec(2019)11: background, objectives, methodology and limitations.**

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and the Council: The protection of children in migration COM(2017) 211 final, adopted on 12 April 2017, available [here](#); Conclusions of the Council of the European Union and the representatives of the governments of the Member States on the protection of children in migration adopted by the Council at its 3546th meeting held on 8 June 2017, available [here](#); EU Asylum acquis, available [here](#); and the new EU Pact on migration and asylum, available [here](#).

<sup>45</sup> Council of Europe (2022) Effective guardianship for unaccompanied and separated children in the context of migration. Recommendation CM/Rec(2019)11 of the Committee of Ministers and Explanatory Memorandum, p. 5. Available [here](#).

34. Since its adoption, the continued implementation of the Recommendation has been supported by the Council of Europe's Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025) and the Strategy for the Rights of the Child (2022-2027).
35. The purpose of this report is to present the results of the implementation review of the Recommendation CM/Rec(2019)11 by member states carried out in 2023, in order to comply with Recommendation no. 5 *“examine within the Committee of Ministers, through the appropriate intergovernmental committee, the implementation of this recommendation three years after its adoption and at similar intervals thereafter”*.
36. This report is based on data collected through a comprehensive questionnaire approved by the CDENF and distributed in an online format to all 46 Council of Europe member states between June and September 2023. States were asked to complete the questionnaire and send in their responses to the Council of Europe Children's Rights Division. The questionnaire was divided into eleven sections (see ANNEX 1):
- An introductory section on cross-cutting implementation measures.
  - Nine sections aimed at collecting promising practices on legislation and policies in member states that contribute to the implementation of the nine guiding principles, in line with the implementing guidelines and the Explanatory Memorandum.
  - A section on specific measures adopted by member states in relation to the guardianship of unaccompanied and separated children fleeing Ukraine.
  - A final section highlighting identified challenges and promising practices in the area of guardianship for unaccompanied and separated children.
37. Twenty-two member states replied to the questionnaire,<sup>46</sup> and some of them also provided additional supporting information to inform on their compliance with the provisions of Recommendation CM/Rec(2019)11.
38. As a limitation of the study, it is important to note that country data reflect the situation as of September 2023 and come from the questionnaire responses or from additional data provided directly by the states. The questionnaire was indeed designed as a self-assessment exercise where states were asked to assess whether their guardianship system was in line with the principles of the Recommendation.<sup>47</sup> The interpretation of the standards applied by the responding states may therefore vary. A verification or triangulation of the information provided by the respondents was not within the scope of this study,

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<sup>46</sup> Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, Finland, France, Germany, Greece, Hungary, Latvia, the Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Switzerland, and Türkiye.

<sup>47</sup> For further information, see also the self-assessment tool designed by the European Guardianship Network which may further assist stakeholders to regularly assess their guardianships systems.



nor was an independent assessment of the effectiveness of the implementation of the guardianship system in practice.<sup>48</sup>

39. In addition, the questionnaire was designed to be answered at national level. Depending on how the guardianship system for unaccompanied and separated children is organised in each responding state, regional and local differences may not be fully reflected in the report. This may be particularly the case in highly decentralised models.
40. To complement this implementation review, child and youth consultations were carried out, gathering the views of unaccompanied migrants who had benefited from guardianship measures during their childhood. Thanks to the availability and support of relevant authorities and partners, children were consulted in Cyprus and in Portugal, under the coordination of Defence For Children International Italy. Quotes from children and extracts from the child consultations report are integrated in this report, while the results of these consultations can be found in the [full report](#).

*“Without an old man, you won’t go far.”\**

## II. IMPLEMENTATION REVIEW OF THE PRINCIPLES OF THE RECOMMENDATION IN MEMBER STATES

### a. OVERARCHING MEASURES FOR THE IMPLEMENTATION OF RECOMMENDATION CM/REC(2019)11.

#### ***Establishing a framework for the guardianship unaccompanied and separated children in the context of migration.***

41. The Committee of Ministers recommended that Governments of member states set out a comprehensive and consistent framework of measures on guardianship for unaccompanied and separated children in migration.
42. Although only 4 out of 22 states reported having established a specific framework on guardianship for unaccompanied and separated children, this does not mean that there are no comprehensive measures in place. As explained below, measures relating to guardianship for unaccompanied and separated children

<sup>48</sup> The information provided by the member states in this report may be further complemented by reports on effective implementation produced by other stakeholders such as: FRA (2022) *Guardianship systems for unaccompanied children in the European Union. Developments since 2014*. Available [here](#); European Guardianship Network (2019) *Proguard. Recommendation report on the current state of the art in guardianship for unaccompanied children*. Available [here](#); UNICEF (2023) *Fulfilling the rights of children without parental care displaced from Ukraine. An analysis of international and European law*. Available [here](#); UNHCR (2017) *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*, available [here](#);

\* Quote of an Afghan proverb mentioned by a participant of Afghan origin in the context of the consultation of children and young persons who benefited from guardianship measures during their childhood. See full report on the consultation of children and young persons in the framework of the implementation review of the Council of Europe CM/Rec(2019)11 in the appendix to this report ([CDENF\(2024\)06add](#)). Similar quotes from this consultation process are inserted in this report in similar bubbles.

could also be included in either the asylum and/or the general child protection framework.

43. Nevertheless, it is interesting to see the different ways in which states are developing specific frameworks. For example, in 2022 the **Greek** Parliament adopted a new law on the establishment of a National Guardianship System and Accommodation framework for unaccompanied minors.<sup>49</sup> In **Belgium**, the Guardianship Act includes a specific chapter on unaccompanied children in the context of migration.<sup>50</sup> In **Croatia**, the Protocol on procedures for unaccompanied and separated children, adopted in 2018, sets out the tasks and responsibilities of guardians and the referral procedures.<sup>51</sup> In **the Netherlands**, the national guardianship authority, NIDOS, is mandated to exercise guardianship over unaccompanied and separated children.<sup>52</sup>

***Evaluate legislation, policies and practices and allocate resources to ensure implementation.***

44. The Recommendation also encourages states to assess their legislation, policies and practices and, where appropriate, to take measures and allocate resources to ensure the necessary reforms to implement the Recommendation. **Azerbaijan, France, Germany, Greece and Portugal** reported that they had reviewed their legal framework to bring it into line with the Recommendation, and Austria and Finland reported that they were planning to do so. **Albania, Belgium, France, Greece and Portugal** stressed that they were allocating resources to ensure the implementation of the Recommendation, while **Bulgaria, Hungary, Norway or Spain** confirmed that they had taken measures in this direction.

In **Germany**, the 2015 Act on the Improvement of Accommodation, Care and Assistance for Foreign Children and Juveniles<sup>53</sup> was evaluated in 2021 and the new Act on the Reform of Guardianship and Assistance Law<sup>54</sup> entered into force on 1 January 2023.

In the case of **Greece**, the new National Strategy for the Protection of Unaccompanied Minors in Greece develops actions and programs, reforms institutions and proposes legislation or promotes practices to better protect children's rights.

<sup>49</sup> Law 4960/2022 on National Guardianship System and Accommodation Framework for Unaccompanied Minors and other provisions within the competence of the Ministry of Migration and Asylum. Govern. Gazette A' 145. Available [here](#).

<sup>50</sup> 24 Decembre 2002. Loi-programme (I) (art. 479) – *Titre XIII – Chapitre VI: Tutelle des mineurs étrangers non accompagnés*. Disponible [ici](#). Note that the Guardianship Act regulates the guardianship of unaccompanied foreign children, the role of the Guardianship Service and the guardian itself.

<sup>51</sup> Protokol o Postupanju Prema Djeci Bez Pratlje. Available [here](#).

<sup>52</sup> Decree on the acceptance of legal entities dated 12 February 2005. Available [here](#).

<sup>53</sup> Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendliche. Available [here](#).

<sup>54</sup> Gesetz zur Reform des Vormundschafts- und Betreuungsrechts. Available [here](#).

***Translation and dissemination of the Recommendation.***

45. Finally, **Azerbaijan, Belgium, Germany, Latvia and Slovenia** reported that they had translated and disseminated the Recommendation to competent authorities and relevant stakeholders, while **Albania, Bulgaria, Croatia, Hungary, Latvia and Portugal** are in the process of doing so.

**b. PRINCIPLE 1 – PROTECTION OF THE RIGHTS OF UNACCOMPANIED AND SEPARATED CHILDREN IN MIGRATION THROUGH GUARDIANSHIP**

*States should have in place an effective system of guardianship which takes into account the specific needs and circumstances of unaccompanied and separated children in migration in order to protect and promote their rights and secure their best interests.*

46. All responding states have a guardianship framework in place, contributing to avoid the risks associated with ad hoc or informal guardianship arrangements. However, the framework needs to comply with certain requirements in order to effectively protect the rights of unaccompanied and separated children in migration.

***Ensuring the best interests of unaccompanied and separated children is a primary consideration.***

47. Guardianship ensures that children deprived of parental care have access to and benefit from all their rights. To achieve this, it is essential that guardianship frameworks have clear procedures for assessing and determining the best interests of unaccompanied or separated children.
48. In this regard, the principle of the best interests of the child is uniformly provided for in national legislation mainly within the child protection legal framework. In some cases, it is also provided for in the migration or asylum legal framework. From the replies of the reporting states to the questionnaire it can be concluded that in general there are no procedures for the assessment and determination of the best interests of the child, either in general or specifically tailored to unaccompanied or separated children. However, some member states, such as **Bulgaria, Greece, or Norway**, have developed promising practices.

In **Bulgaria**, Rapid Assessment and Full assessment forms are available for guardians and have been adapted for unaccompanied and separated children by introducing support measures such as legal services, family tracing and reunification.

In **Greece**, specific Best Interests Assessment tools have been developed in co-operation with UNHCR and the European Union Agency for Asylum (EUAA). Conducted by specially trained professionals in the context of reception procedures, the results are submitted to the Public Prosecutor for Minors to decide on guardianship and care measures.

In **Norway**, the Directorate of Immigration assesses the best interests of the child in the short and long term in order to determine the most durable solution and conducts a procedure to determine the best interests of the child within the asylum procedure. The assessment and weighting must be visible in the decision, according to the Norwegian Immigration Regulation.

***Assessment of specific migration-related risks, vulnerabilities or protection needs of unaccompanied and separated children.***

49. In addition, the Explanatory Memorandum of the Recommendation stresses the importance of taking into account the specific vulnerabilities or protection needs that unaccompanied and separated children may have as a result of their migratory experience, and their increased exposure to certain risks such as discrimination, exploitation, sexual, physical or psychological abuse, violence and trafficking in human beings. Effective guardianship should assess and respond to these specific needs and circumstances.

50. With regard to vulnerability and risk assessment, most reporting states have screening procedures as part of asylum or reception procedures. In this sense, European Union (EU) countries usually have vulnerability assessment procedures in place within the asylum procedure in order to comply with their obligations under Directives 2013/32/UE and 2013/33/UE.<sup>55</sup> For example, **Bulgaria** and **Greece** reported using the EUAA Vulnerability Toolkit.<sup>56</sup> However, such procedures only apply to asylum-seeking children while less attention is paid to the need for standardised procedures for children in other migration contexts, within the guardianship framework.

*"[A guardian should help] to feel that he [the young person] is not alone because there is a lot of danger."\**

In **Belgium**, there is a specific procedure whereby the Vulnerable Persons Unit of the Immigration Office<sup>57</sup> seeks and determines a durable solution in the best interests of the child. This procedure is laid down in the manual for guardians.<sup>58</sup>

In **Norway**, the Directorate for Immigration has developed guidelines and action cards to identify and follow up on specific risks among unaccompanied and separated children, such as the risk of human trafficking, social control, or child marriage.

<sup>55</sup> [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) and [Directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) contain specific provisions targeting vulnerable asylum seekers, obliging states to establish processes for assessing these vulnerabilities, which include minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

<sup>56</sup> [EUAA Vulnerability toolkit](#) including "Tool for Identification of Persons with Special Needs (IPSN)", "Special needs and vulnerability assessment tool (SNVA)", and the "Referral toolkit".

<sup>57</sup> Vulnerable Persons Unit of the Immigration Office of the Belgian government. More information available [here](#).

<sup>58</sup> Manual for guardians of the Belgian government. Available [here](#).

In **Poland**, the authorities have developed an algorithm for the identification and case management vulnerable asylum seekers.

51. When it comes to addressing the specific circumstances of unaccompanied and separated children in need of international protection and/or victims of trafficking or exploitation, states' replies show a wide variety of approaches. Firstly, in countries where a guardianship framework for unaccompanied and separated children is integrated in the asylum system, special needs of asylum-seeking children are usually adequately identified and addressed, in contrast to countries where it is integrated into the child protection system (see principle 2), where less attention is paid to the international protection needs of such children.
52. Secondly, with regard to trafficking or exploitation, although most states referred to their trafficking laws or their criminal code, these provisions do not usually include specific provisions for unaccompanied or separated children victims of trafficking and exploitation. While national legislation usually provides for the appointment of a guardian or a representative to assist the victim in the proceedings, the specific needs of trafficked or exploited children are not addressed in the guardianship frameworks.
53. Unaccompanied and separated children in need of international protection and/or victims of trafficking or exploitation are not only in situations of increased vulnerability but are also entitled to access to measures other than guardianship such as refugee status or subsidiary protection, special reception conditions or residence permits and/or access to special accommodation on the basis of their status as victims of trafficking. It should therefore be ensured that guardianship frameworks specifically address these situations in order to ensure, in particular, referral to relevant services, as reported by **Croatia** or **Spain**. Indeed, the access to these procedures requires the identification of both the trafficking situation and the need for international protection. If the guardianship framework does not specifically address these realities (i.e. definitions, description, identification of competent authorities, referral protocols, etc.) it will be difficult for the needs of these children to be comprehensively covered in practice. This goes beyond the fact that, once in the procedure, they have a guardian or representative.

*"I want my issues to be solved."\**

In **Croatia**, the Protocol on the treatment of unaccompanied children adopted in 2018 addresses the identification of vulnerable cases and establishes the obligation to designate a special guardian.

In **Spain**, the Framework Protocol on actions relating to foreign unaccompanied children establishes asylum-related specific provisions,<sup>59</sup> and the Annex to the Framework Protocol for Protection of Victims of Human Trafficking is strictly focused on actions for detection and assistance of children victims, including unaccompanied and separated.<sup>60</sup>

### **Addressing the specific needs of separated children.**

54. Finally, the Appendix to Recommendation CM/Rec(2019)11 defines ‘separated children’ as “a child who has been separated from both parents, or from his or her previous legal or customary primary caregiver, but not necessarily from other relatives.” The Recommendation also clearly underlines the similar legal entitlement of both unaccompanied and separated children to receive the support and assistance of a guardian. In this respect, separated children have many of the same protection needs as unaccompanied children. However, they also have some specific protection needs mainly related to their relationship with the accompanying adult, which need to be specifically addressed.

“I want my needs to be addressed.”\*

55. The Recommendation calls on States to ensure that guardianship measures take into account the best interests and specific circumstances of the child and that they contribute to finding sustainable and rights-based solutions. In this context, an individual and case by case analysis should assess the relationship with the accompanying adult and whether it is in the best interests of the child to appoint the accompanying adult as a guardian. Such a possibility must be provided for in the guardianship framework.

“I want her to care about me and listen about what I have to say, not judge me and find ways to help me when I do not know what to do.” \*

56. Nevertheless, we observe a general lack of such assessment of the specific situation of separated children in the guardianship frameworks. When asked how countries address the specific needs of separated children, we find a variety of responses: some countries clearly state that there is no differentiated approach (e.g **Germany**), others point out that, although they differentiate the concepts, the treatment is the same as for unaccompanied children (e.g **Norway**), while others state that the concept is included in that of unaccompanied children. However, most of the countries that indicate that this specific approach exists do not justify how it is applied.

57. Based on the replies, there is still need for clarification of the concept of ‘separated child’, as the terms “unaccompanied” or “separated” are sometimes mistakenly used interchangeably while they do not address the same situations,

<sup>59</sup> Spanish Framework Protocol on actions relating to foreign unaccompanied children establishes asylum-related specific provisions, signed on 13 October 2014. Available [here](#).

<sup>60</sup> Annex to the Framework Protocol for Protection of Victims of Human Trafficking is strictly focused on actions for detection and assistance of children victims, including unaccompanied and separated signed on 13 October 2017. Available [here](#).



and as the specific circumstances of separated children are generally not adequately addressed.

### c. PRINCIPLE 2 – GUARDIANSHIP FRAMEWORKS AND MEASURES

*States should adopt and implement appropriate legal, policy, regulatory and/or administrative frameworks to ensure the provision of guardianship for unaccompanied and separated children in migration.*

58. In order to implement this principle, States should have frameworks and policies in place that clearly define how guardianship for migrant children is established and operates. Nevertheless, the challenges faced by the countries consulted in this regard vary according to the characteristics of their guardianship model and the legal nature of the guardian.

#### ***Diversity of guardianship frameworks.***

59. Firstly, there are differences depending on whether there is a specific guardianship framework for unaccompanied and separated children (such as in **Greece**, or **the Netherlands**), whether it is included in the general asylum framework (such as in **Finland** or **Norway**) or in child protection policy (such as in **Cyprus** or **Germany**); or whether there is a mixed model of guardianship under asylum law and subsidiarily under child protection law, or vice versa (as in **Austria**, **Slovenia** or **Switzerland**).

60. For example, in models where the application of the asylum framework takes precedence over the child protection framework, it is not clear whether unaccompanied or separated children who are not asylum seekers benefit equally from certain protections and services<sup>61</sup>. On the other hand, in mixed models, the number –and type– of actors involved varies considerably, and therefore it requires more effort to establish a clear model in which they co-ordinate with other services and stakeholders. In **Slovenia**, for instance, family law is subsidiary to asylum law. If the child applies for asylum, the legal representative is appointed according to the provisions of the International Protection Act, which differs from the general guardianship system. In the case of **Switzerland**, the federal government is the guardianship authority for unaccompanied and separated asylum-seeking children and only during their stay in the federal reception centres. In all other cases, guardians are supervised by the cantons, through their youth protection authorities and social services.

*"I don't feel like I am being helped by my legal guardian, the child protection officer helped me a lot more."\**

<sup>61</sup> This observation concurs to the findings of FRA (2022) *Guardianship systems for unaccompanied children in the European Union. Developments since 2014* (2.6. Guardianship and the residence status of the child). Available [here](#).

***Degree of decentralisation of the guardianship system.***

61. Secondly, different challenges are identified depending on the level of decentralisation of the guardianship system. There are countries with centralised guardianship models where there is more clarity about the functioning and the distribution of tasks and responsibilities between the different actors involved (such as **Greece, the Netherlands, or Portugal**), but also countries with decentralised models, where guardianship systems are organised at regional or even local level (such as **Austria, France, Spain, or Switzerland**). In the latter case, the ability to provide a clear and consistent legal and policy framework depends on the existence of multi-level and inter-regional co-ordination spaces or similar monitoring body at state level, as in **Latvia or Spain**.

In **Latvia**, the Orphan's and Custody Courts are guardianship institutions established by local governments under the supervision of the State Inspectorate for the Protection of Children's Rights which also provides methodological support to guardians.

In **Spain**, there are 17 different models of guardianship -one per region- although there is a national regulation setting out minimum content and a state-level body with power to issue guidelines and recommendations and to create co-ordination spaces.

***Ambiguity or lack of clarity in the identification of the guardian and the guardianship authority.***

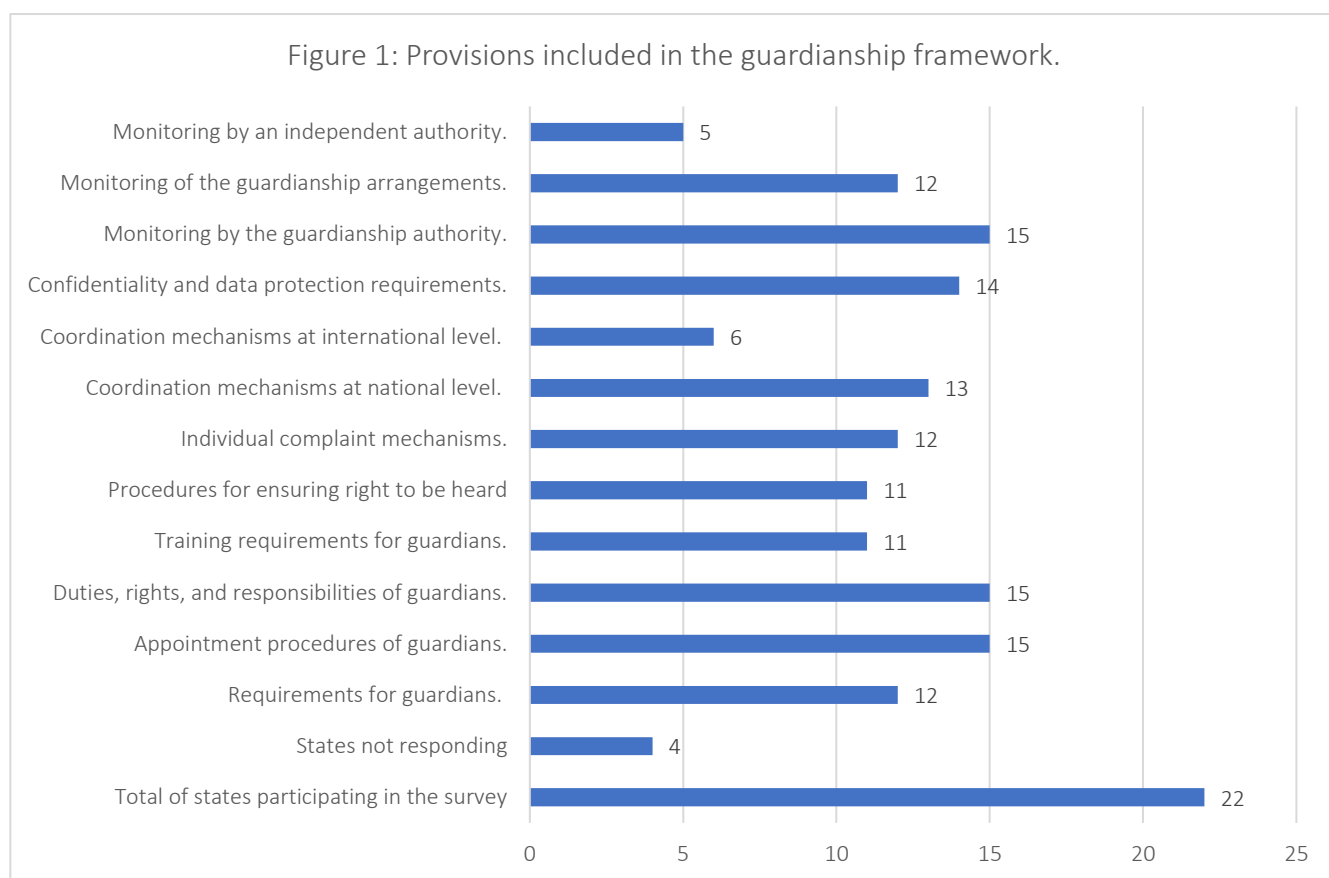
62. While in some countries the guardian is clearly identifiable, in other countries several entities could be considered to fall under the concept of a guardian as defined in the Recommendation (with distribution of roles and tasks between these different entities). In such cases, there are usually court-appointed guardians who act as representatives, while other tasks are carried out by stakeholders closer to the child's daily life (e.g. the director of the residential centre). This is namely the case in **Bulgaria, Finland, Germany, Poland and Portugal**.
63. In **Portugal**, the process manager handles all administrative procedures and co-ordinates with all available actors and resources to ensure the support, services and follow-up legal representative of child needs; and the director of the Residential Centres is the legal representative of the child and takes full responsibility for the technical intervention. So, the role of the guardian as stated in the recommendation, is fulfilled in Portugal by the combination of these two factors.
64. In this context, the ability to provide a clear and uniform framework for guardianship also depends on the legal nature of guardianship and its main characteristics. On the one hand, there are countries that designate public institutions (**Albania, Armenia, Austria, Cyprus, France or Spain**), natural persons (**Belgium, Bulgaria, Finland, Latvia, Norway or Poland**) or private entities (the **Netherlands**) as guardians or guardianship authorities (**Portugal**), and countries having hybrid models (**Germany, Greece, Hungary, Slovenia or Turkey**). On the other hand, regardless of their nature, guardians in most



countries are paid professionals, who work through formal guardianship arrangements and can be both permanent and temporary, following the different options provided by the Guidelines.

***Provisions that a guardianship framework should include.***

65. The specificities mentioned above affect the way in which guardianship frameworks address the role, activities, and powers of the guardian in the exercise of his or her functions, as well as a better understanding by all services involved. However, while recognizing the diversity of guardianship models, the Guidelines provide essential minimum elements that should be included in any framework.



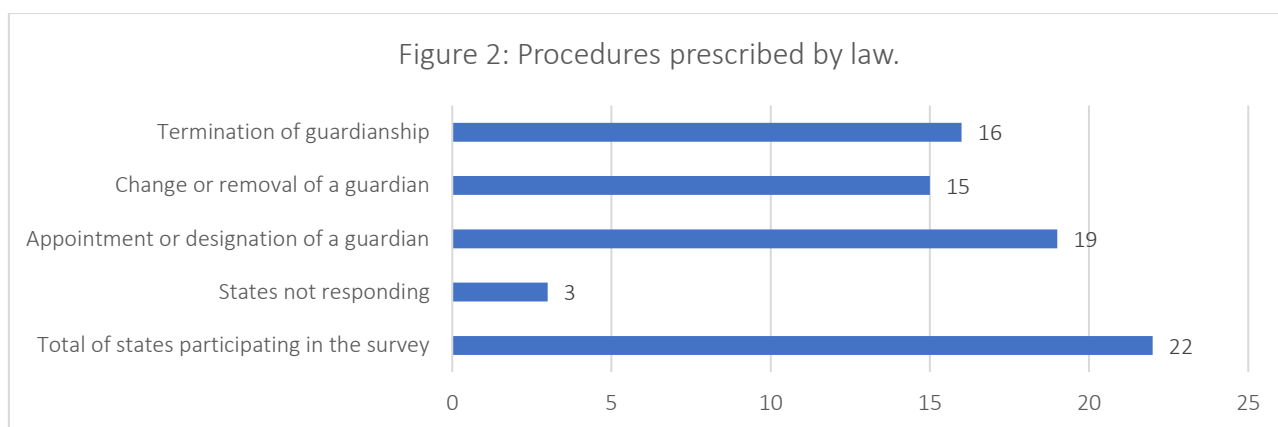
66. In this sense, most of the reporting States consider that their guardianship frameworks include practically all the elements covered by the Recommendation. However, only some of them explain how and where they are regulated. From the results of the analysis, it can be concluded that many of these elements are understood to be inherent to functions of the guardian but are not necessarily explicitly provided for the legal or policy framework.

67. Nevertheless, *Figure 1* shows that provisions on “*Inter-agency and multidisciplinary co-operation and co-ordination mechanisms and processes at the international level*”; and “*monitoring of the guardianship arrangements for children by an independent authority*” need to be strengthened, as only 6 and 5 of the 22 States reported that they were included in their guardianship framework, respectively.

68. On the one hand, the Explanatory Memorandum stresses the importance of frameworks that provide for co-operation between the various relevant professionals, including cross-border co-operation where appropriate, to ensure a holistic, child-centred approach. On the other hand, it emphasises the need to designate an independent authority responsible for the overall monitoring of the guardianship system, such as the Children's Ombudsman or another appropriate independent authority.

***Procedures that should be provided for by law in the context of guardianship.***

69. Finally, Principle 2 states that the circumstances and procedures relating to the appointment or designation of the guardian, his replacement and the termination of the guardianship, should be provided for by law. In this sense, the degree of implementation by States is remarkable.



#### d. PRINCIPLE 3 – IMMEDIATE APPOINTMENT OR DESIGNATION OF GUARDIANS

*States should ensure that an unaccompanied or separated migrant child has a guardian appointed or designated without undue delay, taking into account the child's individual characteristics, to assist the child until he or she reaches the age of majority, and that care and assistance through guardianship or other means is available for a transitional period after the age of 18 years, as deemed appropriate in specific situations.*

##### ***Appointment or designation of a guardian regardless of the child's immigration status.***

70. As described in the Explanatory Memorandum of the Recommendation, every unaccompanied and separated child should be assigned a guardian in the host country, regardless of their residence status and regardless of the reasons for their absence from their country of origin. However, as mentioned above, some national systems only provide for guardianship when a child applies for asylum, which affects access to guardianship for non-asylum-seeking unaccompanied and separated children.

*“When I arrived in Portugal, I didn’t expect to have someone to help me and when I arrived in Portugal I had, and that was useful.”\**

71. In some countries, such as in **Cyprus, Poland or Slovenia**, a different guardian is appointed in case the unaccompanied or separated child applies for asylum. In **Slovenia**, for example, a new guardian is appointed under the International Protection Act, which deviates from the previous guardianship arrangement under the general child protection framework.

##### ***Appointment or designation of a guardian without undue delay.***

72. Immediate appointment of a guardian means that a guardian should be appointed from the moment when the child is identified as being unaccompanied or separated. However, where there is a doubt as to the minority of a person, a temporary guardian should be appointed or designated to inform and assist the person in relation to age assessment procedures in accordance with the principle of the presumption of minority.

*“The person who was responsible [for me] informed me that she was going to accompany my process, right in the first day, when I*

73. In this regard, most of the responding States reported that a guardian is appointed only when it is certain that the person is an unaccompanied child. Taking into account the replies of the States, it can be concluded that although there are States that allow temporary guardianship during the assessment of the child's

age, such as **Belgium**<sup>62</sup>, **Germany** or some regions in **Spain**, the majority of the responding Member States do not yet have a system that fully respects the presumption of minority, when the age is in doubt.

As a promising practice, the **Spanish** government is currently working on a law regulating the age assessment procedure, which will include provisions on guardianship and the presumption of minority.

74. Early designation is essential as it initiates important procedures such the assessment of individual needs, the provision of appropriate reception and care arrangements and the application of any necessary status determination procedures. The average time taken to appoint or nominate a guardian varies from country to country. According to the responses, 6 out of 22 respondents reported that guardians were appointed immediately after identification, while in 3 countries guardians were appointed within the first 2 or 3 days. In 6 countries the appointment takes between 2 weeks and 2 months and some of them indicated that the reason for the delay is usually the lack of guardians or the length of the identification procedures. In general, the lack of available information on the average time taken to appoint a guardian is striking.

*"We have difficulties even getting a meeting with our guardian, and when we met, they didn't know who I was".*

***The child's right to be heard in the guardianship proceedings.***

*"She never told me about my rights."\**

75. The Recommendation underlines the need for the child to be informed and consulted about the procedure for the appointment of a guardian, as well as the possibility to complain about a guardian or to request a change. In this sense, only 3 countries guarantee the participation of the child in this decision-making process, while children can request a change of guardian in 14 out of 22 countries. A number of promising practices were identified:

*"There should be elections for legal guardians."\**

In **Germany**, any child can go to Family Court and ask for a change of guardian. **Greece's** newly introduced legislation provides for the establishment of complaints mechanisms regarding guardianship; and in **Norway**, the guardianship authority can be contacted by phone, e-mail, or secure chat if the child wishes change guardian.

<sup>62</sup> The Belgian authorities have clarified that temporary guardians are appointed when the minority is in doubt and when there are additional vulnerabilities or immediate measures need to be taken (e.g. in the case of pregnant girls, indications of trafficking in human beings, etc.).

***Specific considerations for guardianship procedures in the case of separated children.***

76. In the case of separated children, consideration should be given to whether guardianship should be granted to the accompanying adult family member or to the non-family adult or carer, following the relevant best interests' assessment. The analysis of the replies submitted by member states' replies that, despite the general lack of explicit provisions mentioned above, some countries have certain provisions which somehow address their specific needs of the child, for example, the possibility to appoint the accompanying adult as a guardian, following an assessment of the suitability of accompanying adult (as in **Austria, Croatia, Germany, Norway or Portugal**), or as the foster family (such as in **Finland, Greece, the Netherlands, or Poland**).

***Transitional support after the age of 18.***

77. The implementing guidelines emphasize that the principles should also apply to young persons who need continued care and support, through guardianship or other means for a transitional period after reaching the age of 18 years old, where appropriate, in order to facilitate the child's safe transition to adulthood. In this respect, **Germany, Greece, Hungary, the Netherlands and**

*"When we have to decide if we keep on studying or if we start working, it may help talking to someone. When they are helping me, they are thinking in what is best for me." \**

**Spain**, reported having introduced such measures. For example:

In **Greece**, the new Migration Code introduces the right to a ten-year residence permit for adult third-country nationals or stateless persons who entered Greece as unaccompanied children and who, before reaching the age of 23, have successfully completed at least three years of secondary education in a Greek school.

In **Hungary**, children who reach the age of majority as a protected child, they are entitled to aftercare until the age of 22-30, depending on the conditions, in which they continue to receive full age institutional care and benefits according to their needs.

In the case of **the Netherlands**, an extended form of reception and care by the guardianship authority, NIDOS, for unaccompanied and separated children with a residence permit who turn 18 up to the age of 21 was introduced in 2023

**e. PRINCIPLE 4 – LEGAL RESPONSIBILITIES AND FUNCTIONS OF LEGAL GUARDIANS**

*States should take measures to empower guardians to inform, assist, support and, where provided for by law, represent unaccompanied and separated migrant children in processes affecting them, to safeguard their rights and best interests and to act as a link between the child and the authorities, agencies and individuals responsible for them. States should ensure that guardians enjoy the independence and impartiality appropriate to their role.*

78. According to the Explanatory Memorandum, guardians are entrusted with a wide range of responsibilities to undertake various tasks in the best interests of the child for whom they have been appointed. Depending on the organisation of the guardianship system, the structure of care arrangements and the way in which specific arrangements and services are made available to children, the activities undertaken by guardians may vary considerably.

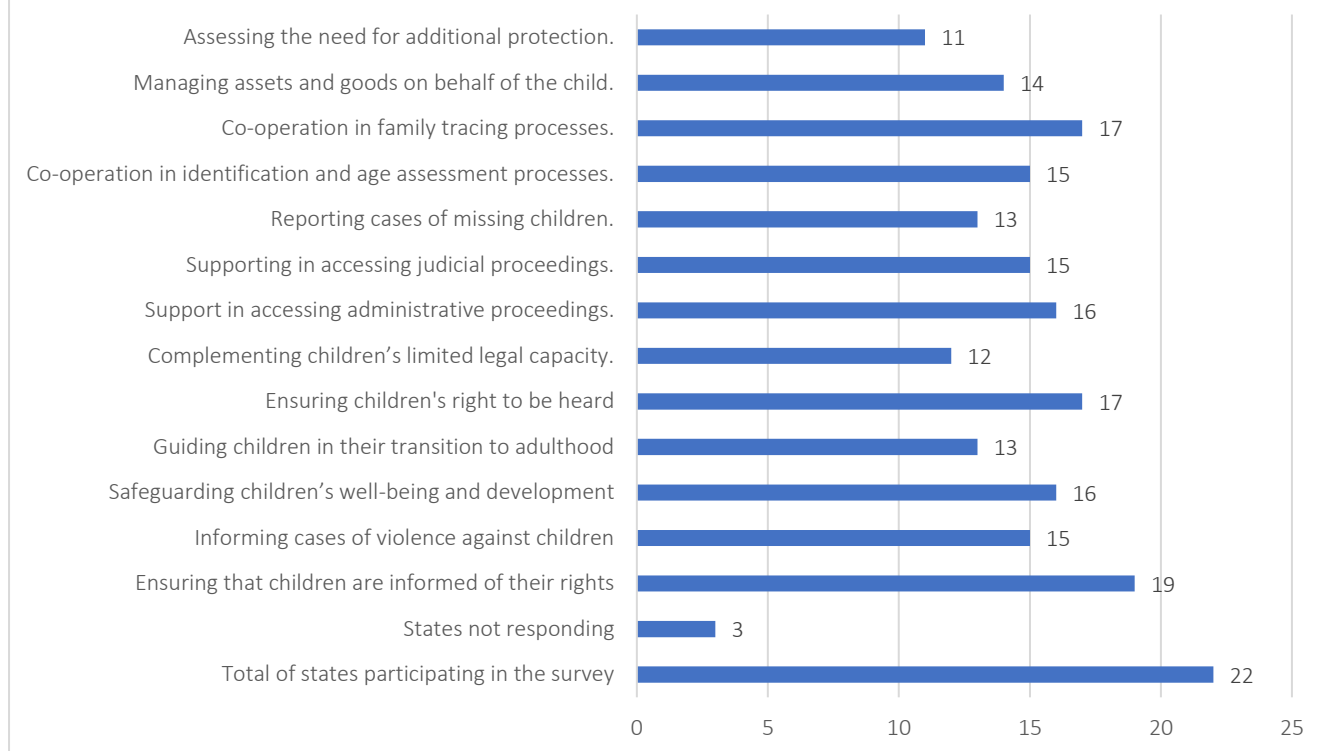
*"My caregiver helps me in everything."*

***Tasks of guardians that should be included in a guardianship framework.***

79. The day-to-day activities of guardians undertake will also be shaped by the way in which guardians are managed and supported by a guardianship authority. A volunteer guardian, as envisaged in the recommendation, cannot be expected to carry out the same tasks as a full-time paid professional guardian. However, the implementation guidelines indicate that in all national contexts and circumstances, guardians have common tasks that they should be authorised and empowered to undertake.

*"I need her to ask me what I feel, how I think and what help I want." \**

Figure 3: Tasks of guardians under the guardianship framework.



80. In this sense, most of the reporting States consider their guardianship frameworks contain practically all the elements suggested by the Implementation Guidelines. However, only some of them explain how or where they are regulated. In **Belgium**<sup>63</sup>, for example, the roles, tasks and responsibilities of the guardian are defined in the General Directives for Guardians.<sup>64</sup>

81. From a comprehensive analysis of the responses, it appears that, on the one hand, these types of tasks are understood to be inherent to the role of the guardian but are not necessarily explicitly laid down in the framework. On the other hand, some of the tasks are not carried out exclusively by the guardian but are shared between the guardianship authority and the guardian, or even shared by other bodies in between.

*"I want to be supported in getting my legal documents."\**

82. Nevertheless, *Figure 3* also shows those tasks for where States should make a greater effort to include in the role of guardian. Firstly, attention should be paid to the importance of guardians being able to *"Assess [...] whether there are any grounds for additional protection measures to be provided to the child, including the extension of the duration of such measures, and advise the guardianship authority in this respect"* and *"complement[...] children's limited legal capacity"*. Secondly, it is also important not to forget the guardian's role in *"Guiding children*

<sup>63</sup> [Manuel des tuteurs/tutrices](#), Service fédéral Justice, Belgique (in french only)

<sup>64</sup> Federale Overheidsdienst Justitie (Brussels) General Guidelines for Guardians of Unaccompanied Foreign Minors signed on December 2, 2013. available [here](#) (in French only) [See](#) also the guide for guardians available [here](#).



in their transition to adulthood, including through individualised life projects” and in “Reporting cases of missing children”.

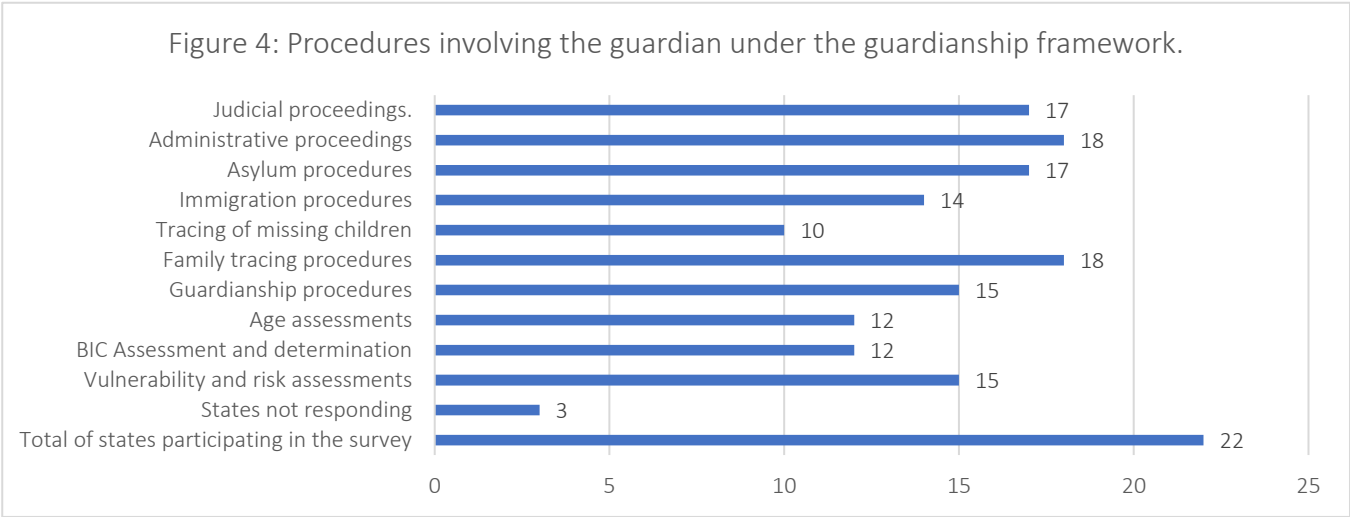
**Actions aimed at safeguarding the best interests of the child by guardians should be included in a guardianship framework.**

83. In addition to these tasks, in accordance with Principle 4, guardians should also be authorised and empowered to take measures aimed at safeguarding the best interests of the child. 18 out of 22 member states ensure that guardians are able to “*assess the child’s best interests in all actions taken in relation to the child*” and in 16 member states guardians are able to “*challenge authorities for failures to safeguard the best interests of the child*” under their guardianship framework for unaccompanied and separated children. Less attention is paid to the need for guardians “*to initiate the process of appointing a lawyer/legal representative for the child, where legally required, for the purpose of representing the child in relevant legal proceedings*” although 12 of the responding states report compliance with this guideline.

“Sometimes the [professional who is] responsible [for the young person] does what he thinks it’s good for the young person and not what the young person wants, sometimes he doesn’t explain what is better for the young person.”\*

**Procedures involving the guardian should be included in a guardianship framework.**

84. In addition, guardians should be involved in all proceedings affecting the child to ensure that any measures or procedures in accordance with the child’s best interests and individual needs.



85. The extent to which states have implemented this principle is also noteworthy, in particular as regards the involvement of the guardian in judicial and administrative proceedings, or in asylum and family tracing procedures. However, it is worrying that guardians are not involved in certain procedures that are particularly relevant to unaccompanied and separated children, such as, “*Tracing procedures for missing children*”, “*Best interests determination procedures*” and “*Age assessment procedures*”. The latter is consistent with the fact that few States



appoint guardians before the age assessment has been completed and the person is considered a child.

**Create conditions for a trusting relationship between the guardian and the child.**

86. In line with the Implementation Guidelines, the guardian should create an environment conducive to the development of a relationship of trust with the child, which includes the provision of confidentiality rules, especially given the number of authorities and actors involved in the migratory processes of

*"My guardian is like my father." \**

*"She helped me from the hotel to the shelter and from the shelter to a house, also she helped with my Dublin case." \**

unaccompanied and separated children. In this regard, **Greece** has recently introduced specific provisions on confidentiality within the framework of guardianship for unaccompanied and separated children. Most of the countries report that they have no specific provisions, although they apply the general data protection legal framework or data protection provisions within either the child protection or the asylum framework.

**Ensuring the independence and impartiality of the guardian.**

87. Finally, under Principle 4, States should ensure that each guardian enjoys the independence and impartiality appropriate to his or her role. On the one hand, the responding states assured that the guardian does not exercise any other responsibility that could lead to an actual or potential conflict of interest. However, some countries, such as in **Croatia**, assign the role to staff of residential centres where children are accommodated which means that their independence is not guaranteed. On the other hand, guardianship frameworks for unaccompanied and separated children generally ensure that guardians are not subject to instructions from any authority other than the guardianship authority, the child's protection system or a court. Nevertheless, there are concerns in those countries where the guardianship authority is subordinate to the migration administration, such as in **Finland**, where instructions to guardians are given by the Finnish Immigration Service.

*"I have a good relationship with my legal guardian."  
"I want her to come see me more often to be able to know her and trust her that what she will do is good for me." \**

88. Finally, the responding countries reported that the independence and impartiality of guardians is guaranteed either by the law or by supervision by other independent public authorities, such as the Ombudsperson or a court.

**f. PRINCIPLE 5 – INFORMATION, ACCESS TO JUSTICE AND REMEDIES, INCLUDING CHILD-FRIENDLY COMPLAINT MECHANISMS.**

*States should ensure that unaccompanied and separated children in migration are provided with relevant information and counselling, and that they have access to an independent complaint mechanism and remedies to effectively exercise their rights or address violations of their rights.*

89. The guardian is one of the key actors who should inform migrant children of any procedure affecting them. It is therefore crucial that children understand the role of guardians, their independence and the fact that they must act in their best interests.

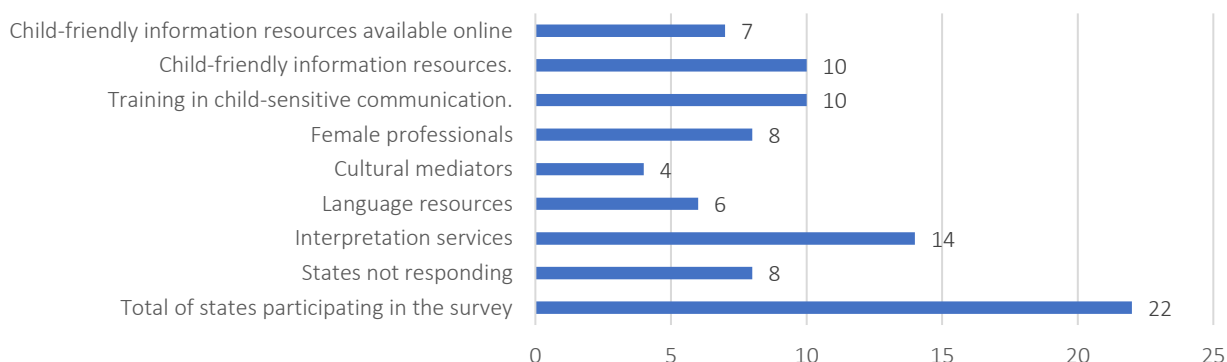
***Provide information that is accessible and adapted to the specific circumstances of children.***

*“There were people who did not know how to speak Portuguese and there were no people to translate in the place where I was.” \**

90. First, such information must be provided to each child in a language that he or she understands and in a “child-friendly” manner appropriate to the child’s age and maturity.<sup>65</sup> The guardian should check that the child has understood the information as the information provided to the guardian should not be an alternative to communicating the information to the child. To this end, guardians should be provided with means such as interpretation services, language resources, cultural mediators, female professionals (e.g. interviewers, interpreters, cultural mediators, psychologists), training in child-friendly communication or child-friendly information resources should be made available for the guardian.

91. Most of the responding countries reported that they provide guardians with most of the resources suggested by the recommendation. In particular, **Cyprus** report

Figure 5: Means available to guardians to ensure information provision to unaccompanied and separated children.



<sup>65</sup> Council of Europe (2018) *How to convey child-friendly information to children in migration*, p.16. Available [here](#).

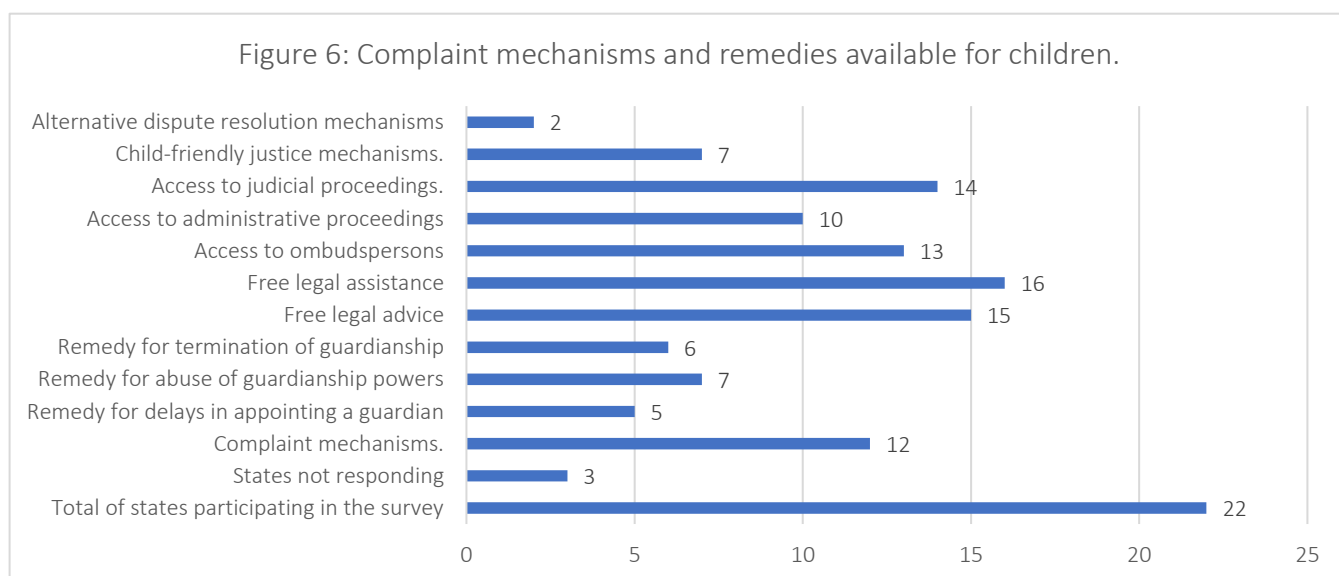
that all the resources are available to guardians. Overall, in other countries, *Figure 5* shows a general lack of provision of some services, in particular cultural mediators, language resources and female professionals. In addition, some countries pointed out that these services are not provided by the guardianship authority, but by other bodies such as the children's home (**Hungary**) or the immigration authorities (**Norway**).

***Ensuring access to independent and effective complaint mechanisms and remedies for unaccompanied and separated children.***

92. Secondly, as underlined in the Explanatory Memorandum of the Council of Europe Guidelines on child-friendly justice,<sup>66</sup> children also need to be informed about the instruments which they can use to exercise or defend their rights if necessary. Access to complaint mechanisms is important in relation to complaints concerning guardianship, and more generally any violation of children's right to special assistance and protection, and respect for their rights. Such mechanisms should be easily accessible, child-friendly, transparent and gender-sensitive to avoid any prejudice to the child. In addition, there shall be an effective remedy before a competent authority against the decision of the complaint's mechanism should be in place.

*"It did not happen yet that I wanted to file a complaint about someone, but I think I would feel comfortable to talk [if I had to/if that happens]." \**

93. To this end, States should provide children with free legal advice or assistance and child-friendly judicial mechanisms. In addition, States should also promote their access to the ombudsperson, to administrative and/or judicial proceedings and alternative dispute resolution mechanisms, to an effective remedy with respect to excessive delays in the appointment of a guardian, the conditions



under which the guardianship is terminated or the exercise of guardianship powers by the guardian.

<sup>66</sup> Committee of Ministers of the Council of Europe (2010) *Guidelines on child friendly justice*, p. 35-42. Available [here](#).

94. In this respect, most of the countries reported that children are provided children with free legal advice and assistance, access to ombudspersons, and to administrative and judicial procedures, and **Croatia** assured that all of the above mechanisms are available to migrant children. Nevertheless, the findings suggest, firstly, that the availability of alternative dispute resolution mechanisms is not guaranteed in 82% of the responding member states. Secondly, the availability of effective remedies regarding guardianship arrangements (delays in appointment, exercise of guardianship powers or termination of guardianship), as well as access to child-friendly justice mechanisms need to be strengthened.
95. Finally, there are indications that either there is a general lack of monitoring of complaints mechanisms or that existing complaints mechanisms do not seem to be effectively implemented in practice, as only 5 countries have been able to provide concrete data on complaints (**Belgium, Bulgaria, Latvia, the Netherlands and Slovenia**) and two of them have reported zero cases in the last three years. On the other hand, countries such as **Armenia** or **Greece** reported that they are currently working on the implementation of data collection mechanisms in this area.

#### g. PRINCIPLE 6 – INSTITUTIONAL MEASURES.

*States should ensure that there is a competent authority responsible for the administration of guardianship for unaccompanied and separated children in migration considering the way in which responsibilities are organised in member states.*

96. In accordance with the Explanatory Memorandum, the management of guardianship should be entrusted to a competent authority, agency or legal entity. The guardianship authority should be operationally independent from authorities with other responsibilities and, in particular, the guardianship functions should not be linked to immigration responsibilities. There should also be clear eligibility criteria should be in place for the competent authority in order to avoid any situation of conflict of interest.

the

*“When I need some things, I call my caregiver. I talk everyday with her. She helps me deal with SEF [the designation of the extinct Immigration and Borders Service in Portugal].” \**

***Procedures, support measures and services for guardians should be provided with by the guardianship authority.***

97. In addition, the guardianship authority has a central role in providing harmonised procedures and services for persons exercising guardianship functions, thus enabling them to respond to the children’s situation in an efficient and effective manner. Although the way in which these services are provided will depend on how the guardianship system is organised, the Implementation guidelines set out certain procedures, support measures and services that guardianship authorities should be responsible for providing to guardians.

Figure 7: Procedures, support measures and services guardians are provided with by the guardianship authority.



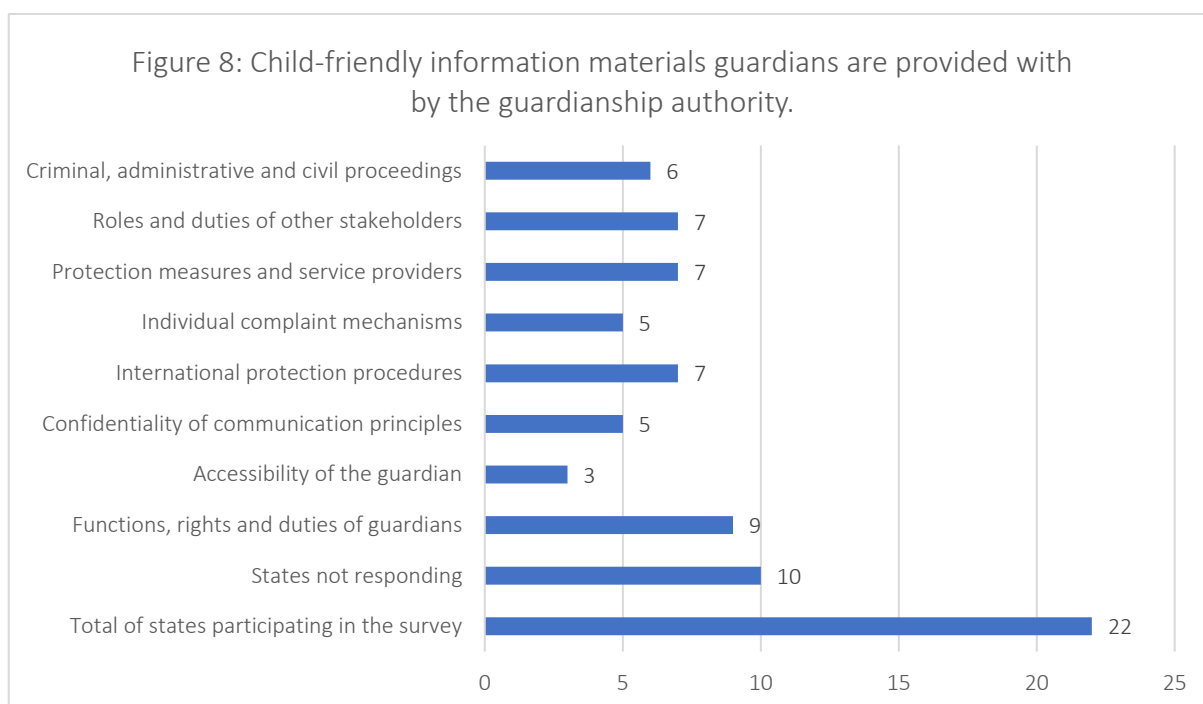
98. In terms of such procedures, support measures or services, most of the responding States reported that they comply with the provision of guardians with initial and ongoing administrative support to guardians, counselling and support measures or services, training, child protection policies and harmonised procedures and processes for guardians to report and record cases of missing children or children who are victims of violence, abuse, trafficking or exploitation. However, *Figure 7* shows the urgency of strengthening communication mechanisms, as well as standards for the operational procedures for the guardians' behaviour.

The Norwegian guardianship authority has surveyed the need of guardians and is now in the process of developing operational procedures for representatives of asylum-seeking unaccompanied children.

***Making the guardianship system clear and accessible to unaccompanied and separated children.***

*“She never explained my rights, but she asks questions to understand better my needs”\**

99. One of the ways to harmonise the guardianship system and make it clear and accessible is the development of child-friendly information materials and their distribution to guardians, as identified in the Implementation Guidelines. A checklist included in the Explanatory Memorandum of the Recommendation provides key information for children involved in guardianship.



100. From the available replies, it can be concluded that guardianship authorities in some countries, guardianship authorities are making efforts to develop child-friendly materials on the functions, rights and obligations of guardians; on international protection procedures; on the roles and obligations of other stakeholders; and on available support and protection measures and service providers. However, these efforts could be increased by member states in general, as the level of compliance with the Recommendation is not very high, as indicated by the fact that 10 out of 22 responding states did not reply to this specific question. It is noteworthy that **Croatia, Greece, and the Netherlands** reported that they provide all kinds of child-friendly materials to guardians. In addition, the following promising practices were identified.

The **Belgian** guardianship authority has developed an animated video and a brochure<sup>67</sup> to inform unaccompanied and separated children who have just arrived in Belgium about the tasks and role of a guardian, available in different languages, as well as a board game<sup>68</sup> aimed at informing them about the tasks of a guardian, asking them about what guardianship is like for them and getting their feedback<sup>69</sup>.

<sup>67</sup> Both the brochure and the video are available on [YouTube](#).

<sup>68</sup> Information about its availability was not provided.

<sup>69</sup> Information available [here](#)



**Norway** has developed a website with films and information for children, available in 16 languages.<sup>70</sup> The purpose of the website is to be a tool for guardians, accompanying adults, parents, reception centre staff, teachers and others who meet the children, to prepare unaccompanied and separated children for the asylum procedure and to make their situation more predictable and safer.

***Ensure that guardians are responsible for a manageable number of cases.***

*"The person who was responsible did not have enough time because there were many boys."\**

101. Finally, in order to comply with Principle 6, states should also ensure that guardians are responsible for a manageable number of cases and that good caseload management is in place. One indicator of good caseload management will be a maximum number of cases that guardians can take on, which may vary in different national situations depending on each national contexts.

102. In most of the countries surveyed, the guardianship framework does not set a maximum number of children per guardian. In the exception are **Greece**, where the maximum number of children is 15, and **Hungary**, where the maximum number of children is 30, both of which are set law. The average number of children per guardian varies from country to country. For example, in **Belgium**, the average number is 2 children per volunteer carer, 16 children per self-employed carer and 21 per employee carer, in **Cyprus**, the average is 50 children per carer according to the replies to the questionnaire, while in **Finland** it ranges from 2 to 10 children per carer. In **Germany**, association guardians are limited to 50 children while the civil code provides that the number and scope of the guardianship must be taken into account in the selection decision for an association or professional guardian in terms of the workload.<sup>71</sup> **Austria** reported having more difficulties in answering questions related to this principle due to their decentralised model. In such cases, it is crucial to ensure the availability of common resources at the national level (e.g., child-friendly information materials, decision-making protocols, harmonised standards for data protection standards, etc.).

*"In two and a half years, I have only seen my legal guardian once."\**

<sup>70</sup> [www.asylbarn.no](http://www.asylbarn.no) is established in an interagency collaborative project between the Norwegian Directorate of Immigration (UDI), the Police Immigration Unit (PU), and the Norwegian Immigration Appeals Board (UNE). The website aims to provide information about the asylum process from A to Z for both minor and adult asylum seekers.

<sup>71</sup> See § 54 (1) no. 2 SGB VIII and § 1780 of the Civil Code

## h. PRINCIPLE 7 – RESOURCES, RECRUITMENT, QUALIFICATIONS AND TRAINING.

*States should allocate adequate resources to ensure effective guardianship of unaccompanied and separated migrant children, including ensuring that guardians are adequately screened, reliable, qualified and supported throughout their mandate.*

### ***The need for quality data collection mechanisms.***

103. To support the identification and allocation of sufficient resources to the guardianship system, states should collect quantitative and qualitative data on a regular basis. This should include information disaggregated by age group, gender and origin, as well as information on the process in which they have been involved and the manner in which services have been provided.
104. In this respect, most of the countries collect data on unaccompanied and separated children. Nine countries have specific data on unaccompanied and separated children in migration. However, most of the countries include these data in general databases, which may be child protection in general (**Armenia**), asylum seeker databases (**Finland**) or both (**Spain**).
105. In **Azerbaijan**, two decrees have been adopted to create a single database on unaccompanied children and stateless persons and an information system under the State Migration Service. Relevant institutions have access to this subsystem, which collects quantitative and qualitative data.
106. As regards **Croatia**, the Ministry of Labour, Pension System, Family and Social Policy keeps data on unaccompanied children who have been appointed a special guardian, as well as on unaccompanied children who have been granted the right to social housing services in crisis situations or organised housing services.
107. In the case of the **Netherlands**, the Migration Co-ordination Unit, the Immigration and Naturalisation Service (IND), Statistics Netherlands (CBS) and the National Guardianship Institution for Unaccompanied and Separated Children (NIDOS) register unaccompanied children in a structured way. They collect qualitative data on an individual basis and quantitative data on an aggregated basis.
108. In federal states, such as **Germany**, the number of unaccompanied children arriving in the various landers is recorded centrally. The Federal Office of Administration, which is a federal authority, collects reports from the youth welfare offices on a daily basis. Further data on unaccompanied children is regularly collected as part of the Federal Government's annual report on the situation of unaccompanied children. The number of asylum applications submitted by unaccompanied foreign children is also recorded in the asylum statistics of the Federal Office for Migration and Refugees.
109. In any case, data are usually disaggregated by age, nationality and gender. Very few countries include procedures or specific protection needs, except for those whose database is related to the asylum procedure. Five countries disaggregate



data by age, nationality, gender, sex and include data on procedures involving unaccompanied and separated children, specific protection needs such as the needs of asylum-seeking children, or victims of trafficking or exploitation, and information on the how services were provided.

**The Norwegian** authorities also include in their database the percentage of unaccompanied and separated children who have completed their education in Norway and are participating in the labour market, their income level, or the percentage of children in child protection measures.<sup>72</sup>

***Ensure sustainable and adequate financial, human, and technical resources for the guardianship authority.***

110. As mentioned above, data collection helps states to provide the guardianship authority with sustainable and adequate financial, human, and technical resources. According to Principle 7, it is important that guardians are specialised or have access to counselling services, or that financial resources enable guardians to ensure the protection and development of the child.

111. In this respect, the results are inconclusive, with half of the responding countries finding it difficult to meet this obligation and to plan resources in the face of fluctuating numbers of children arriving, while the other half report no difficulties in providing adequate resources. Only three countries reported that no specific resources were allocated to the guardianship authority.

*" [The professional] didn't have the knowledge, he was lacking of knowledge to understand (grasp) what the young person wanted to do."\**

***Ensure high professional standards for guardianship staff.***

112. States should also have procedures in place to ensure that the staff of the guardianship authority maintain high professional standards, including standards of confidentiality, a high degree of integrity and the possession of appropriate skills. In particular, most countries claim to have defined criteria for the qualifications or requirements of guardians in the case of unaccompanied or separated migrant children.

<sup>72</sup> See: [www.ssb.no](http://www.ssb.no) [Enslige mindreårige flyktninger – SSB](#) Unaccompanied minor refugees" (only in Norwegian)  
[Sysselsetting blant innvandrere, registerbasert – SSB](#) Employment among immigrants, register-based – SSB; [Utdanningsløp blant innvandrere og norskfødte med innvandrerforeldre – SSB](#) Education pathways among immigrants and Norwegian-born with immigrant parents - SSB" only in Norwegian (written articles on the theme); [Tre av fire enslige mindreårige flyktninger i arbeid eller utdanning - SSB](#) (Three out of four unaccompanied minor refugees in work or education")

113. On the one hand, only five countries report having specific qualifications and professional requirements. As far as specific information is concerned, in some countries, such as **Croatia, Cyprus or Germany**, as guardians are professionals, the requirements required are those included in the university degree of social work, psychology, sociology or another relevant field of study. However, they are not required to have specific knowledge of the needs of migrant children.

*"She is here for me,  
to meet my needs"  
"She understands,  
we communicate" \**

114. On the other hand, six countries report that they only require certain standards to be met. This means that some countries, such as **Belgium or Norway**, do not require any formal or specific professional criteria to become a guardian.

115. In **Belgium**, guardians must be adults and residents in Belgium, explain their motivation to become a guardian and demonstrate their specific competences in relation to unaccompanied children (such as migration and youth care law or guardianship law), and provide an official certificate of good conduct showing no convictions for offences against vulnerable persons, including children. A selection interview is always carried out to assess guardians' skills.

*"I need her to ask  
me what I feel,  
how I think and  
what help I  
want."\**

116. In **Norway**, for example, guardians must meet with certain criteria such as knowledge of children's rights, good communication skills, knowledge of municipal services, ability to assess the child's needs, experience in managing children's finances, etc. In this sense, experience in the field of migration is considered relevant.

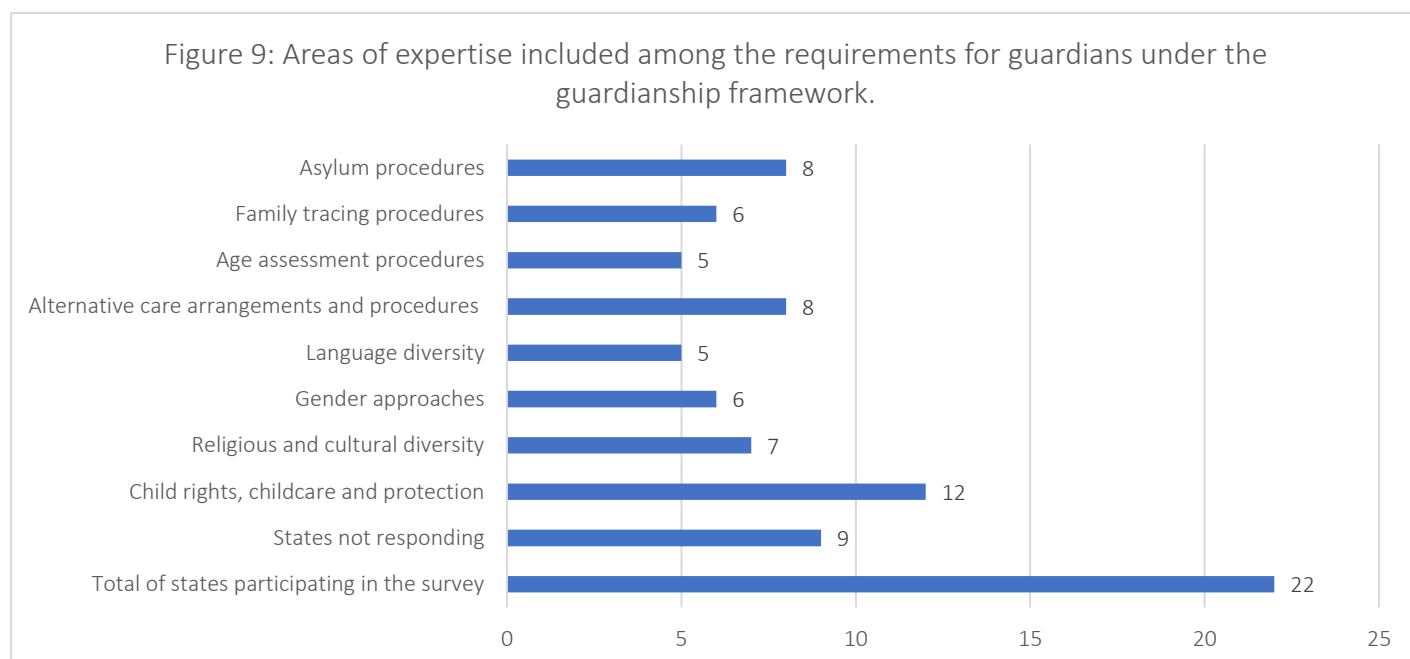
### ***Ensure that guardians have the necessary qualifications and expertise.***

117. It is important that guardians have a sufficient level of knowledge and skills to ensure that the child's interests are safeguarded and that the child's needs are adequately met. This means that guardians need to understand the child development, child rights, child welfare and child protection.

118. Migrant children have specific needs that should be addressed, such as procedural issues, including age assessment, family tracing or status determination, or language differences. In this regard, guardians should also be trained on the specific procedural aspects, potential differences in religious and cultural expectations, gender issues, multiculturalism and how to support children with different language backgrounds.

*"I want her to care  
about me and listen  
about what I have to  
say, not judge me and  
find ways to help me  
when I do not know  
what to do." \**

119. As shown in *Figure 9*, the areas of expertise that are least included in the requirements for tutors are linguistic diversity, knowledge of age assessment or family tracing procedures and gender approaches. These findings highlight the limited focus on children with a migrant background.



### ***The importance of initial and in-service training for caseworkers.***

120. Finally, regardless the preconditions, states should take measures to ensure that guardians and the guardianship authority are provided with adequate support to carry out their respective functions effectively, which should include initial and continuing education and training. In this sense, only 45% of the responding countries reported that they provide training to guardians to enable them to carry out their functions effectively. Nevertheless, a number of promising practices were identified:

In the case of **Belgium**, guardians are required to attend a five-day basic training course, a coaching programme and regular training provided by the guardianship authority.

In **Norway**, guardians receive a 10-hour basic digital course, which includes topics such as guardianship arrangements and duties of guardians, the legal framework, complaint mechanisms, confidentiality, the child's right to be heard, asylum procedures, interpretation, human trafficking and exploitation, or negative social control and honour-related violence, among others.

In **Slovenia**, guardians are required to attend a training at the University of Ljubljana, which covers family law, social work, psychology, protection of human rights and fundamental freedoms and asylum law.

## i. PRINCIPLE 8 – CO-OPERATION AND CO-ORDINATION AT NATIONAL LEVEL.

*States should, in accordance with their national systems, establish mechanisms and take measures to ensure effective co-operation and co-ordination between those with responsibilities for unaccompanied and separated children in migration, and the guardianship and/or custody authority.*

***The value of a model that clearly defines the responsibilities of all actors involved in the protection of unaccompanied and separated children.***

121. According to Principle 8, states should define the roles, tasks, and responsibilities of the guardian and of the guardianship authority in relation to other actors with responsibilities for unaccompanied and separated children, such as youth and social services, migration authorities, law enforcement, health and education professionals, reception centre staff and others. In this regard, 60% of the responding member states state report having clearly defined roles and tasks of different actors, although very few of them have provided detailed information on how this is implemented.

***Ensure effective operational co-ordination between all actors involved in the protection of unaccompanied and separated children.***

122. In addition, states should establish an operational co-ordination mechanism to ensure that the best interests of the child are a primary consideration in all actions concerning them. Depending on the organisation the guardianship model in each member state, such co-ordination may take place at the national or regional level and may take different forms. In this respect, almost 60% of the responding countries reported to having such mechanisms in place, mainly in the form of co-ordination bodies or strategies.

In the case of **France**, for example, within the Ministry of Justice, the national mission for unaccompanied minors, in French “Mission nationale des mineurs non accompagnés” coordinates the national assessment and guidance system for unaccompanied minors. In this capacity, it provides, through the national unit and at the request of the judicial authority, operational support for the decision of magistrates to allocate unaccompanied minors to departmental child welfare services, in application of the 14 March 2016 law on child protection. From Monday to Friday, the national unit is on call to respond to all requests from the judicial authorities and to propose a care department for unaccompanied minors.

In the case of **Greece**, the Special Secretariat for the Protection of Unaccompanied Minors co-ordinates the actions of all agencies and bodies involved in issues related to the protection of unaccompanied and separated children and has developed the National Strategy for the Protection of Unaccompanied Minors in Greece, which has main four core pillars of action:

- 1) improving reception and promoting children’s rights,
- 2) identifying and implementing durable solutions,

- 3) strengthening the protection framework to prevent trafficking, abuse and violence against children, and
- 4) improving data collection.

Finally, in **Portugal**, the Supervision and Monitoring Council of Unaccompanied Children and Young People has been set up, with representatives from social security, migrations, and shelters for unaccompanied and separated children, and in **Slovenia**, a special working group has been established.

123. In order to improve co-operation and co-ordination on a regular basis, it is recommended that member states develop protocols, memoranda of understanding, standard operating procedures (SOPs) or referral mechanisms. The roles and responsibilities of all professional working with the child should be clarified and formalised at each stage of the child's protection, including initial contact and identification, risk assessment and care arrangements until a durable solution is found. It is worth noting that around 45% of the responding states have developed either a protocol or SOPs on unaccompanied and separated children. Some interesting practices have been identified in this regard.

The **Belgian** College of the Prosecutors has issued circular letters on the role of the police, prosecutors, immigration officers and guardians in the referrals of unaccompanied and separated children.

In the case of **Croatia**, there is a protocol on the treatment of unaccompanied and separated children and a protocol on the implementation of Dublin procedures for unaccompanied and separated children seeking asylum under the EU Dublin Regulation, in coordination with special guardians.

The **Greek** Special Secretariat for the Protection of Unaccompanied Minors has established, through ministerial decisions, standard operating procedures for the different types of shelters for unaccompanied and separated children.

In **Latvia**, the State Inspectorate for the Protection of the Rights of the Child has developed guidelines for the operation of the co-operation groups.<sup>73</sup>

The **Netherlands** has developed protocols on what to do when an unaccompanied or separated child goes missing or is found in the Port of Rotterdam trying to reach the UK.

In **Spain**, as mentioned above, there is a framework protocol to co-ordinates all actions when an unaccompanied child is identified, and an annex to the framework protocol for the protection of victims of trafficking co-ordinates actions to identify and assist unaccompanied child victims.

<sup>73</sup> Litvins, G. and Kronberga, I. (2021) *Inter-institutional co-operation to protect children's rights in municipalities. Methodological guidelines*. National Agency for Children's Rights. Inspectorate for Child Protection. Available [here](#).

**Ensuring confidentiality, providing of multi-agency and multidisciplinary training, and monitoring.**

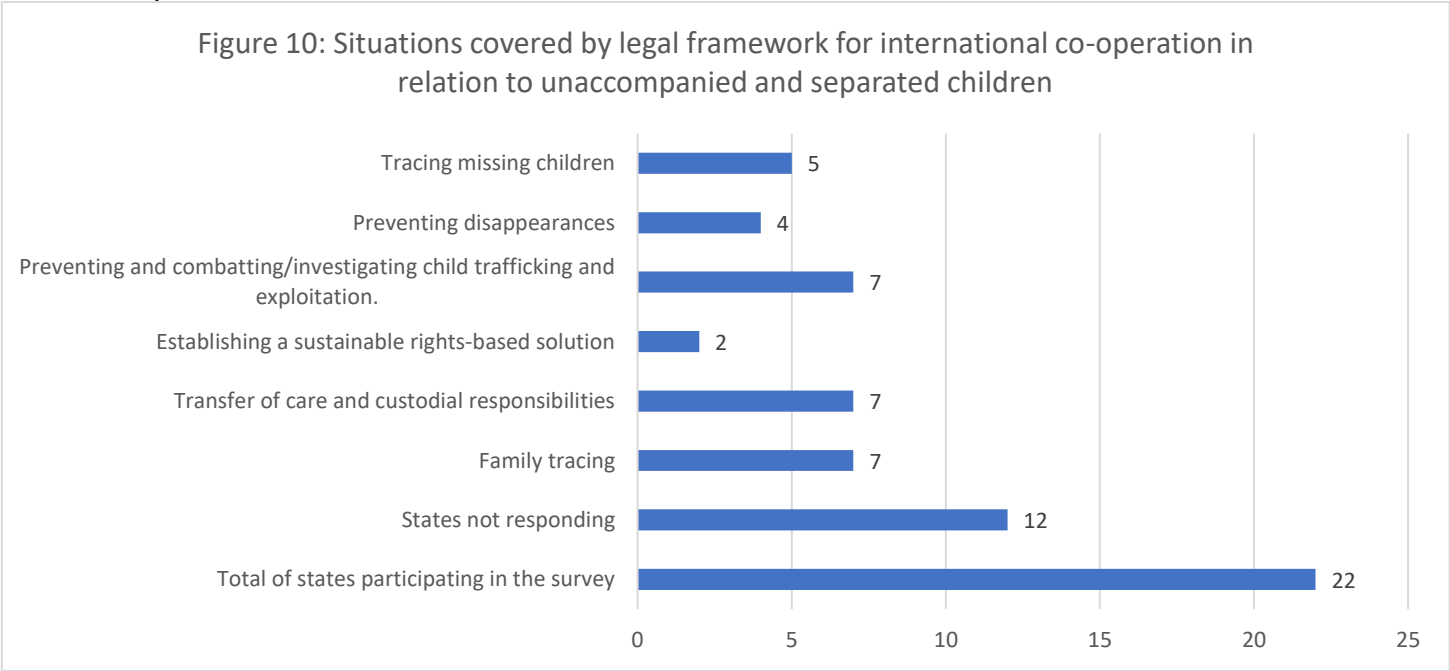
124. Finally, in order to comply with Principle 8, states should establish clear provisions on the nature and limits of data sharing to ensure that confidentiality is respected, as well as monitoring and evaluation mechanisms for co-ordination and provide regular multi-agency and multidisciplinary training and tools to stakeholders. However, the responses from member states have provided little conclusive information in this regard.

**j. PRINCIPLE 9 – INTERNATIONAL CO-OPERATION.**

*States should expeditiously, constructively and effectively provide for the widest possible international co-operation in relation to unaccompanied and separated children in migration, including for family tracing for the identification and implementation of durable, rights-based solutions, involving their guardianship authority and/or guardians in an appropriate manner.*

**The need for a legal basis for international co-operation.**

125. In accordance with Principle 9, states should have a legal basis to engage international co-operation with respect to unaccompanied and separated children in migration, both of their own initiative and upon request. There is often a need to protect children from human trafficking and the influence of smugglers, to trace children who disappeared from care, to identify and locate family members and relatives, to re-establish family links where this is in the best interests of the child and to find durable solutions. Guardians and guardianship authorities often play a central role as interlocutor for the child and other actors in international co-operation. In this sense, 13 countries reported having specific legal frameworks providing for international co-operation in relation to unaccompanied and separated children.





126. As *Figure 10* shows, in 7 countries these legal frameworks cover situations such as prevention and combatting/investigation of child trafficking and exploitation, and the transfer of care and custody. In addition, 5 countries also have provisions on tracing missing children and 7 have provisions on family tracing, such as in **Belgium**, where the Guardianship Act provides that the Guardianship Service is responsible for co-ordinating contacts with the immigration authorities, housing authorities, and the countries of origin of children, in particular to trace family members.

***Establishment of clear channels or mechanisms for the transmission and execution of requests for information or other types of assistance.***

127. The Implementation Guidelines point to the need for channels or mechanisms for the transmission and execution of requests for information or other types of assistance in relation to unaccompanied and separated children. In this regard, responding states generally highlight mechanisms related to the fight against trafficking in human beings and most EU countries have mentioned EU legal frameworks such as the Dublin Regulation,<sup>74</sup> the Anti-Trafficking Directive<sup>75</sup> or the Brussels II Ter Regulation.<sup>76</sup> In this context, only three states replied that the role of the guardianship authority and guardians in the context of international co-operation is clearly defined by law.<sup>77</sup>

***The importance of regular exchange of knowledge, experience, and good practice.***

128. Finally, states should co-operate and promote the regular exchange of knowledge, experience and good practices on guardianship of unaccompanied and separated children. To this end, the EU responding countries have identified the European Guardianship Network as an appropriate forum.
129. In addition, the responding states also participate in other relevant international and European mechanisms, such as the EU Network for the Rights of the Child, the EU Informal Expert Group on children in migration and the EU Policy Cycle EMPACT (European Multidisciplinary Platform Against Criminal Threats) on trafficking in human beings.

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<sup>74</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). Available [here](#).

<sup>75</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA. Available [here](#).

<sup>76</sup> Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast). Available [here](#).

<sup>77</sup> This report was written before the EU's new Pact on migration and asylum was voted, and in fact does not take it into account.



### III. CHALLENGES AND PROMISING PRACTICES IN IMPLEMENTING THE RECOMMENDATION.

130. As part of the questionnaire, states were encouraged to share the main **challenges** they face in relation to guardianship for unaccompanied and separated children.
131. The **high influx of unaccompanied and separated children** stands out as the main challenge for states. This situation leads to a shortage of guardians in areas related with children in migration, such as asylum and migration procedures; risk and vulnerability assessment procedures; trauma; specialised mental health professionals; protection of children at risk; language barriers or cultural sensitivity and understanding. However, the above-mentioned situation also leads to a lack of training and capacity building for newly selected guardians and a general lack of sufficient and appropriate accommodation for unaccompanied and separated children.
132. This lack of accommodation is closely linked to another main concerns highlighted by member states which is the increasing risk of disappearance, trafficking, and exploitation of unaccompanied and separated children on the move. This is especially the case in transit countries, where it appears difficult to provide care and protection to unaccompanied and separated children who are wandering.
133. Member states also point out to **the diversity of guardianship models and the legal nature of guardians**, both between and within states, as a challenge to the implementation of the Recommendation. This concerns specific obstacles in managing the intersection of complex legal processes such as asylum, family reunification procedures, or the verification and recognition of guardianship when separated children arrive together with accompanying adults who are not their parents.
134. States express concern about the need to clarify the role and division of responsibilities between child protection authorities and asylum or immigration authorities. This hinders the protection of non-asylum-seeking unaccompanied children in countries where guardianship is included in asylum law or of children in need of international protection whose needs are not being identified.
135. Finally, states identified as a challenge the **lack of monitoring and evaluation mechanisms**, both for children and for guardians and the guardianship authority.

#### IV. GUARDIANSHIP FOR UNACCOMPANIED AND SEPARATED CHILDREN FROM UKRAINE

136. 15 out of 22 responding states reported to have adopted specific measures on guardianship or on the protection of unaccompanied and separated children fleeing the Russian aggression against Ukraine<sup>78</sup>.
137. After the completion of this analysis, a Council of Europe Consultation Group on the Children of Ukraine (CGU) was formally launched in Strasbourg on 30 November 2023. During the 4th Council of Europe summit in Reykjavik in May 2023, the Heads of States and Governments called on the Council of Europe to set up an appropriate mechanism to co-ordinate actions concerning children having fled Ukraine to Council of Europe member States. The CGU is thus the practical implementation of this call. Within the CGU, a Thematic Dialogue Group on Guardianship was set up to discuss the challenges faced by member States in putting in place guardianship solutions for children of Ukraine following the full-scale Russian war of aggression on Ukraine. The Group aims to assist member States to respond to existing and new challenges, and to find appropriate solutions by identifying opportunities for effective co-operation, also by way of exchanging best practices and sharing and developing new practical tools related to guardianship systems for the children of Ukraine.
138. This Dialogue Group will carry out an extensive analysis of different guardianship measures put in place nationally for unaccompanied and separated children from Ukraine. Notwithstanding the findings of the CGU, the measures that member states reported, in the questionnaire, to have taken up to September 2023, are set out below.
139. These measures can be grouped into the following categories:
- 1) **Specific legal or policy frameworks.**
140. Some member states developed specific legal or policy frameworks for guardianship and protection of unaccompanied and separated children fleeing Ukraine such as **Croatia**, where the competent ministry adopted amendments to the Social Welfare Law stipulating that beneficiaries of temporary protection are entitled to the same benefits and services under the social welfare system as beneficiaries of subsidiary protection and refugees; **Latvia**, where a Law on Assistance to Ukrainian Civilians was recently adopted; or **Slovenia**, where instructions were adopted on how to guarantee the rights of unaccompanied and separated children under temporary protection.
141. **France** adopted an inter-ministerial instruction setting out the framework and conditions for the reception and care of unaccompanied children fleeing Ukraine, focusing on access to essential health and education services.
142. In **Greece**, the National Emergency Response Mechanism (NERM) has established a relevant procedure with the Asylum Service to ensure that all

<sup>78</sup> For more information, see UNICEF (2023) *Fulfilling the rights of children without parental care displaced from Ukraine. An analysis of international and European law*. Available [here](#).

unaccompanied and separated children have adequate access to temporary protection.

143. **The Netherlands** tried to set up some specific mechanisms and legal provisions for children fleeing Ukraine, but eventually found that it worked better to apply the system to all unaccompanied children, without exception, while being flexible enough to adapt to new circumstances.
144. **Poland** adopted the Act on the Assistance to Ukrainian Nationals in relation to the Armed Conflict which contains specific provisions on special procedures for Ukrainian children.

## 2) Co-ordination mechanisms.

145. Other countries established co-ordination mechanisms, either through collaboration between authorities, establishing expert advisory bodies or developing protocols. In this sense, in **Cyprus** and **Spain**, a closed collaboration was developed with the relevant Ukrainian authorities such as the collaboration between the Social Welfare Services of Cyprus and the Embassy of Ukraine, or between diplomatic representations of Spain and Ukraine with regional guardians.
146. The Ministry of Labour of **Croatia** established an expert support team for displaced persons from Ukraine, such as an advisory and expert body for every stakeholder. Other countries established a nation-wide reporting and co-ordination office. In the case of **Germany**, it is based in two offices: the SOS Reporting Office that provides information to institutions, organisations and private individuals who organise the reception of children already under the Ukrainian child protection system; and the central co-ordination office which registers data of Ukrainian children and young people and organises their reception between the federal states.
147. **France** set up a co-ordination group on the risks of trafficking in human beings displaced from Ukraine. It is co-directed by UNHCR and the Inter-ministerial Mission for the protection of women against violence and the fight against trafficking in human beings (MIPROF). It brings together associations specialised in supporting victims of trafficking, asylum seekers and refugees, and in child protection, as well as several governmental departments and institutions. This working group has developed a leaflet for displaced minors, available in Ukrainian, Russian, English and French, which aims at raising awareness among these children about the risks of trafficking and exploitation, by presenting some warning signs and advice and offering association contacts.
148. Finally, the State Committee for Family, Women and Children Affairs of **Azerbaijan**, together with the staff of the Commission on Minors' Affairs and Protection of their Rights, conduct regular work on identification of the needs of the children placed in foster families, assessment of their psycho-social status, and provision of the relevant services. Every three months, information is submitted to the State Committee in order to record these children and to carry

out an appropriate assessment in terms of their health, social welfare, education, upbringing and safety.

149. At the Council of Europe level, the CGU) functions as an operational inter-governmental co-operation platform between Council of Europe member states, the European Union, and other key international organisations together with relevant civil society representatives.

### 3) Specific protocols.

150. In countries like **Germany**, the Federal Government implemented an orderly and structured procedure for the reception of children in care and orphans from Ukraine in order to ensure the best interests of the child.
151. **Greece, for instance**, established a procedure for the proper registration and protection of unaccompanied children from Ukraine through the National Emergency Response Mechanism (NERM). In this regard, it is noteworthy that a best interests' assessment was established for each child traced on the main entry point of Ukrainian citizens entering Greece, in a child-friendly space. A relevant best interests assessment report is prepared, which is subsequently sent to NERM for further management of the case.
152. In **Poland**, the Ministry of Interior and Administration, together with the Ministry of Agriculture and the Border Guard, developed an algorithm for dealing with children arriving from Ukraine without a legal guardian. Thanks to it, unaccompanied children were sent to a safe place where they could wait for their legal situation to be regulated and a guardian to be appointed.
153. In the case of **Portugal**, a working group was created that specifically addresses children's needs while being in Portugal and a platform for registering entries into national territory, automatic attribution of tax number, social security, and health, allowing access to support and resources.

### 4) Flexibility in the appointment of guardians.

154. It is relevant to mention some countries where guardianship authorities were **more flexible** when **considering the possibility to appoint the accompanying adult as a guardian** or as the day-to-day caregiver. Among these countries, **Belgium, Bulgaria, and Croatia** stand out.
155. In the case of **Belgium**, the guardianship service contacts the child, his/her family, parents in the country of origin and/or all the relevant authorities. If necessary, the guardianship service schedules a visit to talk with the child and their family face-to-face. The guardianship service analyses their situation and evaluates if someone of their family can take the legal guardianship, or if the guardianship service should assign a specific guardian.
156. In **Bulgaria**, when a child is accompanied by an adult relative (grandparent, aunt, uncle, brother, or sister) or by another person close to the family, he/she must prove the entrustment of the child authorised by his/her parents.

157. In these cases, entrustment is proven by a power of attorney or, in the absence of it, by a declaration of assumption of responsibility and care for the child signed by the parents back in Ukraine. This declaration can be presented at the border or submitted later to the Child Protection Department (OCD) of the local Directorate of Social Assistance (DSP), which is responsible for the settlement of children.
158. On the other hand, **Croatia** reported having placed all Ukrainian children under guardianship. Appointed guardians are trusted persons, close family members or professional employees of the Regional Offices. As for the accommodation, there are no Ukrainian children residing in national childcare institutions. On the contrary, children are in collective or private accommodation together with trusted persons.
159. In the case of the **Netherlands**, NIDOS, which is the guardianship entity for unaccompanied children in migration, used to appoint temporary guardians since most of the children arrived with an adult supervisor who knew the child and his/her parents. In these cases, parents used to be in contact with their children and the supervisor, and when they need a notarial deed, the parents' wishes about the supervision of the child were included.

#### 5) **Specific information provision mechanisms.**

160. Finally, some member states developed **specific information provision mechanisms**, such as in **Belgium** or **Spain**, where the guardianship authority developed an information sheet and recommendations for the protection of children displaced by the armed conflict in Ukraine. These materials are available also in different languages to make them accessible.
161. Others, like **Bulgaria** or **Croatia**, established a national telephone line and an email for children to inform, counsel and give psychological support.

## **V. CONCLUSIONS AND SUGGESTIONS FOR ENHANCING THE IMPLEMENTATION OF RECOMMENDATION CM/REC(2019)11**

162. In the light of the above analysis, this section sets out suggestions that may serve to inspire states in their efforts to fully align their guardianship frameworks with the principles of the Recommendation, and to inform possible Council of Europe actions to support implementation.

### **a. Overarching implementation measures of Recommendation CM/Rec(2019)11.**

163. All responding states report having a framework for guardianship. However, general overarching implementation measures appear to be underdeveloped in most of the responding states.

164. In order to improve the implementation of the Recommendation, we suggest that member states:

- Translate the Recommendation into the official languages of each country, where this has not yet been done.
- Disseminate the Recommendation and its Explanatory Memorandum to the main authorities involved in the protection of unaccompanied and separated children's, in particular the guardianship authority, the immigration and asylum authority, and any co-ordination agencies in place. Further disseminate the checklist for guardians and key information for children involved in guardianship to relevant stakeholders such as ombudspersons and NGOs working with unaccompanied and separated children in order to strengthen the transparency and accountability of all stakeholders.
- Develop child-friendly materials explaining the content of the Recommendation, translate them into the languages of the countries of origin of the children and ensure their dissemination.
- Initiate a review process of the existing legal and policy framework and its implementation in practice<sup>79</sup> in order to identify gaps and reflect on proposals to address them, in line with the Recommendation, its Implementation guidelines and the Explanatory Memorandum, involving all relevant authorities and stakeholders, as well as ensuring the participation of unaccompanied and separated children.<sup>80</sup>

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<sup>79</sup> The the ProGuard PAS tool for Self-Assessment and Strengthening National Guardianship Systems in Europe could be relevant for States to self-assess their national guardianship system's strengths and weaknesses and reflect on opportunities for progress. More information available [here](#).

<sup>80</sup> To ensure effective child participation, please refer to the following Council of Europe's guidelines: Council of Europe (2023) *"Let's decide together!" Guide to meaningful and effective engagement of children in decision-making processes*. Available [here](#); Council of Europe (2020) *"Listen – Act – Change" Handbook on children's participation for professionals working for and with children*. Available [here](#).

**b. Principle 1. Protection of the rights of unaccompanied and separated children in migration through guardianship.**

165. The Recommendation calls for the establishment of effective guardianship systems that take into account the best interests of the child. The review highlights that the principle of the **best interests of the child** is uniformly provided for in the national legislations of the responding states.

- Its effective implementation, however, would benefit from regulatory or operational instruments, such as protocols or guidelines, which set out in more concrete terms the procedures for assessing and determining the best interests of the child.<sup>81</sup> These instruments should assist the guardianship authority and those authorities who are in contact with the children prior to the appointment of the guardian. They should be applied to all children, regardless of their migration or residence status or age, and ensure that all unaccompanied children have a guardian.

166. In order to mitigate the increased risks of unaccompanied and separated children to various forms of violence, including **trafficking and exploitation**, it is recommended that:

- Guardianship frameworks specifically address situations of increased vulnerability to ensure clear and explicit referral to relevant services.
- Early identification of any special needs is ensured through the training of guardians and other professionals in contact with children and the development of awareness-raising materials such as screening guides or checklists.<sup>82</sup>
- Protocols, guidelines, or SOPs are in place to outline the referral procedure in case of identification of specific protection needs such as international protection or trafficking. The above mechanisms should apply not only within the asylum procedure, but to all unaccompanied or separated children, regardless of their residence status.<sup>83</sup>

167. **Separated children** have different protection needs from unaccompanied children that need to be addressed, although no concrete and systematic approach to separated children has been identified between countries. The guardianship framework could<sup>84</sup>:

<sup>81</sup> For inspiration see UNHCR (2021) *Best interests procedure guidelines: assessing and determining the best interests of the child*, Available [here](#); EUAA (2019) *Practical guide on the best interests of the child in asylum procedures*, available [here](#).

<sup>82</sup> In this regard, we suggest member states to consider the use of existing trainings already offered by relevant actors such as HELP Online course on Refugee and Migrant Children provided by the CoE, available [here](#), and on combatting trafficking in human beings, available [here](#); FRA (2023) *Guardianship for unaccompanied children - A manual for trainers of guardians*. Available [here](#); and FRA (2023) *Training and learning platform for guardians*. Available [here](#).

<sup>83</sup> However, promising practices have been identified in relation to vulnerability identification within the EU asylum legal framework that can be extrapolated: see for example the [EUAA Vulnerability toolkit](#) including “Tool for Identification of Persons with Special Needs (IPSN)”, “Special needs and vulnerability assessment tool (SNVA)”, and the “Referral toolkit”.

<sup>84</sup> For inspiration: UNICEF (2023) *Fulfilling the rights of children without parental care displaced from Ukraine. An analysis of international and European law*. Available [here](#).



- Ensure that procedures are in place to assess the best interests of 'separated children' in relation to the accompanying adult.
- Include clear guidelines for assessing the relationship and the suitability of the accompanying adult for being appointed as guardian or as day-to-day carer, taking an intercultural and gender approach. While ensuring the child's right to be heard, the assessment would benefit from being carried out by a multidisciplinary team of experts.
- Provide for specific provisions on how the accompanying adult is to be taken into account in the process of appointing a guardian and in the process of assessing and determining best interests.

*The findings from the child consultations emphasise the need for guardians to be more involved and proactive in advocating for the children's best interests, ensuring that their actions align with the principles of independence and child-centered support. Promoting independence requires guardians to prioritise children's autonomy and agency, empowering them to make informed decisions and assert their rights effectively. Guardians should provide children with the necessary information, resources, and support to navigate their circumstances independently. Additionally, they should advocate on their behalf to ensure their best interests are upheld. Establishing clear decision-making processes, promoting transparency and accountability, and fostering a culture of empowerment can help facilitate children's independence and resilience in guardianship systems.<sup>85</sup>*

### **c. Principle 2 – Guardianship frameworks and measures.**

168. The diversity of guardianship models, both between and within countries, is one of the main challenges identified by the responding states not only in determining the proper implementation of the Recommendation but also in evaluating it. However, it can be concluded that any model – whether States establish a specific guardianship framework for unaccompanied and separated children in migration or include provisions that take into account specific needs within the broader framework of national child protection – can comply with Principle 2, provided that, whatever its characteristics, it is flexible and comprehensively addresses all situations in which children may find themselves.
169. Although the responding states reported that they complied with the minimum requirements set out in the implementing guidelines of the Recommendation,<sup>86</sup> the results of the analysis show that the following improvements could be made:
- Ensure the provision of guardianship for all unaccompanied and separated children, regardless of their residence status and not limited to asylum-seeking children.
  - Simplify guardianship models to make them more accessible. For example, consider having a single model for all unaccompanied children

<sup>85</sup> Extract from the report on the consultation with children and young people published in the appendix (CDENF(2024)06add).

<sup>86</sup> See Appendix to Recommendation CM/Rec(2019)11, Implementing guidelines for an effective guardianship system, Principle 2(2)(a-j); and Explanatory Memorandum of Recommendation CM/Rec(2019)11, paras. 25-40.

and thus avoiding the application of different guardianship frameworks based on residence status or age.

- Establish legal or policy provisions to clearly identify the guardianship authority and the guardian, their role, functions, and responsibilities. This is particularly important in countries where several similar actors are identified as falling under the concept of guardian, as defined in the Recommendation, or where the guardianship authority is not clearly identifiable.
- In the case of decentralised models of guardianship, establish a multi-level and/or inter-regional co-ordination mechanism with regular meetings to support the standardisation of models, provide technical assistance, facilitate co-ordination between guardianship authorities and guardians, and gather relevant information.
- Consider formalising guardianship arrangements to be as permanent as possible, in order to best contribute to providing a durable solution for unaccompanied and separated children, regardless of whether guardians are volunteers or professionals.
- Strengthen the legal and policy framework in areas such as interagency and multidisciplinary co-ordination mechanisms at international level and monitoring by an independent authority.

*The findings from the child consultations underscore the need for consistent and meaningful engagement from guardians to ensure the well-being and rights of unaccompanied children. Enhancing presence requires guardians to prioritize regular communication and engagement with children, actively listening to their concerns and providing timely support. Establishing clear communication channels and regular check-ins can help foster trust and rapport between guardians and children, ensuring that children feel supported and empowered to navigate their circumstances effectively.<sup>87</sup>*

#### **d. Principle 3 – Appointment or designation of guardians without undue delay.**

170. The implementation review shows that the average time to appoint a guardian varies greatly between the respondent states. The analysis further suggests that in some member states the designation of a guardian is delayed due to the scarcity of guardians in case of increased arrivals. It is also often delayed when there is a doubt as to the minority of an individual.
171. To comply with the Recommendation, which calls for the appointment of a guardian without undue delay, once a child is identified as unaccompanied or separated, irrespective of their immigration status, good practices suggest that guardianship frameworks could:
- Set a maximum time limit for appointing a guardian by law.
  - Provide for the possibility of appointing temporary guardians from the very initial arrival, including prior to or during age assessment procedures,

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<sup>87</sup> Extract from the report on the consultation with children and young people (CDENF(2024)06add).

especially in cases where these processes are lengthy<sup>88</sup> and where the competent authorities have objective grounds to believe that the person is a child in view of relevant visible signs, statements, or behavior.

172. The Recommendation underlines the need for the child to be informed and consulted in appointment procedures.

- States need to strengthen mechanisms for children's participation in the procedure of appointment or designation of guardians, as well as to allow the possibility to complain about a guardian and apply for a change.
- In line with the implementing guidelines, regulatory provisions should be envisaged to allow for the possibility of extending certain protection measures to unaccompanied and separated children after reaching 18 years of age, where appropriate in order to enhance a safe transition to adulthood. These measures do not include legal guardianship but specialised accommodation, foster care or socio-legal support, among others.<sup>89</sup>

*Findings from the Child consultation suggest that guardians should be consistently present in the children's lives, dedicating sufficient time to understand their needs and building a trust-based relationship with the child. Also, guardians should always be transparent about issues concerning the child.<sup>90</sup>*

#### **e. Principle 4 – Legal responsibilities and tasks of guardians.**

173. Although the high level of compliance with Principle 4 is remarkable, there are still certain issues that could be more comprehensively addressed by member states.

174. First, regardless of the way in which the guardianship system is organised, according to the Implementing guidelines and the Explanatory Memorandum, guardians across all national contexts should be authorised and empowered to carry out certain common minimum tasks.<sup>91</sup> The reporting states consider that their guardianship frameworks include most of these elements. However,

<sup>88</sup> For more information on age assessment procedures, please see the recent Recommendation CM/Rec(2022)22 of the Committee of Ministers on Human rights principles and guidelines on age assessment in the context of migration and its Explanatory Memorandum, as well as Council of Europe (2019) *Age assessment for children in migration. A guide for policy makers*. Available [here](#); Council of Europe (2019) *"We are children, hear us out" Report on consultations with unaccompanied children on the topic of age assessment*. Available [here](#); and Council of Europe (2017) *Age assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration*. Available [here](#); FRA (2018) *Age assessment and fingerprinting of children in asylum procedures Minimum age requirements concerning children's rights in the EU*, available [here](#)

<sup>89</sup> For more information, please see Council of Europe (2023) *Turning 18 with confidence. A practical guide to the Council of Europe Recommendation on Supporting Young Refugees in Transition to Adulthood – CM/Rec(2019)4*. Available [here](#).

<sup>90</sup> Extract from the report on the consultation with children and young people (CDENF(2024)06add).

<sup>91</sup> For more information, see the Annex to Recommendation CM/Rec(2019)11, Implementation Guidelines for an Effective Guardianship System, Principle 4(1)(a-k) and (2)(a-c); and the Explanatory Memorandum to Recommendation CM/Rec(2019)11, paras. 55-59.

according to the analysis, few states explain how or where they are regulated, and some of the elements need more attention. We therefore suggest that:

- The role of guardians is clearly defined in law, distinguishing it from the role of other actors involved, especially in countries where several similar actors are identified to fall under the concept of guardian.
- The minimum elements set out in the recommendation are explicitly provided for in the guardianship framework and their implementation are ensured through policy instruments, if necessary.
- Mechanisms are strengthened to enable guardians to assess whether there are grounds for additional protection measures for the child, including the extension of the duration of such measures, and to advise the guardianship authority in this respect.
- The necessary legal and policy provisions are established within the guardianship framework to facilitate guardians to initiate the process of appointing a lawyer/legal representative for the child, where legally required, for the purpose of representing the child in relevant legal proceedings.

175. In addition, guardians should be involved in any proceedings affecting the child to ensure that any measures or procedures are in accordance with the child's best interests and individual needs. Therefore, in order to comply with Principle 4, it is advised that:

- The guardianship frameworks explicitly provide for the involvement of guardians in the procedures referred to in the Implementing guidelines and the Explanatory memorandum,<sup>92</sup> where not yet done.
- The guardians are involved in specific procedures such as the tracing of missing children<sup>93</sup> or the age assessment procedures.<sup>94</sup>

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<sup>92</sup> Idem, para. 60.

<sup>93</sup> For inspiration, see initiatives such as Missing Children Europe – Children in migration. Available [here](#).

<sup>94</sup> For inspiration, see: CoE (2023) *Administrative detention of migrants and asylum seekers. A guide for practitioners*. Available [here](#); FRA (2018) *Age assessment and fingerprinting of children in asylum procedures Minimum age requirements concerning children's rights in the EU*, available [here](#). Resolution 2195 (2017) Child-friendly age assessment for unaccompanied migrant children; and Recommendation 2117 (2017) Child-friendly age assessment for unaccompanied migrant children (by the Standing Committee, acting on behalf of the Assembly, on 24 November 2017). Available [here](#); Recommendation CM/Rec(2022)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration (Adopted by the Committee of Ministers on 14 December 2022 at the 1452nd meeting of the Ministers' Deputies). Available [here](#); Council of Europe (2019) *Age assessment for children in migration. A guide for policy makers*. Available [here](#); Council of Europe (2019) *"We are children, hear us out" Report on consultations with unaccompanied children on the topic of age assessment*. Available [here](#); and Council of Europe (2017) *Age assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration*. Available [here](#).

176. Finally, under Principle 4, states should ensure that guardians enjoy the independence and impartiality appropriate to their role. To this end, states should consider to:

- Decouple the role of the guardian from the work of professionals in residential centres in order to avoid conflicts of interest.
- Appoint a natural person when the guardianship system appoints an organisation.
- Avoid the guardianship authority being placed under the migration competent administration.
- Facilitate monitoring mechanisms by independent authorities such as the ombudsperson or a court.

*According to the findings of the child consultations, guardians should care about the children, listen to their concerns without judgment and help them find solutions, guiding the child in their best interest. Also, guardians should take an interest in the children's dreams and aspirations, helping them to develop and pursue their goals.<sup>95</sup>*

**f. Principle 5 – Information, access to justice and remedies, including child-friendly complaint mechanisms.**

177. First, under Principle 5, unaccompanied and separated children in migration need to be provided with information that is adapted to their age and maturity, in a language which they can understand and, in a gender, and culturally sensitive manner.<sup>96</sup> To this end, states could:

- Provide guardians and guardianship authorities with legal assistance, interpretation services, language resources, cultural mediators, female professionals, training in child-sensitive communication, and child-friendly information resources, including online.<sup>97</sup>
- Inspired by good practice, increase their efforts to ensure the availability of cultural mediation and interpretation services, as well as frontline female professionals. They are particularly important for children who have been, are or may be in a vulnerable situation, such as victims of gender-based violence, trafficking, or exploitation, etc. This could be done either by

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<sup>95</sup> Extract from the report on the consultation with children and young people (CDENF(2024)06add).

<sup>96</sup> Council of Europe (2018) Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Guideline 2. Available [here](#); UNCHR (2021) *Technical Guidance: Child Friendly Procedures*, available [here](#).

<sup>97</sup> See for inspiration: Council of Europe (2018) *How to convey child-friendly information to children in migration. A handbook for frontline professionals*. Available [here](#); Council of Europe (2018) *Child-friendly information for children in migration. What do children think?* Available [here](#); Council of Europe (2019) *Promoting child-friendly approaches in the area of migration - Standards, guidance and current practices*. Available [here](#).

employing professionals with this profile or by subcontracting such services to companies or other NGOs.

178. Second, children should have access to complaint and redress mechanisms in relation to their guardianship arrangements, which should be easily accessible, child-friendly, independent, and confidential.<sup>98</sup> With this in mind, and taking into account the results of the analysis, we propose that member states:

- Ensure the availability of effective remedies in relation to guardianship arrangements (to challenge delays in appointment, exercise of guardianship powers or termination of guardianship).
- Follow the Council of Europe Guidelines on child-friendly justice<sup>99</sup> to develop alternative dispute resolution and child-friendly justice mechanisms for children in migration. These child-friendly justice mechanisms should include information and counselling, protection of private and family life, special preventive and protective measures, trained and qualified professionals and a multidisciplinary approach.<sup>100</sup>
- Strengthen the monitoring of complaints mechanisms by an independent institution such as an ombudsperson or a court.

*The findings from the child consultations emphasise the importance of building strong, trust-based relationships through effective communication, cultural sensitivity, and a genuine interest in the children's well-being and future aspirations. Improving relationships requires guardians to prioritise intentional meetings with children to listen to their concerns and demonstrate empathy and understanding. Additionally, cultivating open and honest communication channels, fostering a supportive and nonjudgmental environment, and involving children in decision-making processes can help strengthen relationships.<sup>101</sup>*

#### **g. Principle 6 – Institutional measures.**

179. Principle 6 states that there should be a competent authority responsible for the administration of guardianship of migrant children and for providing guardians with procedures, support measures or services to assist them in carrying out their responsibilities.<sup>102</sup>

<sup>98</sup> For more information see Appendix to Recommendation CM/Rec(2019)11, Implementing guidelines for an effective guardianship system, Principle 5(3-5); and Explanatory Memorandum of Recommendation CM/Rec(2019)11, paras. 69-71.

<sup>99</sup> Council of Europe (2018) Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice. Available [here](#). See also: Council of Europe (2023) *Barnahus: a European journey Mapping study on multidisciplinary and interagency child-friendly justice models responding to violence against children in Council of Europe member states*. Available [here](#).

<sup>100</sup> Ibid. p. 58.

<sup>101</sup> Extract from the report on the consultation with children and young people (CDENF(2024)06add).

<sup>102</sup> For more information see Appendix to Recommendation CM/Rec(2019)11, Implementing guidelines for an effective guardianship system, Principle 6(2)(a-e); and Explanatory Memorandum of Recommendation CM/Rec(2019)11, paras. 77-80.



180. Despite the widespread reported compliance with Principle 6, the analysis shows that there are still certain issues that should be addressed more comprehensively. Therefore, in line with the Recommendation, we advise member states to:

- Develop legal or policy provisions to clearly identify the guardianship authority.
- Ensure that the guardianship authority is operationally independent from public authorities and that guardianship functions are not linked to immigration responsibilities.
- Establish measures to ensure that guardians are responsible for a manageable number of cases, such as setting in the law a maximum number of cases that guardians can take on.
- Strengthen the provision of mechanisms for communication, networking, and self-help among guardians, as well as standards for the operational procedures for the conduct of guardians, and the harmonisation of procedures.<sup>103</sup>
- Support civil society organisations to develop and update initial and continuous training for guardians, including on children's rights, child protection policies, cultural and gender approaches, missing children, and children victims of violence.<sup>104</sup>

181. In addition, guardianship authorities should provide guardians and children with child-friendly information materials covering all aspects of the guardianship model.<sup>105</sup> In this regard, most of the countries reported initiatives to develop child-friendly materials, in particular on the functions, rights and obligations of guardians. States could:

- Increase efforts to develop such materials in general and on principles of confidentiality of communication, on individual complaint mechanisms available to the child and on relevant criminal, administrative and civil procedures.<sup>106</sup>
- Translate the materials into different languages.

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<sup>103</sup> See for inspiration: [ProGuard Guardianship Toolkit](#). It consists of information, tools and best practices related to guardianship for unaccompanied children and aims at protecting and implementing children's rights for this special group of children in Europe.

<sup>104</sup> See for inspiration: Council of Europe and FRA (2023) *Children in migration: fundamental rights at European borders*. Available [here](#).

<sup>105</sup> These materials should cover information on the functions, rights and duties of guardians; the accessibility of the guardian; confidentiality of communication principles; individual complaint mechanisms available to the child; available assistance and protection measures and service providers; the role and duties of other stakeholders; and any relevant criminal, administrative and civil proceedings for the child.

<sup>106</sup> See for inspiration: Council of Europe (2018) *How to convey child-friendly information to children in migration. A handbook for frontline professionals*. Available [here](#), and also Council of Europe (2018) *Child-friendly information for children in migration. What do children think?* Available [here](#).



*Findings from the child consultations carried out in the framework of this implementation review suggest that the adequacy of support of a guardian is influenced by various factors, including guardians' knowledge and training, clarity on the role of the guardian, resources available to support children and the effectiveness of communication channels between guardians and children. Improving adequacy requires a multifaceted approach, including comprehensive training for guardians on children's rights and their role, access to tailored support services and enhanced communication strategies to ensure children are informed and empowered to assert their rights.<sup>107</sup>*

#### **h. Principle 7 – Resources, recruitment, qualifications and training.**

182. Under Principle 7, states should allocate adequate resources to ensure effective guardianship of unaccompanied and separated children. States should also ensure that guardians are adequately vetted, reliable, qualified and supported throughout their mandate.
183. Most countries find it challenging to provide the guardianship system with financial, human and technical resources due to the fluctuating numbers of arrivals of children and their circumstances. States could:
  - Develop policy instruments, such as strategies, that include provisions for the allocation of resources in different scenarios of migration influx, including emergency situations.
184. In order to support the identification and allocation of sufficient resources to the guardianship system, comprehensive and disaggregated data collection is essential, although the analysis shows that the efforts made by the responding countries to collect data are and insufficient, therefore member states could:
  - Develop an official, specific and harmonised database on unaccompanied and separated children, regardless of their immigration status.
  - Collect quantitative and qualitative data, highlighting in particular the procedures in which children have been involved, their specific protection needs such as the needs of children seeking asylum, victims of trafficking, or exploitation, and information on the way services have been provided.
  - Collect data on guardians and guardianship arrangements.
185. With regards to qualifications and requirements for guardians, states should have procedures in place to ensure that guardians and the guardianship authority staff maintain high professional standards. While most responding countries assure that they have defined criteria for qualifications or requirements for guardians, we found that some relevant areas of expertise are lacking. We therefore suggest member states to:

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<sup>107</sup> Extract from the report on the consultation with children and young people (CDENF(2024)06add).

- Explicitly set out the requirements for guardians in the guardianship framework.
- Ensure that the requirements include knowledge of migration, age assessment<sup>108</sup> and family tracing procedures, linguistic, cultural and gender diversity, as well as an understanding of migration-related trauma.
- Ensure the provision of adequate initial and continuing education and training in the above areas of expertise for guardians, particularly where they are not considered a requirement for appointment or designation.<sup>109</sup>

*The findings from the child consultations highlight the need for more effective training, better communication strategies, and a focus on meeting both the basic and complex needs of unaccompanied children to ensure their well-being and the realisation of their rights. Enhancing guardians' capacities requires comprehensive training programs and ongoing adequate support to ensure they have the knowledge, skills, and resources to fulfil their duties effectively.<sup>110</sup>*

#### **i. Principle 8 – Co-operation and co-ordination at national level.**

186. Principle 8 states that operational co-ordination mechanisms should be established to ensure that the best interests of the child are a primary consideration in all actions concerning children.

187. While most responding states reported having a co-ordinating body, strategy or protocol, they also identified implementation of this principle as a challenge. In order to improve implementation, member states could:

- Establish a co-ordination mechanism such as an agency, protocol, SOPs or referral mechanism which clearly identifies the role of each competent authority involved in protection of children in migration.
- Designate an authority or institution that could assess and guide stakeholders, especially those outside the guardianship system.
- Promote regular multi-agency and multidisciplinary training for stakeholders to facilitate co-operation and co-ordination between actors with responsibilities for children in migration.
- Establish mechanisms for monitoring and evaluating co-ordination.

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<sup>108</sup> Council of Europe (2022) *Recommendation CM/Rec(2022)22 of the Committee of Ministers and Explanatory Memorandum on Human rights principles and guidelines on age assessment in the context of migration*. Available [here](#).

<sup>109</sup> For inspiration: FRA (2023) *Guardianship for unaccompanied children - A manual for trainers of guardians*. Available [here](#); and FRA (2023) *Training and learning platform for guardians*. Available [here](#); HELP Online course on Refugee and Migrant Children provided by the CoE, available [here](#), and on combatting trafficking in human beings, available [here](#);

<sup>110</sup> Extract from the report on the consultation with children and young people (CDENF(2024)06add).

- Ensure confidentiality by including data sharing provisions in any co-ordination mechanism.

*Regarding multi-disciplinary support, findings from the children's consultations suggest that guardians should cooperate with other professionals and be proactive in helping children regarding primary needs and navigating the legal and social systems. They should ensure that problems raised by children are listened to and promptly and effectively addressed with respect to their views.<sup>111</sup>*

#### **j. Principle 9 – International co-operation.**

188. When it comes to children in migration, Principle 9 states that international co-operation is essential to ensure their protection and best interests. However, the analysis concludes that this is still an underexploited area and we therefore suggest that member states:

- provide for by law for the widest range of international co-operation, including family tracing, family reunification, transfer of care and custodial responsibilities, establishing a durable rights-based solution, preventing and combating child trafficking and exploitation, preventing disappearances, or tracing missing children.
- Establish clear channels or mechanisms for the transmission and execution of requests for information or other types of assistance beyond those related to trafficking.<sup>112</sup>
- Encourage the establishment of international and/or regional mechanisms for co-operation and promote the regular sharing of knowledge, experience and best practices with other states or actively participate in the existing ones<sup>113</sup>.

#### **I. Actions to be taken at the Council of Europe level.**

189. In order to further support the implementation of Recommendation CM/Rec(2019)11 by member states, we propose that the Council of Europe, in partnership with relevant stakeholders should:

- Support member states in the dissemination of the Recommendation by developing information materials aimed at guardianship authorities, other relevant stakeholders and children in migration.
- Subject to availability of funding, provide technical assistance through co-operation projects to national competent authorities<sup>114</sup> to review legal and policy frameworks in the areas of child protection, migration and asylum

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<sup>111</sup> Idem

<sup>112</sup> For inspiration for non-EU member states: Dublin Regulation, or the Brussels II Ter Regulation.

<sup>113</sup> Such as the Council of Europe Network of Focal Points on Migration, the EGN and the EMN.

<sup>114</sup> See, as examples, the projects carried out in Armenia ([Protecting the rights of Armenian children in a post-conflict context](#)) and the joint European Union and Council of Europe action in Türkiye ([Strengthening the human rights protection in the context of migration in Türkiye](#)).

and support member states in the dissemination and using of existing Council of Europe tools and resources.<sup>115</sup>

- Further disseminate existing training courses and modules such as the HELP training course on migrant and refugee children or others from relevant international agencies or organisations such as FRA, EUAA, EMN, EGN or UNCHR,<sup>116</sup> and develop new training modules that could be replicated in member states on areas not yet covered by the above.
- Strengthen the exchange of knowledge, experience and good practices between member states within existing international co-operation mechanisms on guardianship, such as the Network of Focal Points on Migration, operated within the Council of Europe by the Special Representative on Migration and Refugees, the EGN and the EMN.
- Monitor and evaluate the implementation of measures taken in the context of the Ukraine conflict in co-operation with the Consultation Group on the Children of Ukraine (CGU).

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<sup>115</sup> See in particular the tools and resources adopted in the framework of the Council of Europe Action Plans on Protecting Refugee and Migrant Children in Europe (2017-2019). Available [here](#) and of the Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025), available [here](#).

<sup>116</sup> For inspiration: HELP Online course on Refugee and Migrant Children provided by the CoE, available [here](#), and on combatting trafficking in human beings, available [here](#); FRA (2023) Guardianship for unaccompanied children - A manual for trainers of guardians, available [here](#); and FRA (2023) Training and learning platform for guardians, available [here](#)