

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



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Effective guardianship for unaccompanied and separated children in the context of migration

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of the Committee of Ministers
and Explanatory Memorandum

French edition:
*Un régime de tutelle efficace
pour les enfants non accompagnés
et les enfants séparés
dans le contexte de la migration
Recommandation CM/Rec(2019)11
du Comité des Ministres*

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Foreword

Migration is a journey into the unknown and for many, especially for children, it almost always is a traumatic one. Due to their age, sex or other vulnerabilities, their journey is scattered with risks and obstacles. In 2022, Europe witnessed how war within the very heart of our continent forced millions of Ukrainian children to become displaced or to flee their home country, many of them alone without the protection of a parent or other adult carer. These circumstances, and the alarming reports of disappearances of children having crossed borders to and within Europe, call for a safe and trusted guardianship system for children who seek a safe haven in Europe. The prompt appointment of a guardian is crucial for safeguarding their rights and ensuring that the best interests of the child are ensured without exception.

This Recommendation on effective guardianship for unaccompanied and separated children in the context of migration, adopted by the Council of Europe's Committee of Ministers in 2019 as a ground-breaking soft law instrument firmly anchored in international and European human rights standards, sets clear guiding principles for the protection, assistance and safety of children on the move through guardianship. Its continued implementation is 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 its Strategy for the Rights of the Child (2022-2027). The Explanatory Memorandum of the Recommendation on guardianship, prepared by the Council of Europe's Steering Committee for the Rights of the Child in 2022, illustrates different ways of organising guardianship in our member states, so that the specific needs of children in migration are catered for at every level.

Marja Ruotanen
Director General of Democracy and Human Dignity

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 Committee of Ministers on 11 December 2019 at the 1363rd meeting of the Ministers' Deputies)

Preamble

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, inter alia, by promoting common standards and co-operation in the field of human rights;

Reaffirming the principle of the equal dignity of all human beings, and underlining the importance of guaranteeing all children within a State's jurisdiction the full exercise, respect, protection and promotion of their human rights and fundamental freedoms, without discrimination on any ground;

Having regard to States' obligations and commitments towards children as undertaken in international legal instruments, notably the United Nations Convention on the Rights of the Child (1989) and its Optional Protocols; the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and

Children (2000), supplementing the United Nations Convention against Transnational Organized Crime; the United Nations Convention on the Rights of Persons with Disabilities (2006); the Convention concerning the powers of authorities and the law applicable in respect of the protection of infants (1961); the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993) and the related Recommendation Concerning the Application to Refugee Children and Other Internationally Displaced Children (1994); the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996); and other United Nations instruments concerning refugees and stateless persons;

Taking into account the rights enshrined in relevant European legal instruments, and the obligations and commitments undertaken by States, including by virtue of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and the protocols thereto; the European Social Charter (ETS No. 35 and its revised version, ETS No. 163); the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its protocol (CETS No. 223); the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

(ETS No. 126); the European Convention on the Exercise of Children's Rights (ETS No. 160); the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197); the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201); and the Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210);

Recalling the relevant case law of the European Court of Human Rights and taking into account the relevant recommendations, resolutions and declarations of the Committee of Ministers and of the Parliamentary Assembly of the Council of Europe in this field, and the relevant recommendations of international monitoring bodies and committees;

Deeply concerned that unaccompanied and separated children are among the most vulnerable persons in the migration context, and as such are at increased risk of violation of their fundamental rights and freedoms, in particular the right to life, survival and development, the right to non-discrimination, the right to respect for private and family life, the right to acquire a nationality, the right to seek asylum, the right to the highest attainable standards of health and of access to health-care services, the right to education, the right to housing, access to justice, and the right to freedom from all forms of violence;

Aware that children are forced to flee their homes and/or migrate – accompanied, unaccompanied or separated – for different reasons, such as, conflict or other forms of abuse and persecution, violence, family reunification, changes in the environment that affect their life and living conditions, or the search for better economic, social or cultural conditions;

Recognising that unaccompanied and separated children in migration are right holders and that all children should be guaranteed equal standards of protection, reception and care;

Conscious of the need to put in place comprehensive and child-friendly measures in open accommodation facilities to ensure the protection and assistance of unaccompanied and separated children in migration in order to effectively prevent neglect, trafficking for the purpose of sexual exploitation or other forms of exploitation, involvement in criminal activities, forced labour, removal of organs, drug trafficking, unlawful or arbitrary deprivation of liberty, torture, inhuman or degrading treatment, involvement in armed conflicts, child and forced marriage, and other harmful practices or forms of violence, including gender-based violence;

Aware of the need for additional protection and assistance measures in circumstances where unaccompanied and separated children in migration are in a situation of additional vulnerability, such as children with disabilities or at risk of violence, re-trafficking or revictimisation, or in any other situation of vulnerability;

Taking into account that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, and should be implemented in all spheres of their life, regardless of their circumstances;

Taking into account that States must realise the children's right to express their views freely in all matters affecting them and have their views be given due weight in accordance with their age and maturity, and that States have an obligation to ensure the respect of this right;

Convinced that an effective guardianship system constitutes an essential safeguard for the protection of the rights of unaccompanied and separated children in migration and that guardians play a key role in the safeguarding of children's best interests and the exercise by these children of their rights;

Convinced that guardianship is critical to ensuring that State efforts to find sustainable, rights-based solutions are initiated and implemented without delay,

Recommends that the governments of member States:

1. set out a comprehensive and consistent framework of measures with respect to guardianship for unaccompanied and separated children in migration, which takes account of the manner in which responsibilities are organised in member States;
2. assess their legislation, policies and practice and, where appropriate, take measures and allocate resources to ensure the necessary reforms to implement this recommendation;
3. ensure that this recommendation is translated and disseminated as widely as possible among all competent national authorities, relevant professionals and stakeholders, including those working for and with unaccompanied and separated children in migration and non-governmental actors;

4. establish a platform of experts at pan-European level through a Council of Europe committee to promote the implementation by States of the principles and implementing guidelines, acting also as a regular forum for exchanges of experience and good practice, with a view to supporting member States in reinforcing their national guardianship systems and facilitating cross-border co-operation between them, taking into account available resources;
5. examine within the Committee of Ministers, through the appropriate inter-governmental committee, the implementation of this recommendation three years after its adoption and at similar intervals thereafter.

Appendix to Recommendation CM/Rec(2019)11

Guiding principles and implementing guidelines for effective guardianship for unaccompanied and separated children in the context of migration

I. Purpose and scope

1. The present guiding principles and implementing guidelines are intended to support States in ensuring that unaccompanied and separated children within their jurisdiction are effectively provided with guardianship, promptly after identification as an unaccompanied child, so that their rights and best interests are adequately safeguarded and duly considered in all processes and decisions concerning them, in line with international and European standards.
2. Taking into account the international and European legal instruments and relevant guidance and experience in this area, these principles and implementing guidelines seek in particular to:
 - a. assist States in effectively implementing the actions necessary to fulfil their responsibilities and obligations towards unaccompanied and separated children in migration, while guiding the policies, decisions and activities of all the competent stakeholders concerned;
 - b. provide guidance on the development and implementation of standards on guardianship, including by developing a common framework, in order to safeguard the rights of unaccompanied and separated children in migration, and ensure respect for their best interests while taking into account the different ways in which responsibilities are organised in member States;
 - c. encourage States to facilitate and promote the exchange of sustainable and promising practices with respect to guardianship to ensure the protection of the rights of unaccompanied and separated children in migration while ensuring a rights-based approach in migration policies applied to them.

3. These guiding principles and implementing guidelines apply to guardianship measures for unaccompanied and separated children in migration.
4. The principles and measures should also be applicable, as appropriate, to young persons who need continuing care and support through guardianship or other means for a transitional period after reaching 18 years of age or in specific situations, as set out under the law of the receiving State.

II. Definitions

1. For the purpose of this recommendation:
 - a. “child” refers to any human being below the age of 18 years;
 - b. “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;
 - c. “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;
 - d. “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 organisation 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;
 - e. “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;
 - f. “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;
 - g. “life projects” refers to an integrated policy tool, available to member States in order to meet the needs of unaccompanied and separated children in migration, and the challenges arising out of their 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. Life projects are based on a joint undertaking between the child and the competent authorities for a limited duration. Depending on their particular objectives, they may be implemented either in the host country, in the country of origin or in both.

III. Guiding principles for an effective guardianship system

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.

Principle 2 – Guardianship frameworks and measures

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

Principle 3 – Appointment or designation of guardians without undue delay

States should ensure that an unaccompanied or separated child in migration has a guardian appointed or designated without undue delay, taking into account individual characteristics, to provide support to the child until the age of majority, and that care and support are available through guardianship or other means for a transitional period after reaching 18 years of age, as may be deemed appropriate in specific situations.

Principle 4 – Legal responsibilities and tasks of guardians

States should take measures to empower guardians to inform, assist, support and, where provided by law, represent unaccompanied and separated children in migration 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 with responsibilities for them. States should ensure that guardians enjoy the independence and impartiality appropriate to their role.

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 advice, and that they have access to an independent complaint mechanism and remedies to effectively exercise their rights or act upon violations of their rights.

Principle 6 – Institutional measures

States should ensure that a competent authority is in place with responsibility for the management of guardianship for unaccompanied and separated children in migration taking into account the manner in which responsibilities for guardianship are organised in member States.

Principle 7 – Resources, recruitment, qualifications and training

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

Principle 8 – Co-operation and co-ordination at national level

States should, in accordance with their domestic systems, establish mechanisms and take measures to ensure effective co-operation and co-ordination between people exercising responsibilities towards unaccompanied and separated children in migration, and the guardian and/or guardianship authority.

Principle 9 – International co-operation

States should rapidly, constructively and effectively provide the widest range of international co-operation in relation to unaccompanied and separated children in migration, including for family tracing and identifying and implementing sustainable, rights-based solutions, and involve in appropriate ways their guardianship authority and/or guardians.

IV. Implementing guidelines for an effective guardianship system

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.

1. International human rights obligations with respect to children shall be fully respected when establishing and implementing a guardianship system.
2. Every unaccompanied or separated child is entitled to special protection and assistance provided by the competent authorities and bodies, and to receive the support and assistance of a guardian.
3. States should ensure that guardianship measures take into account children's best interests and specific circumstances, including circumstances of particular vulnerability in which they find themselves when outside their countries of origin, as well as any vulnerability factors requiring additional protection and assistance.

4. States should ensure that effective mechanisms are in place for guardianship to mitigate the aggravated risks for these children of exposure to discrimination, neglect, sexual violence, forced labour, drug trafficking, child abduction, child marriage and other forms of violence.

5. States should ensure that guardianship contributes to ensuring that efforts to identify sustainable, rights-based solutions for these children are initiated and implemented without delay, including the possibility of family reunification based on the determination of the child's best interests.

Principle 2 – Guardianship frameworks and measures

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

1. States should put in place an effective guardianship system, taking into account the evolving nature of needs and the manner in which different State responsibilities concerning children are organised, in particular as regards defining how guardians operate, co-ordinate and co-operate with other services and stakeholders to fulfil the rights of the child.

2. States should adopt and implement a comprehensive legal, policy, regulatory and/or administrative framework for guardianship, including provisions on:

- a. professional standards, requirements and qualifications;
- b. screening, vetting, recruitment and appointment or designation procedures of guardians;
- c. duties, rights and responsibilities of guardians, as well as support measures and a guardians' registry;
- d. training requirements;
- e. procedures to ensure that children are provided with information and assistance and that their views are expressed, taken into consideration and given due weight at all stages of relevant procedures;
- f. individual complaint mechanisms available for children and related procedures;
- g. interagency and multidisciplinary co-operation and co-ordination mechanisms and processes at national and international level;
- h. confidentiality and data-protection requirements, where appropriate;
- i. monitoring, supervision and oversight of guardians by the guardianship authority;
- j. monitoring of the guardianship arrangements for children, including monitoring by an independent authority.

3. The circumstances and procedures related to the appointment or designation and change of the guardian, as well as the termination of guardianship, should be prescribed by law, taking into account the child's right to be heard, the best interests of the child, the need for stability and continuity and, where appropriate be subject to judicial review.

4. States should ensure monitoring of the guardianship system at regular intervals, including through consultation with children.

Principle 3 – Appointment or designation of guardians without undue delay

States should ensure that an unaccompanied or separated child has a guardian appointed or designated without undue delay, taking into account individual characteristics, to provide support to the child until the age of majority, and that care and support are available through guardianship or other means for a transitional period after reaching 18 years of age, as may be deemed appropriate in specific situations.

1. Every unaccompanied or separated child should have a guardian, regardless of his or her immigration status.
2. States should ensure that a guardian is appointed or designated, following appointment or designation by another competent body (such as a court) without undue delay, once a child in migration is reported or identified as unaccompanied or separated.
3. In exceptional cases involving a delay in the designation or appointment of a guardian, the State should ensure that there is no gap in the possible exercise of rights or in the effective protection of the unaccompanied or separated child in migration.
4. When there is uncertainty as to whether a person is a child, and even after the national age assessment procedures have been conducted, States should ensure that they have a guardian or that a guarantee of respect for their rights is upheld by a competent authority.
5. Every unaccompanied or separated child in migration should be informed and have their views taken into consideration in the process of appointment or designation of guardians, taking into account their individual circumstances, for example their age, maturity, evolving capacities and need for adequate interpretation and cultural mediation.
6. Every unaccompanied or separated child in migration should be able, in specific cases, to request a change in guardian or, when an organisation is appointed or designated as a guardian, of the person carrying out the duties.
7. A guardian's assignment should last until guardianship is transferred, parental responsibility is in place, or until the child reaches the age of majority.
8. The principles and measures should also be applicable, as appropriate, to young persons who need continuing care and support through guardianship or other means for a transitional period after reaching 18 years of age or in specific situations, as set out in the law of the receiving State.

Principle 4 – Legal responsibilities and tasks of guardians

States should take measures to empower guardians to inform, assist, support and, where provided by law, represent unaccompanied and separated children in migration 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 with responsibilities for them. States should ensure that guardians enjoy the independence and impartiality appropriate to their role.

1. Measures in place should authorise and empower guardians to inform, assist and support unaccompanied or separated children in migration and, where necessary and provided by law, to complement their limited legal capacity in processes and decisions affecting them. More particularly, the role of the guardian should include:
 - a. ensuring that children are informed of, and understand, their rights;
 - b. informing the competent child-protection system in cases where children are subject to violence, abuse, neglect or exploitation, and requesting and/or facilitating the provision of appropriate protection and care to children;
 - c. safeguarding children's well-being and development by, inter alia, listening to the child and taking into consideration their views, through supporting their access to adequate care, accommodation, health care, education and professional training, and any other relevant professional support services;
 - d. guiding children in their transition to adulthood, including through individualised life projects;
 - e. preparing children/ensuring children have access to, and have the opportunity to participate in, procedures and decision-making processes concerning their status and the realisation of their rights, including processes concerning their identity, age and sustainable, rights-based solutions, and that they are provided with support in participating in processes affecting them;
 - f. complementing children's limited legal capacity;
 - g. supporting children in accessing representation, and if required, legal counsel, in administrative and judicial proceedings;
 - h. reporting cases of missing children;
 - i. co-operating with competent authorities to ensure the child's best interest e.g. in identification and age assessment processes and family tracing;
 - j. managing assets and goods on behalf of the child;
 - k. assessing 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.
2. The guardian should be authorised to take actions aimed at safeguarding the best interests of the child, in particular to:
 - a. assess the child's best interests in all actions in their regard;
 - b. to initiate the process for the appointment of a lawyer/legal representative for the child, where legally required, for the purpose of representing the child in relevant legal proceedings, if this is not within the duties of another authority;
 - c. challenge authorities for failures to safeguard the child's best interests.
3. The guardian should assist in particular in the identification and implementation of measures regarding: the assessment of each child's vulnerabilities, including an assessment of protection risks and needs on a regular basis, best interests' assessments, age assessment, and guardianship procedures. The guardian should assist, where provided by law, in family tracing procedures, tracing of missing children, immigration or asylum procedures, and administrative or judicial proceedings.

4. The guardian has a duty to the child and measures in place should create an enabling environment for the guardian to develop a relationship of trust with the child. Policies and procedures in place should ensure the regularity of personal contacts and visits and establish any confidentiality rules applicable to communications between them for the duration of their mandate and after. Any disclosure of information concerning the child by the guardian should require the prior consent of the child, unless the disclosure is necessary in the best interests of the child.

5. The guardian should act as a link between the child and relevant authorities, agencies and individuals. Measures in place should empower the guardian to cooperate and co-ordinate with other stakeholders, as appropriate, on issues concerning the child, in particular with carers, the child's legal representative(s), education professionals, social workers and social services, health professionals, reception-centre directors, police, law-enforcement and judicial authorities, migration authorities, victim support services and community services. Equally, measures in place should require relevant stakeholders to inform the guardian and the child about relevant procedures and decisions, and to co-operate and co-ordinate with the guardian, as appropriate, on issues concerning the child.

6. States should ensure that each guardian enjoys the independence and impartiality appropriate to their role, to ensure freedom from undue influence or interference, and that they are accountable. In particular, guardians should not exercise any other responsibility which might lead to any actual or potential conflict of interest in their support, assistance and representation of the child.

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 advice, and that they have access to an independent complaint mechanism and remedies to effectively exercise their rights or act upon violations of their rights.

1. States should ensure that children are provided with relevant information and advice on their rights and procedures that concern them, including on the issues that are relevant for the understanding of their situation, on the scope of guardianship arrangements, the role and duties of a guardian and of the guardianship authority, on complaint processes and mechanisms, the opportunity to have recourse to either court proceedings or alternatives outside court settings, and on the decisions or judgments affecting them.

2. Such information and advice should be provided to each child in a language that they understand or are reasonably meant to understand, in a child-friendly manner, and the understanding by the child of the information provided should be verified by the guardian. Provision of the information to the guardian should not be an alternative to communicating the information to the child.

3. States should ensure that effective mechanisms are in place to allow children to access an independent and effective complaint mechanism in relation to their guardian, guardianship arrangements and/or guardianship authority. Such mechanisms should,

inter alia, be easily accessible, child-friendly and transparent, and accompanied by appropriate safeguards to ensure the protection of confidentiality of the information. Triggering a complaint should not lead to a disadvantage for the child.

4. States should encourage the use of alternative dispute resolution mechanisms, such as mediation, wherever they may best serve the child's best interests, although they should not be used as an obstacle to the child's access to justice.

5. States should ensure that every child has access to an effective remedy before a competent authority or body against the decision of the complaints mechanism in cases where the complaints mechanism is not in itself a court-based mechanism. The competent authority should be impartial and independent, in accordance with the standards and safeguards set forth in the Convention for the Protection of Human Rights and Fundamental Freedoms and the Committee of Ministers' Guidelines on child-friendly justice (2010). An effective remedy implies that the child should have access to representation and, where necessary, to legal counsel, as well as interpretation whenever required. Proceedings should be child sensitive and accessible, and the urgency principle should be applied to provide justice in a timely manner, and free of charge. The decision should be explained in a child-friendly manner, which is adapted to the child's age and maturity.

Principle 6 – Institutional measures

States should ensure that a competent authority is in place with responsibility for the management of guardianship for unaccompanied and separated children in migration, taking into account the manner in which responsibilities for guardianship are organised in member States.

1. States should ensure that a competent authority is responsible for managing guardianships, that is for recruiting, vetting and training guardians, for making sure that adequate child-protection policies are incorporated into the guardianship system, and for supervising the guardians. States should provide clear eligibility criteria for this authority in order to prevent any conflict of interest with that of the child.

2. The competent authority should be responsible for setting out relevant procedures and support measures or services for guardians and children, which include providing:

- a. initial and continuous administrative support, advice and assistance measures or services, as well as training and development, to enable guardians to meet and maintain the required professional standards and enhance their knowledge and skills in relation to their duties;
- b. setting standards for the operational procedures for the conduct of guardians;
- c. mechanisms for communication, networking and self-help among guardians;
- d. harmonised procedures and processes for guardians for reporting and recording cases of children going missing or suffering from violence, abuse, trafficking or exploitation;
- e. child-friendly information materials for unaccompanied or separated children in migration, covering, inter alia, 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, regarding the rights of 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.

3. States should take measures to ensure that guardians are responsible for a manageable number of cases allowing the performance of their duties, taking into account their complexity, and the need for the child to have regular access to the guardian's individual attention and adequate personalised support.
4. States should ensure that regular monitoring, supervision and oversight is carried out regarding the exercise of guardians' duties and functions and the competent authority's discharge of functions, including through the participation of, and the feedback from, children.
5. Measures in place should ensure that the competent authority has the necessary operational independence from the management of other responsibilities for the child.
6. The competent authority should be responsible for maintaining an individual case file on every child under its care. This file should include information relevant to the guardianship throughout the guardianship period.
7. States should ensure that the record-keeping requirements and measures in place enable them to provide, where necessary, evidence for any relevant proceedings and complaint processes, and that the confidentiality of these records is in line with international data-protection standards.

Principle 7 – Resources, recruitment, qualifications and training

States should allocate adequate resources to ensure effective guardianship for unaccompanied and separated children in migration, including ensuring that guardians are adequately screened, qualified and supported throughout their mandate.

1. States should collect data on a regular basis, with a view to identifying the number of children, the needs and allocated resources in relation to the guardianship of unaccompanied and separated children in migration and provide for a review of guardianship measures to ensure that they respond to changing needs, including in emergency situations.
2. States should ensure that the guardianship authority is provided with sustainable and adequate financial, human and technical resources.
3. States should have in place processes to ensure that the staff of the competent guardianship authority maintain high professional standards, including standards regarding confidentiality, are of high integrity and possess the appropriate skills.
4. States should take measures to ensure that guardians have the necessary qualifications and relevant expertise in child development, the rights of the child, the child-welfare and protection system and services available, in order to take into account the specific and cultural needs of the children entrusted to them.

5. States should take measures to ensure that guardians and the guardianship authority are provided with adequate support to carry out their functions effectively, which should include initial and continuing education and training.

Principle 8 – Co-operation and co-ordination at national level

States should, in accordance with their domestic systems, establish mechanisms and take measures to ensure effective co-operation and co-ordination between people exercising responsibilities towards unaccompanied and separated children in migration, and the guardian and/or guardianship authority.

1. States should define the roles, tasks and responsibilities of the guardian and of the guardianship authority in relation to other competent authorities and stakeholders with respect to unaccompanied and separated children in migration, in particular of other national and local authorities, welfare services, youth services and organisations, to ensure accountability and transparency.

2. States should have an operational co-ordination mechanism in place which includes the guardianship authority, so that policies in place ensure that the continued well-being of unaccompanied and separated children in migration, their best interests and the search for and implementation of sustainable, rights-based solutions remain primary considerations in all matters relating to them, and that relevant professionals co-operate and co-ordinate their actions.

3. States should develop protocols, agreements, standard operational procedures and referral mechanisms to enhance co-operation and co-ordination on a regular basis between guardians, the guardianship authority and all other relevant stakeholders to protect unaccompanied and separated children in migration from the moment of identification until a sustainable, rights-based solution is implemented, including in individual case management.

4. States should ensure that referral mechanisms address the role of the guardian and of the guardianship authority in cases of disappearance of an unaccompanied or separated child in migration and in situations where the child is a victim or is at risk of becoming a victim of violence, abuse, trafficking or exploitation.

5. Processes and channels for co-operation and co-ordination should be established to ensure that confidentiality is respected, including with respect to information sharing with the child and between the child, the guardian and other stakeholders, having the best interests of the child as the primary consideration and taking into account international data-protection standards.

6. States should facilitate effective co-operation and co-ordination between guardians and other stakeholders by providing multi-agency and multidisciplinary training and tools on a regular basis.

7. States should ensure the continuous monitoring and evaluation of co-operation and co-ordination, with the participation of relevant stakeholders.

Principle 9 – International co-operation

States should rapidly, constructively and effectively provide the widest range of international co-operation in relation to unaccompanied and separated children in migration, including for family tracing and identifying and implementing sustainable, rights-based solutions, and involve in appropriate ways their guardianship authority and/or guardians.

1. States should take measures to define, as appropriate, the role and responsibilities of the guardian and the guardianship authority in the context of international co-operation for the purpose, inter alia, of family tracing and assessing family circumstances, the transfer of care and custodial responsibilities, establishing a sustainable, rights-based solution, preventing child trafficking, preventing disappearances of children and tracing missing children.
2. States should have a legal basis to provide international co-operation in relation to unaccompanied and separated children in migration, both of their own initiative and upon request.
3. States should have clear channels or mechanisms for the transmission and execution of requests for information or other types of assistance with respect to unaccompanied and separated children in migration, and clear and efficient processes for the prioritisation and timely execution of requests, and for safeguarding the information sent and received in line with privacy and data-protection obligations, which fully take into account the best interests of the child and involve, as necessary, the guardian and/or the court and/or guardianship authority.
4. In order to ensure the rights of the child, the child's well-being and their best interests in cases where their situation is of concern to more than one State, or when the child moves to another State, States should co-operate through the most effective means, including by negotiating or entering into specific arrangements or agreements where necessary, to enable timely co-operation between guardians and guardianship institutions with foreign counterparts.
5. States should co-operate and promote the regular sharing of knowledge, experience and good practices with respect to guardianship of unaccompanied and separated children in migration.

Explanatory Memorandum of Recommendation CM/Rec(2019)11 on Effective guardianship for unaccompanied and separated children in the context of migration

Why a new instrument?

1. Unaccompanied and separated children in the context of migration are first and foremost children who have been separated from both parents and other relatives and any other adult who is responsible for caring for them. It is because these children are deprived of the care of their parents or other adults responsible for them that States must step in to provide protection and assistance to these children. The first step towards protecting these children is the appointment or designation of a guardian who is responsible to safeguard the best interests of the child in question.¹
2. The preamble to the Recommendation recalls the International and European legal instruments that already provide specific protections and safeguards, however unaccompanied and separated children face additional barriers and vulnerability factors which make it necessary to provide specific protections and safeguards in law to ensure their rights are fully upheld.²
3. The Recommendation and its guiding principles and implementing guidelines target both decision makers and practitioners working to secure the protection, reception, care and wellbeing of unaccompanied and separated children through guardianship. They provide concrete guidance for the formulation of legislation,

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1. The European Court of Human Rights (ECtHR) has accepted that "...there is currently a broad consensus – including in international law – around the idea that in all decisions concerning children, their best interests must prevail". See in relation to Article 3 ECtHR, *Rahimi v. Greece*, No. 8687/08, § 108, 5 April 2011 and in relation to Article 8, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 135, 6 July 2010. See also Article 3 of the 1989 UN Convention on the Rights of the Child, especially Art. 3 § 1.
 2. The European Court of Human Rights has underlined that unaccompanied children are extremely vulnerable. In the judgment of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 55, 12/10/2006 it has reasoned this conclusion as follows: "*The ... applicant's position was characterised by her very young age, the fact that she was an illegal immigrant in a foreign land and the fact that she was unaccompanied by her family from whom she had become separated so that she was effectively left to her own devices. She was thus in an extremely vulnerable situation.*" See also the Reception Conditions Directive 2013/33/EU, Art. 21 and Return Directive 2008/115/EC, Art. 3 (9).

the planning of public policies and institutional measures, ensuring these children's access to justice and effective remedies, and for the concrete aspects of cooperation and coordination among relevant stakeholders, including at international level.

4. This Recommendation consolidates and completes the legal framework of protections afforded to these children and provides guidance to member States to ensure effective implementation. In addition, the European Court of Human Rights has already started to refer to the Recommendation in its judgments on unaccompanied children in migration cases.³

Drafting process

5. This Recommendation was drafted by a drafting group of experts of the Council of Europe Ad hoc Committee for the Rights of the Child in consultation with relevant Council of Europe bodies and international intergovernmental and non-governmental organisations. The drafting group of experts was formed of an international and inter-disciplinary group of experts from Council of Europe member States. It was adopted by consensus by the Council of Europe Committee of Ministers on 11 December 2019 at the 1363rd meeting of Ministers' Deputies which represent the member States of the Council of Europe.

EXPLANATORY MEMORANDUM

Preamble

6. The Preamble recalls that rights and protections recognised by key international and European legal instruments which uphold the rights of the child are enjoyed without discrimination by unaccompanied and separated children. The Preamble recognises that these children face additional barriers and additional risks which require additional safeguards and protections. This instrument aims to provide guidance to member States to ensure that comprehensive and child-friendly measures are put in place to uphold and protect the rights of unaccompanied and separated children in migration.

7. When implementing this Recommendation, member States are free to apply higher standards or more favourable measures of protection for unaccompanied or separated children.

Recommendation

8. The Recommendation calls on member States to take a number of practical steps to strengthen and evaluate existing frameworks, including through the allocation of resources to implement and disseminate the Recommendation. It also calls on member States to strengthen co-operation between States which is a key element to strengthen the continuity of care and protection afforded to these children even in a cross-border context.

3. See ECtHR, *Moustahi v. France*, No. 9347/14, 25 June 2020, § 28.

9. The Recommendation additionally calls on member States to examine, within the Committee of Ministers, the implementation of the Recommendation in three-year intervals, to establish a platform of experts at pan-European level to promote its implementation and to act as a forum for exchanges of experience and good practice.

Appendix to the Recommendation

10. The Appendix to the Recommendation provides detailed guidance to member States recalling the purpose and scope of the Recommendation (I), the key definitions (II), guiding principles (III) and implementing guidelines (IV). It is of note that in this Recommendation “child” refers to any human being under the age of 18 years, regardless of the definition of the age of majority under national law and that the definition of “guardian” includes both designated and appointed persons, comprising different approaches of guardianship installed by law or designated by a court.

11. It is also noteworthy that this Recommendation applies to all children in migration deprived of parental care regardless of whether they set off from their country of origin without their parents or other adults responsible for their care or whether they have become separated from them during their journey.

12. The nine guiding principles identified in the Recommendation outline what is required for an effective guardianship system (III) as well as for the implementation of guardianship systems in member States (IV). This Explanatory Memorandum contains additional practical guidance in relation to these nine principles.

Principle 1 – Protection of the rights of the unaccompanied and separated children in migration through guardianship

13. It is a well-established principle that the State shall provide special protection and assistance to a child who is temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment.⁴ The European Court of Human Rights has concluded that failure to take care of unaccompanied children can amount to inhuman and degrading treatment contrary to Article 3 ECHR.⁵ The UN Guidelines for the Alternative Care of Children provide that no child should be without the support and protection of a guardian or other recognised responsible adult or competent public body at any time.⁶ The Lanzarote Committee has also recognised the importance of the appointment of a guardian for each unaccompanied or separated child which can play a crucial role in building the child’s trust and enabling the disclosure of sexual exploitation and sexual abuse.⁷ In essence, guardianship ensures that each child deprived of parental care has someone who assists and supports them and can act on their behalf where

4. Article 20 of the UN CRC, Article 10 CoE Convention on Action against Trafficking in Human Beings, Article 31 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

5. ECtHR, *Rahimi v. Greece*, No. 8687/08, 5 April 2011. See also ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, Nos. 25794/13 and 28151/13, 22 November 2016, and ECtHR, *Moustahi v. France*, No. 9347/14, 25 June 2020, §§ 65–67.

6. In accordance with article 19 of the UN Guidelines for the Alternative Care of Children.

7. Lanzarote Committee [Special Report Protecting Children affected by the refugee crisis from sexual exploitation and sexual abuse](#), adopted on 3 March 2017.

needed. It is a vital safeguard to help ensure that, where children are in the care of the State, they can access and benefit from all their rights under the UN Convention on the Rights of the Child and other relevant international law.⁸

14. Children deprived of their family environment who are outside their country of origin or habitual residence, have specific characteristics, circumstances and needs which should be taken into account by guardianship systems. These include situations of particular vulnerability in which such children may find themselves, including the aggravated risks of discrimination, neglect, exploitation, sexual, physical or psychological abuse, violence and trafficking in human beings. As a result of their experiences both during their journey to a State and before leaving their country of origin or habitual residence, these children may suffer from trauma or specific physical or mental health needs. Effective guardianship will be tailored to and respond to these specific needs and circumstances. The European Court of Human Rights has indicated that member States have a positive duty to protect unaccompanied children even when they are not under the strict control of the authorities.⁹

15. Gender, cultural and linguistic differences are also specific characteristics that should be taken into account by the guardianship system. Moreover, guardianship for children in migration will also be concerned by specific challenges faced by these children such as age assessment procedures, access to proper reception conditions, education and health services, tracing and restoring family links where this is in the best interest of the child, immigration and international protection procedures, healthcare, their eventual deportation to the country of origin,¹⁰ protection from discrimination, as well as identifying and implementing durable solutions. Furthermore, an effective system of guardianship for unaccompanied and separated children in migration should be rooted in cooperation and coordination with other statutory services including: youth, social, law enforcement and immigration services with whom the child must interact in order to secure their immigration status.

16. International guidance on the rights of children in migration underlines the important role of guardians to ensure their rights are upheld and effective.¹¹

17. Whilst effective guardianship is of the utmost importance for children in migration it also benefits the State in a range of legal, practical and economic ways. In particular, independent support and representation provided by a guardian allows the State to engage with the child throughout the complex and sensitive administrative and judicial procedures through which the child must navigate in order to find a durable solution. Effective guardianship may also promote better informed

8. See Fundamental Rights Agency, "Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, Luxembourg, Publications Office, (2014a), p. 31.

9. ECtHR, *Rahimi v. Greece*, mentioned above, §§ 87-94. See as well *V.M. and Others v. Belgium*, [GC], no. 60125/11, strike out judgment, 17/11/2016.

10. ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, mentioned above, §§ 66-69.

11. UN Committed for the Rights of the Child General Comment 6 (2005) on the treatment of unaccompanied and separated children outside of their country of origin and Joint General Comments 22(2017) on the general principles regarding the human rights of children in the Context of International Migration and 23 (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

procedures, and better implementation of decisions, given that children are likely to be better engaged in the process thanks to the support of their guardian.¹² A guardian may also provide an interlocutor for the child with the family or other actors in the country of origin, which can be of considerable significance, in particular where the child's actions are influenced by family members. Where the child is involved in a series of different procedures, effective guardianship can ensure that a holistic approach is maintained throughout the various procedures. Furthermore, where a guardian acts as a person of reference for the child and the services involved in their life, guardianship has the potential to contribute to better coordination and integration of overall service provision. Consequently, it is both a responsibility and a benefit for a State to ensure effective guardianship is in place for unaccompanied and separated children in migration.

18. There are currently a diversity of guardianship models in place across member States, ranging from distinct guardianship systems for children in migration, to the application of general guardianship provisions to all children in a State, including children in migration, to jurisdictions where specialised social workers are appointed to discharge guardianship-type duties, to States where only certain children in migration may have access to guardians (e.g. those seeking international protection) and countries where guardianship is not available to children in migration, but rather their situation is addressed largely by foster parents,¹³ social workers, care centre staff and immigration officials.

19. The absence of a guardian increases the risk of serious violations of the rights of the child, as has been recognised by the European Court of Human Rights.¹⁴ Equally, the application of a general guardianship system to children in migration presents specific challenges, for example, where guardians do not have specialised knowledge of the specific risks faced by these children, such as the increased risk of being a victim of sexual exploitation or human trafficking. In contrast, where a guardianship system focuses on the situation of children in migration, or has specific features to address these children, experience suggests that guardianship will be more effective. For example, the Danish, Dutch, and Belgian systems have specific guardianship systems in place for children in migration that deploy specialised training and support for guardians (such as access to interpreters, cultural mediators and lawyers). The Swedish system of guardianship seeks to mitigate certain risks, such as the increased risk of children in migration disappearing from care, by maintaining guardianship when lacking information. In Ireland a dedicated Social Work Team for Separated Children Seeking International Protection has the responsibility for unaccompanied children who come to Ireland.

20. Resources: States may draw on the resources identified in the Preamble to the Recommendation when establishing an effective guardianship system for children in migration.

12. See in relation to the support by guardians or social workers in child related judicial proceedings ECtHR, *V. v. UK*, no. 24888/94, § 87.

13. ECtHR, *Mubanzila Mayeka and Kaniki Mitunga v. Belgium*, mentioned above, §§ 57 & 83.

14. *Id.* See also *Rahimi v Greece* (as above). See also the set of norms elaborated in mars 2017 by the Council of Europe Committee against Torture in relation to detention of migrants in irregular situation (CPT/Inf(2017)3).

Principle 2 – Guardianship frameworks and measures

21. States should have frameworks and measures in place which clearly define how guardianship for children in migration is established and operates. Having a framework in place will avoid the risks associated with *ad hoc* or informal guardianship arrangements.

22. Guardianship frameworks and measures will be sculpted by the manner in which State responsibilities concerning these children are organised, in particular, the ways in which guardians coordinate and cooperate with other services to fulfil the rights of the child.

23. States have a range of responsibilities to unaccompanied and separated children, including identification, care and custodial arrangements, individual needs assessment, access to services, restoring family links where this is in their best interests and status determination. States have different arrangements in place which they consider most appropriate given their national context and circumstances. Typically, many different services contribute to discharge these responsibilities. Frameworks and measures on guardianship should address the guardian's role, activities and powers in the exercise of their functions. In practice, all services involved with the child need to understand how guardianship operates and interacts with their work. Ideally, these frameworks and measures will have a statutory basis to avoid delays or lack of certainty where services are required to negotiate the role of guardians and their relationship with other services and delays associated with lack of clarity and certainty (see Principle 8 for further guidance on co-operation).

24. Such frameworks and measures should also be designed to take account of the situation in each State, including the number of unaccompanied and separated children present. They should also have mechanisms in place to address the dynamic and fluctuating needs of a guardianship system, in terms of the number and circumstances of children arriving, and the nature of any arrivals, including temporary or emergency mass arrivals or more protracted stays. (See Principle 6 for further guidance on data collection and evidence gathering)

25. Member States have discretion to select the types of measures (legal, policy, regulatory or administrative) which will identify and define the necessary elements of guardianship for children in migration.¹⁵ Member States are encouraged to ensure a comprehensive framework is in place to cover the essential elements of the guardianship system. The principles provide that these include at a minimum:

a. Professional standards, requirements and qualifications

26. National frameworks will need to identify and provide clarity as to the professional standards, requirements and qualifications applicable to guardians in light of the guardianship structure in each State. Regardless of the status of a guardian at national level (professional, volunteer, delegated functions or other status) all guardians within a member State should be subject to the same minimum standards,

15. However, this discretion shall be exercised in conformity with the Convention principles and not be arbitrary. See ECtHR, *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55.

requirements and qualifications, this does not preclude professional guardians for example from completing additional professional qualifications that are not required for volunteer guardians. It is important that these minimum standards are set out to ensure that each guardian (regardless of their status under national law) understands their role and responsibilities and adheres to safeguarding principles in the exercise of their functions. This may take the form of minimum training for qualification as a guardian before taking up their functions (see Principle 7 on training).

b. Screening, vetting, recruitment and appointment procedures of guardians

27. Frameworks need to provide clarity as to the exact screening or vetting procedure applicable to guardians as well as the timescales within which this should take place and the frequency with which any repeat screening should be undertaken. The framework will need to identify the authority responsible for the recruitment and oversight of guardians as well as the appointment procedure. These procedures should provide clarity to guardians and children about the circumstances in which a guardian can be removed or changed.

28. The starting point for the provision of adequate guardianship is to ensure that guardians are suitable persons to work with children and in particular vulnerable children. This can be achieved by providing for a transparent recruitment procedure, including mandatory screening or vetting at the initial recruitment stage and then regular updating throughout the exercise of their functions (each State may decide on the appropriate interval between each screening update).

29. The role of the guardian means that they will have access to the child and power to make decisions about their upbringing. As a result, it is crucial that candidates with any history of violence, neglect, physical, psychological, emotional or sexual abuse, any history of dishonest or fraudulent conduct are precluded from acting as a guardian. This may be achieved for example by mandatory checks of criminal records/sex offender registers (if applicable), requesting references from previous employers and requiring prospective guardians to make a declaration to the effect that they are an appropriate person to become a guardian and have no adverse history that would preclude them from working with children.¹⁶ Once a guardian has been recruited to the guardianship service, States should provide for a transparent appointment procedure according to the national context (for example different States provide for appointment by different bodies including by the guardianship service, the public prosecutor's office or a court of law). Where a State has a system of appointment of an *ad hoc* guardian, provision should be made to ensure that a long-term appointment is made without delay.

16. See also Article 5 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and recommendations 18 and 19 of the Special Report of the Lanzarote Committee on Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse.

c. Duties, rights and responsibilities of guardians, as well as support measures

30. In the interests of legal certainty, the duties, rights and responsibilities of guardians, as further specified in principle 4, need to be clearly set out within national frameworks. Given the wide range of duties and responsibilities, the support measures available to guardians also need to be set out in national frameworks.

31. The role of a guardian will vary according to national systems. At a minimum, the guardian will play a central role in helping the child to understand the processes and procedures affecting them and their rights in the host State. The guardian will need to help the child understand what the guardian can and cannot do and what the child should do if they don't agree with a decision taken by their guardian. The guardian's role also includes facilitating the child's participation in the various procedures affecting them including by providing them with every opportunity to express their needs and worries in an open and non-confrontational setting, enabling the child's views to be taken into account and given due weight (see e. below for more specification on child participation). As the guardian will usually be the adult responsible for making decisions about the child's education and medical care, frameworks should include guidance on the guardian's duty to take the child's views into account in their own decision making. To ensure fair procedures and protection from arbitrary decision-making, member States may consider providing guardians with tools or protocols to support their decision-making in the exercise of their wide range of duties and responsibilities.

d. Training requirements

32. Frameworks should define both the initial and on-going training requirements for guardians. The training requirements are likely to vary according to the national context. Guardians should receive training about their own role and responsibilities, the child protection system, safeguarding children and vulnerable young people, basic principles of the procedures that affect the child, how to work with children from different cultural backgrounds, whose first language is not the official language of the host State, and the child's rights to access independent legal advice. It would be advisable for guardianship services to provide regular professional development training to guardians to ensure that their practices are kept up to date with the ever evolving legislative and regulatory frameworks affecting children, and in particular unaccompanied and separated children.

e. Procedures for ensuring that children's views are expressed, taken into consideration and given due weight at every stage of relevant procedures

33. States may consider providing guardians with guidance or checklists to facilitate the guardian's role in empowering the child to express their views in all the procedures affecting them. These should be included in national frameworks or measures and encompass a wide range of procedures from designation of accommodation and education, to decisions about choice of religion, language and cultural education. The guardian should also empower the child to express their views about their immigration status, for example in some member States it is common for children not to apply for asylum in their own right because they will be entitled to citizenship

when they turn 18. The child should nevertheless be given the information in a child-friendly manner and opportunity to express their views about such decisions¹⁷ (see further paragraph 66).

34. In many member States the child's consent is not required before making a mandatory referral to child protection authorities. In some situations, the child's consent is not required before actions are taken on their behalf, for example referral of potential victims of trafficking in human beings to the national referral mechanism. The child's views should nevertheless be sought, and an explanation given to the child, in a child-friendly manner, as to why a particular referral or decision was made without their consent. This will also be very important in the context of providing medical care to children. For example, in France it is a legal obligation to obtain a child's consent in this context. The guardian should remember to follow-up with the child to help them understand how their views were considered by the decision maker and any reasons why the decision maker has reached a particular decision about a child.¹⁸

f. Individual complaint mechanisms available for children and related procedures

35. National frameworks should provide for complaint mechanisms to uphold the child's right to an effective remedy in relation to guardianship. These should provide redress for undue delays in appointing or designating a guardian, complaints about the exercise of the guardian's powers or a decision to end a guardianship measure. Principle 5 provides details of the minimum standards applicable to such complaint mechanisms.¹⁹

g. Interagency and multidisciplinary co-operation and coordination mechanisms and processes at national and international level

36. It is recognised that unaccompanied and separated children will need to cooperate with a variety of professionals throughout a given procedure. It is imperative that frameworks provide for co-operation between these various competent professionals, including cross-border cooperation where appropriate, to ensure a holistic, child-centred approach. This may include provision for co-operation or co-ordination between guardians, education authorities, social services, medical professionals, legal professionals and judicial authorities. Such frameworks need to provide clarity as to the means for this co-operation (whether by regular meetings, written exchanges or some other form of co-operation) and the frequency. It may be necessary to provide for the frequency of co-operation exchanges to vary according to the needs and risk profile of the child. For example, a child presenting with multiple complex needs may require a greater level of co-operation between

17. See ECtHR, *Kutzner v. Germany*, no. 46544/99, § 77, 26.02.2002, *Saviny v. Ukraine*, no. 39948/06, 18.12.2008.

18. Extensive guidance on the child's right to be heard can be found in the UN Committee for the Rights of the Child, general comment No 12 (2009) on the right of the child to be heard; also see the [Guidelines of the Committee of Ministers on child-friendly justice](#).

19. See, *mutatis mutandis*, on this issue *Scozzari and Giunta v. Italy*, [GC], nos. 39221/98 and 41963/98, 13.07.2000, *MD and others v. Malta*, no. 64791/10, 17.07.2012, especially § 55. See also *R. v. Finland*, no. 34141/96, 30.05.2006, *T. v. Czech Republic*, no. 19315/11, 17.07.2014.

professionals than a child with relatively low risk profile. Frameworks should also clarify the means of co-ordination at an international level with other guardianship authorities and relevant monitoring bodies. Principles 8 and 9 provide guidance on the content and means of such co-operation and co-ordination.

h. Confidentiality and data protection requirements

37. Frameworks should identify a legal obligation to protect the child's personal data, including by identifying standards for confidentiality and the circumstances in which confidential information about the child may be disclosed or shared between services and the provision of information in a child-friendly manner. It would be necessary for frameworks to set out the circumstances in which a guardian may share confidential information or data about the child without the child's consent, for example where there are concerns that the child is or has been a victim of trafficking in human beings or other forms of exploitation and it is necessary to make a referral to the national referral mechanism. Another example could be a situation in which a child discloses information about sexual exploitation or abuse and referral to other support services is necessary.

i. Monitoring, supervision and oversight of the guardian by the guardianship authority

38. National frameworks should involve three different levels of monitoring: (i) the guardians, (ii) the guardianship system and (iii) the guardianship arrangements for children.

39. National frameworks should identify the mechanisms and powers of guardianship authorities to monitor, supervise and oversee the guardian from their appointment or designation, throughout the exercise of their functions (as described in Principle 4) and the conditions which lead to a guardianship measure being brought to an end. Frameworks should also provide for oversight of the continuous professional development and training of guardians, whether by direct provision of ongoing training or regulating certified training by external providers (see Principle 7 for more details on training). In Germany, the Youth Welfare Service provides legal and technical supervision to guardians.

j. Monitoring of the guardianship arrangements for children, including monitoring by an independent authority²⁰

40. National frameworks should also identify an independent authority responsible for overall monitoring of the guardianship system as well as monitoring of the guardianship arrangements for children. These functions may be designated to the children's ombudsman or another appropriate independent authority. The procedures for making an application to the independent authority should also be set out including any requirements for timescales applicable to monitoring mechanisms.

20. See ECtHR, *MD and Others v. Malta*, 64791/10, 17.07.2012, especially §§ 55. In that case the Court found a violation of Article 6 § 1 ECHR because of lack of access to an independent tribunal. It is noteworthy to quote the Court when it says that in children related issues "*it is precisely a tribunals role to supervise administrative action in any field, and guarantee freedom from arbitrariness*".

Principle 3 – Appointment or designation of guardians without undue delay

41. All unaccompanied and separated children in migration outside their country of nationality, or habitual residence if they are stateless, need to be appointed a guardian, irrespective of their residence status and regardless of their reasons for being outside their country of origin. This is a fundamental requirement of the principle of non-discrimination enshrined in the UN Convention on the Rights of the Child and the European Convention on Human Rights.²¹ It involves treating children first and foremost as children regardless of their immigration status.²² A guardian has the same general role for all unaccompanied children to provide assistance and support, including in identifying and implementing durable solutions. For example, for children who are not recognised as refugees, the assistance of a guardian may be vital to proper decision making on transfer of care and custody of the child to family members or authorities in countries of origin or other countries. Any such transfer should take into account the best interests of the child (see Principle 9 below for further guidance).

42. The absence of a guardian, for example in the case of a child who has been trafficked or is at risk of trafficking, exposes a child to considerable risk of re-trafficking. Consequently, member States should amend any national provisions which make the appointment of a guardian dependent on the child participating in a particular procedure, for example, an application for international protection. It is a requirement of the Convention on Action against Trafficking in Human Beings that *“as soon as an unaccompanied child is identified as a victim that each party shall provide for representation of the child by a legal guardian.”*²³

43. The appointment of a guardian without undue delay means that a guardian should be appointed from the moment when the child is first encountered and identified as an unaccompanied or separated child. Early provision of information, support and assistance to the child is a vital safeguard to uphold their rights and put an end to any violation of their rights. The prompt appointment of a guardian is the first step towards holistic safeguarding of the child from risks such as disappearance from care, onward travel facilitated by smugglers or becoming a victim of trafficking in human beings.

44. The appointment of a guardian also promotes a timely initiation of an individual needs’ assessment, the provision of proper reception and care arrangements and the application of any necessary status determination procedures. In principle, no decision affecting the child should be taken before a guardian is appointed, with the exception of measures needed to provide for the immediate safety and needs of the child. Principles 6 and 7 provide guidance on the practical arrangements

21. Article 2 UN Convention for the Rights of the Child, Article 14 and Protocol 12 to the Convention European Convention on Human Rights, see also Article 3 Council of Europe Convention on Action against Trafficking in Human Beings and Article 2 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

22. UN Committee for the Rights of the Child General Comment No 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

23. Article 10 (4) Council of Europe Convention on Action against Trafficking in Human Beings

necessary to ensure the recruitment and provision of adequate support necessary for guardians to be able to exercise their functions.

45. Guardianship should endure until responsibility for the child is transferred to another appropriate guardian, parental responsibility is restored or until the child reaches the age of majority. Member States are encouraged to consider extending guardianship for transitional periods after a child reaches the age of 18 to ensure on-going care and support. The Parliamentary Assembly of the Council of Europe calls on member States to maintain guardianship measures beyond the age of 18 where appropriate in order to enhance the child's safe transition to adulthood.²⁴ Such care and support may also be achieved by other means, through practices such as the German provisions of the Youth Welfare Code which offers advice and support for Young people after they turn 18, or in Ireland the Child Care Act 1991 which provides similar help known as "aftercare assistance". In France, help and assistance can continue to be provided beyond the age of 18 through a "young adult contact".

46. In case of doubt as to the minority of an individual, a temporary guardian should be appointed or designated to inform and assist the individual in relation to age assessment procedures in accordance with the principle of the presumption of minority.²⁵ In France an *Ad hoc* guardian is appointed to assist a child in a specific procedure such as an asylum application. In several member States where there is doubt as to the age of a child, the guardian must give consent or permission before age assessments involving medical examinations are carried out.²⁶ The Lanzarote Committee reports that this is the case in Croatia, Finland, Latvia and Poland.²⁷ Germany also has a corresponding regulation.

47. Where a permanent guardian cannot be appointed without delay, for example, in light of exceptional circumstances such as high numbers of arrivals, States should provide for the appointment of a temporary guardian.

48. Where an authority or institution is appointed as guardian, an individual person should be assigned to the child to discharge the duties of the guardian. For example, in Germany, the Youth Welfare Office is appointed as a guardian, with an individual person assigned to discharge the duties of guardianship. In order for guardianship to effectively uphold the rights of the child it is important that an individual person is identifiable for the child. In Ireland where the child is taken into the care of *Tusla*, the Child and Family Agency, which has a like control of the child as it was their parent, a specialised social worker is appointed to carry out the responsibilities that *Tusla* acquired.

49. In the case of a separated child, consideration should be given to whether guardianship should be assigned to the accompanying adult family member or

24. See also Parliamentary Assembly of the Council of Europe Resolution 2354 (2020) Effective guardianship for unaccompanied and separated migrant children, and accompanying report Doc 15133 of 2 September 2020.

25. See ECtHR, *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, § 146, 22/11/2016.

26. See ECtHR, *Yazgül Yılmaz v. Turkey*, No. 36369/06, 1 February 2011.

27. Table E Special Report of the Lanzarote Committee on Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse.

non- family adult or caretaker. This should only occur after a best interests assessment confirms the suitability of such a person to act as the child's guardian as well as the absence of any history of violence and conflict of interests. If an accompanying adult family member or non- family adult or caretaker is found to be suitable and is able and willing to provide day-to-day care to the child and safeguard the child's wellbeing, but unable to adequately represent the child's best interests in all spheres and at all levels of the child's life, supplementary measures (such as the appointment of an adviser or legal representative) should be secured. Authorities should ensure that they receive the child alone as part of the individual needs assessment and best interests assessment, before reaching a decision as to whether that adult or an independent guardian should be appointed for the child. Such interviews should be conducted by trained staff (including interpreters as relevant), in a child-friendly manner, notably by ensuring the availability of female staff to girls. This will be the opportunity to hear the child's views about the accompanying adult and to detect any risk of violence or potential conflict of interest between the child and the accompanying adult. There is a risk that the accompanying adult may be exercising undue influence over the child, for example traffickers who parade as a family member and intimidate and coerce children into giving a particular account. An individual best interests assessment is also particularly important in complex scenarios such as child marriage, where the accompanying adult may declare to be the child's spouse. The assessment should consider the inherent risks of sexual abuse and other forms of gender-based violence such as female genital mutilation (FGM) or forced marriage, or domestic abuse arising from the imbalance of powers between the child and their "spouse". A supposed spouse should never be accepted as the child's guardian. Additional conflicts of interest may arise in this circumstance in relation to the child's right to access services including education, health and welfare services. Specific gender-sensitive consideration should also be given to the guardianship needs of pregnant girls and children who are parents.

50. The child should be informed and consulted about the procedure for the appointment of the guardian. They should also receive information about their right to complain about a guardian or apply for a change in guardian and the circumstances in which they may exercise that right. The essence of a guardian's role is to support and assist the child and act in the child's best interests (Principle 4 provides detailed guidance on the roles and responsibilities of a guardian). Where the child does not understand the role of the guardian or does not trust the guardian, this may undercut the function entirely. In Belgium, the guardianship service conducted a listening exercise to gather feedback from children on how the guardianship system had met their needs. In Norway and Finland the authorities provide opportunities for children to pair up with other children with similar experiences to provide support in addition to guardianship. A number of member States have produced information guides and materials to help children to engage with guardianship.²⁸

28. Examples of good practice can be found in the Council of Europe Handbook for frontline professionals *How to Convey Child-Friendly information to children in migration* (2019).

51. Continuity and stability of guardianship reinforces the trust and engagement of the child with their guardian and vice versa. Circumstances in which a change of guardianship can occur should be clearly prescribed. For this reason, the child should not be unnecessarily transferred to another part of the country in a manner that requires new guardianship arrangements, unless it is in the child's best interest. For example, in Greece an NGO provides assistance and temporary guardianship to unaccompanied children during transfers from their point of arrival to specialist children's centres.

Principle 4 – Legal responsibilities and tasks of guardians

52. The guardian is entrusted with a wide range of responsibilities to undertake various tasks in the best interests of the child for whom he or she has been appointed. These include informing, assisting and supporting the child, safeguarding their well-being and best interests, acting as a link between the child and other actors with responsibilities for them, and exercising legal capacity for the child where necessary. The responsibilities of guardians should be distinguished from the responsibilities of other actors who are concerned with the child, in particular: lawyers and other caregivers who are responsible for the day-to-day needs of the child. The guardian's responsibilities are very different to those of the child's legal counsel, who is responsible for providing legal advice and assistance to the child in the context of judicial and administrative procedures.

53. In different member States, the activities which guardians undertake may vary considerably, depending on how both guardianship and care arrangements are structured. They will be influenced by the specific arrangements in place for a child and the services available to them. These differ considerably across countries and may also differ within a country. For example, a child may be placed in a reception centre (with a range of staff responding to their day-to-day needs), or in a foster family (where the foster family caters to the child's daily needs), or in supported independent living arrangements (where a guardian may be more central to supporting the child's daily activities). In some countries, guardians are paid professionals with extensive responsibilities linked to the child's needs, for example by being involved in daily decisions about care arrangements, education, health and status determination procedures (this is the case in the Netherlands). In contrast, in many countries, guardians are primarily volunteers who support and assist the child and may be consulted on or exercise oversight over arrangements for the child, rather than coordinating them (for example in Denmark, Norway and Sweden). Belgium and Germany have hybrid models, with both professional and volunteer guardians. The day-to-day activities which guardians undertake will also be shaped by the way in which guardians are managed and supported by a guardianship authority (see further Principle 6). Similarly, in Ireland, specialist social workers are appointed with responsibilities to develop a care plan for the child, and support engagement with a range of services as well as the international protection/immigration system. Member States are encouraged to carefully identify the activities that should be undertaken by the guardian in the discharge of their responsibilities.

54. Across all national contexts and circumstances, guardians have common tasks that they should be authorised and empowered to undertake, including:

a. Informing, assisting and supporting the child in processes and decisions affecting them

55. States should ensure that guardians have a clear responsibility to ensure that the child is informed and understands their rights, and is provided with every opportunity to express their needs and worries in an open and non-confrontational setting. This is a challenge for many children that needs to be addressed. If a child is not provided with adequate, child-friendly information in an appropriate and timely way there is a significant risk that the child will be unable to engage with the services responsible for them or participate meaningfully in proceedings.²⁹ The guardian should be a key interlocutor for the child. Therefore, the child should also be provided with clear information on guardianship and the role of the guardian, including their right to be heard and the possibility of complaining about their guardian and applying for a change of guardian (see principle 5 below).

56. Assistance and support provided by the guardian to the child encompasses a wide range of issues, according to the individual circumstances of the child. These include working to mitigate particular risks faced by the child, safeguarding their wellbeing and development generally, guiding their transition to adulthood, helping the child to participate in procedures, including through facilitating access to legal advice, assistance and representation and, where necessary, working with the child's legal advisor in administrative and judicial proceedings. In member States where it is provided by law, the guardian may also complement the child's limited legal capacity. The guardian will also support and assist in family tracing, manage assets and goods on behalf of the child and assess whether additional protection measures should be in place.

57. The guardian plays a central role in ensuring co-ordination with other services responsible for safeguarding the child. The appropriate service will vary according to the child's personal characteristics, individual needs and circumstances. Where the child is or has been a victim of human trafficking or exploitation, this will include making a referral to the national authority responsible for the protection of victims of trafficking.³⁰ Where the child has been the victim of violence, abuse or neglect this will include ensuring the relevant information is passed to child protection services, medical services and in some circumstances the education providers and police. In some member States multi-agency risk assessment conferences are convened to ensure that all actors responsible for the child's welfare are informed and co-ordinate their activities in accordance with the child's best interests (for example the Multi-Agency Risk Assessment Conference in the United Kingdom) (see principle 8 below).

b. Taking actions to safeguard the best interests of the child

58. Guardians should also be authorised and empowered to act in the best interests of the child and facilitate the child's participation in relevant procedures. This will involve undertaking a best interest's assessment, taking actions to ensure their best interests are a primary consideration in decisions regarding them, initiating

29. See in relation to effective participation of minors in judicial proceedings ECtHR, *S.C. v. the United Kingdom*, No. 60958/00, §§ 28-29 and 34, 15/06/2004.

30. Article 29 Council of Europe Convention on Action against Trafficking in Human Beings,

the process for the appointment of a legal advisor, where this does not take place *ex officio* by authorities, and holding public authorities accountable by intervening and challenging decisions on behalf of the child where appropriate.³¹

59. General Comment No. 14 of the UN Convention on the Rights of the Child provides valuable guidance on how the rights of the child are to be assessed.

c. Assisting to identify and implement specific processes

60. In line with the guardian's duty to act in the best interests of the child and to uphold the child's best interests in all procedures affecting them, it is indispensable that guardians are involved in the identification of a child's particular vulnerabilities and needs, including the assessment of any risk that a child might go missing, in order to ensure that any measures or procedures are in line with that particular child's best interests and individual needs. A guardian acts for the child in the context of a relationship of trust and should be included in decisions regarding the procedures the child will engage with whether these be an application for international protection, or for citizenship or to engage in family tracing procedures with a view to obtaining family reunification or any other procedure applicable in a member State. A guardian will be an important safeguard for a child undergoing an age assessment and should help the child to understand the procedure and their rights in that context. Where a child goes missing, guardians should continue to be involved in efforts to find the missing child. Member States should ensure that guardians have the authority and powers to assist in identifying and implementing these processes so that the child's rights to special protection and assistance are fulfilled.

d. Building trust and maintaining confidentiality

61. As discussed at Principle 2, the regulatory framework governing guardianship should provide the guardian with the necessary powers and independence to discharge their duties, this includes adequately training and resourcing guardians to enable them to build a relationship of trust with the child. Guardianship may be at risk of being neglected or under resourced, especially in times of pressure on national systems.

62. A duty of confidentiality is a key element of building a relationship of trust and to facilitate the discharge of the guardian's responsibilities in a way that upholds the child's right to private life (see further principle 7 on resources). This can be a challenging aspect of guardianship and depends on many different factors. Without trust and confidentiality, the child will not disclose or discuss their circumstances with the guardian, rendering the guardian incapable of acting in their best interests. Building the child's trust in their guardian is essential to enable them to disclose what happens to them, in particular in case of sexual exploitation or sexual abuse.³² Consequently, member States are encouraged to put in place a comprehensive and rigorous set of measures which have the specific aim of promoting trust and confidentiality.

31. See ECtHR, *H.A. and Others v. Greece*, No. 19951/16, 28.02.2019, § 205, *Rahimi v. Greece* (No. 8687/08, §§ 108-110, 5.04.2011).

32. Lanzarote Committee [Special Report Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse](#), adopted on 3 March 2017, pages 28-30.

These range from provisions on proper vetting and recruitment processes, training, qualifications and personal requirements, workload and regularity of personal contact and case management systems which pay attention to matching guardians and gender and cultural considerations.

63. Useful resources for national systems include the Core Standards for guardians of separated children in Europe which include indicators for a positive relationship between the guardian and child (core standard number 8).³³ The child's right to privacy should be protected by law. It is also helpful to have a binding code of conduct to address the implications of the principle of confidentiality, and provide clarity for guardians about the circumstances in which it is in the best interests of the child to disclose certain information to other relevant agencies and actors and the circumstances in which they are obliged to make a disclosure, for example in some member States guardians and other actors are obliged by law to refer a child to the specialist authorities where they have reason to believe that the child has been a victim of human trafficking, exploitation or other form of violence.

e. Acting as a link between the child and relevant authorities, agencies and individuals

64. Member States should put in place measures which allow guardians to act as a bridge and focal point between the child and relevant authorities, agencies and individuals involved in the life of the child. Principle 7 addresses this further. As a focal point for the child, the guardian can thereby ensure that distinct processes involving the child will be informed by an overall understanding of the child's situation. Ensuring these links can also improve the quality of overall service provision and resource deployment.

f. Independence and impartiality³⁴

65. A guardian's responsibility is first and foremost to the child. Therefore, it is key that member States take all measures necessary to ensure that the guardian is independent and can act in an impartial way, free from any conflict of interest. Indicators of how this is undertaken include that the guardian should not take instructions from any agency in relation to the child's situation (such as police or migration agencies), nor should the guardian undertake any other responsibility that might impede his or her ability to act on behalf of the child. Member States should avoid the appointment of guardians with financial or institutional connections with authorities or agencies responsible for the determination of care or immigration proceedings. Good practice indicators also include a code of ethics for guardians and specific training on how to safeguard their independence.

33. Published by Defence for Children International, available at: <http://www.corestandardsforguardians.eu/>

34. See ECtHR, *H.A. and Others v. Greece*, mentioned above, where the issue of independence of the guardians was raised. The Court found that the fact that the same authority that decided the detention of the applicant was also considered by law as the applicants' guardian raised issues under Article 5 §§ 2 and 5 of the ECHR. See especially §§ 147, 209-214.

Principle 5 – Information, access to justice and remedies, including child-friendly complaint mechanisms³⁵

66. Guideline 2 of the Council of Europe Guidelines on child-friendly justice reaffirms the right of the child to receive information and advice “*in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive.*” The guardian plays an essential role to ensure that the child understands the information they receive about the procedures affecting them. The starting point will be for the guardian to provide information about their own role and responsibilities so that the child can understand what to expect from the guardian and the decisions that the guardian will be responsible for as opposed to the decisions or procedures that depend on other actors. It is crucial that the child understands that their guardian is independent and must act in their best interests.

67. There are many methods to ensure that information provided to a child is ‘child-friendly’. States should ensure that guardians have access to the interpretation services and language resources necessary to communicate with the child. Member States should provide information in a manner that is adapted to the child’s language, culture and gender. Good practice may include the involvement of cultural mediators and interpreters, including female professionals as appropriate, to support the provision of information to children. Practical measures of support will also promote children’s rights in this regard; for example, member States should train guardians in ways to communicate in a child sensitive manner.

68. Member States should consider the wide range of ways in which children in migration can be best provided with information and advice, drawing on relevant guidance from the Council of Europe. A wide range of tools have already been developed by member States and international organisations. Many useful examples are available in the Handbook for professionals on child-friendly information for children in migration, including examples of the use of apps, cartoons and videos.³⁶

69. As emphasised in the Explanatory Memorandum of the Council of Europe Guidelines on child-friendly justice, children need to be informed of their rights but also of the instruments which they can use to actually exercise their rights or defend them where necessary. Access to complaint mechanisms is important in relation to complaints arising about guardianship, and more broadly any violation of their right to special assistance and protection, and respect for their rights. The work undertaken by the Council of Europe concerning women’s equal access to justice can also provide guidance in relation to the specific situation of girls.³⁷

70. A child may wish to exercise their right to an effective remedy with regard to excessive delays in appointing or designating a guardian, the exercise of guardianship powers by their guardian or the conditions in which the guardianship has been brought to an end. Throughout the guardianship, the child may wish to make a complaint about contact arrangements or the manner in which the guardian acts on

35. See ECtHR, *H.A. and Others v. Greece*, mentioned above, §§177-183, in relation to the effective remedies under Article 13 read together with Article 3.

36. Available at <https://www.coe.int/en/web/children/>

37. Available at: [Guaranteeing Equal Access of Women to Justice \(coe.int\)](#) and [PGG II: Women’s Access to Justice \(2019-2021\) \(coe.int\)](#).

behalf of the child, or disagreement on decisions taken by the guardian, including, for example, decisions on management of their goods or decisions on protective measures in the event of trafficking risks. The availability of free legal advice and assistance may be critical for the child to be able to challenge these decisions.³⁸

71. Different public authorities may be involved in complaint and redress mechanisms, including court-based systems as well as ombudspersons. Children's ombudspersons in particular may play a role in this regard. Member States do not need to create new mechanisms but should ensure that available procedures are adapted to children, in line with the Council of Europe Guidelines on child-friendly justice. Useful indicators of good practice could include fixed deadlines for the hearing of a child's complaint, as well as measures to ensure that the child understands decisions made in their regard.³⁹ The right to a private and family life will also require member States to ensure that special safeguards are in place to ensure the confidentiality of personal information and appropriate safeguards for sensitive data.

72. Member States are encouraged to make alternative dispute resolution mechanisms available, such as mediation. Recourse to such alternative mechanisms should not impede the child's access to administrative and judicial proceedings as appropriate.

73. All complaint mechanisms should operate in a transparent, timely, child-friendly and gender-sensitive way to avoid any prejudice to the child.

Principle 6 – Institutional measures

74. The management of guardians should be entrusted to a competent authority, agency or legal entity (hereafter "guardianship authority") and member States have a variety of different models for doing so. For example, in Belgium, the Ministry of Justice is in charge of guardianship. In Latvia, guardianship is administered by a special court (the Latvian orphan's court). Another model involves mandating an NGO to manage the system (as in Denmark). In Greece, guardianship is provided by the Public Prosecutor's Office, but the execution of tasks associated with guardianship are delegated to an NGO.⁴⁰ Guardianship authorities may be responsible at the same time for managing the guardianship setting for both national and non-national children. In Ireland, the Child and Family Agency, which is responsible for a range of services (e.g. child protection and welfare, alternative care and family support) operates a specific, designated service that discharges duties associated with guardianship.⁴¹ In Cyprus, unaccompanied children fall under the guardianship of the Social Welfare Services which have signed a cooperation protocol with the independent Organisation "Hope For Children" CRC Policy Center.

38. See ECtHR, *H.A. and others v. Greece*, mentioned above, § 211.

39. See ECtHR, *T. v. UK*, [GC] no. 24724/94, 16.12.1999, *S.C. v. UK*, no. 60958/00, 15.06.2004, *Güveç v. Turkey*, no. 70337/01, 20.01.2009.

40. In *H.A. and Others v. Greece*, mentioned above, the Court found that this system, especially when the communication between the Prosecutor's Office and the NGO is not prompt and effective, might lead to problems under the European Convention of Human Rights. See § 180 of the judgment.

41. <https://www.tusla.ie/services/alternative-care/separated-children/>

75. It is important that the guardianship authority is operationally independent from authorities with other responsibilities, including care of children to avoid any situation of conflict of interests. The functions of guardianship should not be associated with immigration responsibilities.

76. Guardianship is not always managed in a uniform way across a State. Whereas a national authority is in place in many States (for example the Netherlands), in other States it is organised at a local level (in the United Kingdom and Poland) or federal State level (in Germany). Where guardianship is managed locally, it is important to ensure that standards for guardianship are equivalent throughout the country. It is also useful to ensure that common resources are available nationally (for example, training resources or decision-making protocols).

77. Having a management authority, or co-ordination between different regional bodies where relevant, should allow States to respond better and more rapidly to changing guardianship needs, in light of the numbers of arrivals of children and their circumstances. It should also permit a system for temporary guardianship where this is necessitated by the national context or the circumstances of the case. Temporary guardianship is sometimes in place in cases of age disputed individuals, in first line responses to situations of high numbers of arrivals or in response to the immediate situation of the child (for example, if an immediate screening of the child on first encounter identifies a high probability that the child has been a victim of violence, human trafficking or other forms of exploitation).

78. A central role of the guardianship authority is to ensure that training and recruitment procedures comply with child protection screening standards to guarantee that guardians are persons of high integrity and possess relevant skills and training. Children in migration are often in a particularly vulnerable situation and the guardian will be in a fiduciary relationship to the child. The authority should ensure that child safeguarding policies are embedded in the system, as well as providing supervision of the guardian of each child. An indicator of good practice is the existence of a detailed code of conducts for guardians, which covers all of the ethical and sensitive issues that may arise. The guardianship authority also plays a role in ensuring that children are properly informed on guardianship and have access to complaint mechanisms (see Principle 5).

79. The authority may also have a role in the ongoing training and development of guardians to ensure that they meet and maintain the professional requirements for their role. For example several guardianship authorities and services, in co-operation with the European Commission have collaborated to develop an online guardianship toolkit.⁴² The authority is also central to putting in place harmonised procedures and services for individuals undertaking guardianship roles. This includes reporting procedures where children go missing, or suffer from violence, abuse, trafficking or exploitation.

80. Guardianship authorities should also ensure that guardians are adequately supported in their work. In certain national systems, such as the Netherlands and Denmark, the responsible body provides a wide range of support and advisory

42. Available at: <https://guardianstoolkit.eu/>

services to guardians, such as access to legal information on specialised processes including cross border transfers in family reunification cases. These authorities also provide access to psychologists, health professionals, interpreters and cultural mediators. This has the benefit of allowing guardians to respond to the situation of children in an efficient and effective way.

81. Entrusting case administration to the guardianship authority should also ensure proper management of the case load of guardians, in particular, by ensuring appropriate appointment mechanisms which take account of the need for the child to have regular access to the guardian, the complexity of cases, the particularly vulnerable circumstances of the child (e.g. child in conflict with law or a victim of violence or human trafficking), whether or not guardians are professionals or volunteers and the level of support available to the guardians. An indicator of good case administration will be a maximum number of cases that can be undertaken by guardians, which may vary in different national situations, depending on these different factors in each national context.

82. Guardianship authorities bear the responsibility for maintaining adequate supervision of guardians, through for example maintaining an individual case file on each child under its care, from the outset of guardianship to the end of the guardianship period. The file should include key information on the situation of the child and document decisions taken. Record keeping requirements and measures should be in line with international data protection standards.

83. Within its mandate, the guardianship authority will play a clear role in ensuring guardianship is appropriately coordinated with other State responsibilities to the child. (See Principle 8 below). Moreover, the existence of a guardianship authority allows specialised knowledge and skills to be built up and preserved within the guardianship system, even as the individuals who perform guardian's tasks may move or rotate out of the role.

84. States should also ensure independent monitoring and oversight of the work of the guardianship authority, potentially through annual review processes undertaken by other state institutions, such as ombudspersons for children.

Principle 7 – Resources, recruitment, qualifications and training

85. It can be challenging for a State to meet its obligation to ensure that the guardianship system has adequate financial, human and technical resources, in face of the fluctuating numbers of arrivals of children, and changing circumstances underlying their arrivals.

86. To support the identification and allocation of sufficient resources to the system of guardianship, States should systematically collect both quantitative and qualitative data on unaccompanied children in migration in their countries. This should include information broken down by age group, gender and origin, as well as the procedures in which they have been involved and information on the manner in which services have been provided. This will support better planning and organisation of recruitment, training and support for guardians.

87. In Greece, the social services agency responsible for children (EKKA) began producing a “dashboard” of information on unaccompanied children on a monthly basis, based on a centralised national automated system, which provides timely and useful information for planning purposes.

88. States should take measures to ensure that both the staff of the guardianship authority and the guardians themselves have the necessary expertise and skills to fulfil their responsibilities, or have access to advisory services which will provide specialised knowledge, where necessary to them to act in the best interests of the child.

89. National systems are organised in different ways to achieve these ends. In particular, some countries have professional guardians, who are required to have specific qualifications (for example, Belgium, Finland, the Netherlands and Northern Ireland). In other countries, guardians are volunteers who may need to meet certain standards and requirements, but may not need particular professional requirements. In Greece, for example, national legislation provides for minimum qualifications for guardians. In some circumstances, States might consider hybrid models, with professional guardians being assigned to cases of particular complexity or in cases where the child’s need for assistance and support are particularly acute.

90. Regardless of the system used, it is important that all guardians have a sufficient degree of knowledge and skills, including through specialised training, to ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered.

91. Consequently, the knowledge and skills of a guardian should encompass child rights, childcare and protection and child development. Guardians will also need to have an understanding of potential differences in religious and cultural expectations, gender aspects and how to support children with different linguistic backgrounds. Guardians should be informed of and understand how care arrangements are organised and the operation of specific procedures for children in care (such as risk assessments, referrals or reporting of disappearance). Guardians should also have knowledge of the procedural issues which children in migration encounter (including age assessment, family tracing and status determination *et al*). Guardians should also be informed about procedures related to child disappearances and the tools available to report and follow this up, including information on the roles of hotlines for missing children.

92. Whilst a guardian’s knowledge needs not duplicate the expertise and skills of a social worker or lawyer as regards care and status determination procedures; it is important that they understand the issues involved so that they can support and assist the child in all decisions in their regard. In addition, guardians should understand the roles and responsibilities of these actors in order to cooperate with them in an appropriate way (see further principle 8 below).

Principle 8 – Co-operation and co-ordination at national level

93. Co-operation and co-ordination between actors is vital, given that the role of the guardian, and the guardianship authority, intersects with the work of a wide range of other actors exercising responsibilities towards unaccompanied and separated children in migration.

94. The tasks and responsibilities of every professional involved with the child should be clarified and formalised in every step taken for their protection, including prevention of disappearance. These actors include: the guardian, youth and social services, migration authorities, law enforcement, health and education professionals, reception centre staff and others. Tensions may arise where the role of the guardian in relation to the responsibilities of other actors is unclear. Effective co-operation and co-ordination between all relevant professionals therefore requires a clear definition by States of the role and responsibilities of guardians relative to these other professionals (see Principle 1 and Principle 2 on frameworks).

95. States should also establish a co-ordination mechanism between different services to ensure that the best interests of the child, including their ongoing well-being as well as the search for a durable solution, is a primary consideration in all actions concerning them. Such general co-ordination mechanisms can take several forms, including a strategy on unaccompanied children (for example in Sweden), or the nomination of a co-ordinating agency (for example in Germany). Depending on the way responsibilities are organised within Member States, such coordination can take place on a national or regional basis. These mechanisms help ensure that the activities of all actors can be embedded in the child protection and welfare system and fulfil State responsibilities of special protection and assistance to unaccompanied children.

96. In some countries the guardianship authority plays a central role in ongoing co-ordination (for example in the Netherlands). In other countries, the guardianship authority is involved and consulted in the context of multi-disciplinary co-ordination to protect children (for example, in the Netherlands NIDOS has signed a co-operation agreement with the police and migration authorities to protect child victims of trafficking). Guidance from the UN Committee on the Rights of the Child in General Comments no 5 and no 13 can support actors in developing these strategic mechanisms. The Council of Europe Policy guidelines on integrated national strategies for the protection of children from violence⁴³ are also of relevance to the development of these coordination frameworks.

97. States should also develop protocols, agreements and referral mechanisms which enhance co-operation and co-ordination in ongoing work on a regular basis, taking into account key moments in State responses to the situation of unaccompanied children, including first encounter and identification, risk assessment and care arrangements until a durable solution is found. The importance of multidisciplinary co-operation is underlined in guidance from the Council of Europe, such as in the Guidelines on child-friendly justice the Council of Europe Recommendation

43. Recommendation [CM/Rec\(2009\)10](#).

CM/Rec(2011)12 of the Committee of Ministers to member States on children's rights and social services friendly to children and families which provides guidance on multidisciplinary co-operation and co-ordination.

98. Referral mechanisms between agencies that involve immediate action in situations of risk, including disappearances from care and situations where a child is a victim or is at risk of violence, abuse, human trafficking or exploitation are of particular importance. The Council of Europe Convention on Action against Trafficking in Human Beings provides that competent authorities as well as support organisations should collaborate to identify trafficked persons (Article 10). The Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse also requires member States to take necessary measures to ensure multi-disciplinary co-ordination at national level to protect children from sexual abuse and exploitation.⁴⁴ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence provides guidance for member States on protecting migrant, refugee and asylum-seeking women and girls from gender-based violence, including gendered aspects of asylum and the forms of violence that migrant girls may be particularly confronted with, such as FGM or forced marriage.⁴⁵ In the case of disappearances of unaccompanied children, an example of good practice can be found in Brussels arising in the form of an inter-agency protocol for responses to disappearances, which sets out actions and responsibilities of actors and the manner in which they work together.

99. All inter-agency frameworks, protocols and referral mechanisms need to address the manner and limits of data sharing, and the manner in which data protection obligations are fulfilled, through policies on use and retention of data. Clear provisions should define what, when and how information will be shared, with appropriate procedures to ensure that confidentiality and the protection of personal data is ensured and respected at all times. States may find inspiration in general inter-agency child protection case management systems or multi-agency practices in other areas, such as inter-agency cooperation in the area of child victims of violence.

100. Co-operation and co-ordination between actors can be strengthened through multi-agency training on a periodic basis, which brings together actors with different responsibilities to learn about common procedures for their work. Pilot projects allowing actors to come together to build good practice, such as pilot schemes concerning child advocates in England, should also be encouraged by States.

101. States should also support periodic monitoring and evaluation of co-operation and co-ordination between actors, ensuring the participation of children to ensure their experiences, perspectives and recommendations are included in the evaluation. Periodic research in this field may also influence better outcomes; inspiration can be drawn from research undertaken by the EU Fundamental Rights Agency into child friendly justice and Guardianship systems for children deprived of parental care in the European Union.⁴⁶

44. Article 10

45. Available at <https://rm.coe.int/migrant-women-and-istanbul-convention/1680925865>

46. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-guardianship-systems-in-the-eu_en.pdf

102. If a child goes missing from care, their guardian has a responsibility to report this to the relevant authorities and to co-ordinate with them in the interests of finding and safeguarding the missing child. Where there is a risk that the child has been a victim of human trafficking and may have been re-trafficked it is imperative that States have adequate international co-operation mechanisms in place, in accordance with the Council of Europe Convention on action against trafficking in human beings.⁴⁷ In Norway it is the duty of the child's carer to report if they go missing, this duty is transferred to the guardian in the case of an unaccompanied or separated child. According to Norwegian practice today, the appointment of the guardian will be discontinued when a child has been missing for some time and it is deemed likely that there will be no further need for the guardian's services. If the child is later identified as present in the country, a guardian will be appointed if original conditions still apply (see Principle 9 for more guidance on international co-operation).

Principle 9 – International co-operation

103. Cross border collaboration is vital for the protection of unaccompanied and separated children in migration. It is often necessary to protect children from human trafficking and the influence of people smugglers, to follow up on children who have gone missing from care, to identify and trace family members and relatives, to restore family links where it is in their best interests and to find durable solutions.

104. International co-operation in the context of transfers of an unaccompanied or separated child is also vital to uphold their rights. The European Court of Human Rights has found that the failure to safeguard a child during international transfers and to ensure that they will be properly looked after upon arrival in another State may amount to inhuman and degrading treatment contrary to Article 3 ECHR.⁴⁸

105. Guardians and guardianship authorities often play a central role as an interlocutor for the child and other actors in international co-operation. To this end, States should ensure that there is a clear definition of their responsibilities and powers in situations of international co-operation. For example, the guardian will play a central role in various procedures that require co-operation with other states including family reunification procedures. In the Netherlands NIDOS provides a helpdesk to advise guardians about their role. The European Guardianship Network is another example of international co-operation in this area.

106. States should also ensure there is a solid legal basis for international co-operation in general and in individual cases. Options available in the field of co-operation on judicial and civil matters in relation to parental responsibility of children should be taken into account. States are encouraged to become party to and fully implement relevant international conventions and instruments, such as the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (19 October 1996). States should ensure that adequate safeguards are incorporated into any bilateral agreements with countries of origin to ensure that children's rights are fully respected in co-operation on matters of concern, such as to assess the family

47. Article 33

48. ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, No 13178/03, 12 October 2006

circumstances in cases where reunification can be considered, bearing in mind that in some circumstances states should refrain from contacting countries of origin, e.g. in asylum procedures.

107. Member States often face challenges in international co-operation as regards durable solutions in that such co-operation is frequently initiated largely on the basis of immigration laws, rather than the broader grounds of the UN Convention on the Rights of the Child. It is worth bearing in mind that the Council of Europe has in the past underlined the importance of countries working together on life projects in relation to unaccompanied children in migration. The Explanatory Memorandum to Recommendation [CM/Rec\(2007\)9](#) of the Committee of Ministers to member States on life projects for unaccompanied migrant minors notes *"how different government departments and services must work together, both at a national and local level but also with their counterparts in the child's country of origin to implement life projects."*

108. Beyond a legal framework for co-operation, States should also establish procedural channels or mechanisms that can be deployed for the transmission and execution of requests for information or other types of assistance with respect to unaccompanied children. This is often a particularly complex area. Procedures should be clear and efficient, and they need to be prioritized and carried out in a timely way. The guardian should be central to such procedures to ensure continuity of care as their responsibilities will not be discharged until the child has been entrusted to an appropriate adult in the receiving country whether this be a family member or the relevant guardianship authority in that state. Key to achieving this is the involvement of the childcare and child protection professionals of both countries concerned, rather than the involvement of immigration or consular actors alone. Guardians, and guardianship authorities, should be closely involved to ensure the individual circumstances of the child are properly considered and that the child is informed, supported and assisted in these procedures. In particular it is important to ensure that the child's views are heard and that any concerns they may have are addressed. Guardians may also play an important role for restoring or maintaining family links in cross border situations and in supporting the families' engagement with local actors.

109. Clear and effective safeguards should be in place to preserve the confidentiality of any information on the child, as well as their safety and privacy. For example, this should include safeguards on whether, what and how information exchange takes place in particularly sensitive cases. Any international co-operation should only ever take place in the best interests of the child and with due regard to safeguarding concerns in the context of exchanging information on families who may have international protection needs, or the personal situation of a child who has been a victim of violence, human trafficking or exploitation.

110. States should also establish channels for guardians and the guardianship authorities to co-operate with other actors to identify conditions for transfer of guardianship in the event that the child moves to another State. This may include provisions for post return co-operation and monitoring, to ensure continuous and stable support, and to support sustainable reintegration.

111. States should also engage in regular sharing of knowledge, experience and good practice on this issue. The European Guardianship Network funded by the European Union is an example of developing practice in this field.

Checklist for Policy Makers to implement the Recommendation

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

Policy makers may want to consider the following questions when evaluating the strengths and weaknesses of their national guardianship systems:

1. Has your State ratified all relevant international instruments as identified in the preamble to the Recommendation? By implementing an effective guardianship system, a member State will be upholding the rights and obligations provided for in these legal instruments.
2. Does national law provide for every unaccompanied or separated child to receive the support and assistance of a guardian?
3. Is the principle of the best interests of the child provided for in national law and implemented without discrimination?
4. Is there scope within the guardianship system to care for the specific needs and vulnerabilities of these children? Does the guardian have the powers and resources necessary to conduct an assessment of the risk that a child will go missing and risks to which they could be exposed to if missing, develop the corresponding safety plan and put in place an individual care plan and the protective mechanisms and support the child needs to recover from any trauma suffered in their country of origin, during their journey or in the host State?
5. Does national law provide for durable solutions for these children? Are guardians informed and trained about these procedures to facilitate access to these procedures for the children in their care?

Principles 2 and 6. Guardianship frameworks and Institutional measures

1. Is there a guardianship system in place? Is there an identifiable Guardianship authority that is mandated to supervise guardians?
2. Does the legal framework provide clarity on the minimum professional standards required for a person to act as a guardian, including all of the considerations outlined at Principles 3, 4, 5, 7? Are there any minimum qualifications necessary? Is it necessary to create a specific guardianship qualification? Is there a mandatory probationary period for newly qualified or recruited guardians during which time they can benefit from enhanced support and supervision from a more experienced guardian?
3. What criminal records registers are available in the member State? Is it mandatory for guardianship authorities to check potential guardianship candidates' criminal records? Is there a register containing details of offenders convicted of sexual offences? Is it a mandatory step in the recruitment process to verify these

registers? Should a guardian be subject to regular vetting for example a criminal record check every 3 or 5 years?

4. Is there clarity about who has authority to appoint or designate a guardian to a particular child? Is there guidance at national level about the factors to be taken into account when considering the appointment or designation (for example the sex of the guardian, their level of experience, the complexity of the needs of the child)? It would be advisable to provide for scope for newly qualified / recruited guardians to be provided with reinforced support and supervision during a probationary period.

Principle 5. Effective remedies

1. Is there an effective complaint mechanism in place to provide access to justice to unaccompanied and separated children with a grievance against their guardian or the guardianship authority? Is the complaint mechanism sufficiently resourced to ensure access to an effective remedy within a reasonable time frame?

2. Is the complaint mechanism independent? Would the Ombudsperson for Children be an appropriate authority to hold the guardianship authority to account?

3. Are complaint mechanisms adapted to the needs of children in accordance with the Council of Europe Guidelines on Child-friendly Justice?

4. Is there sufficient child friendly information available to explain how the complaint mechanism can be accessed and to help the child navigate the mechanism? One crucial element will be to ensure that children understand that they can make a complaint without being punished or this having an effect on their rights in the context of other procedures (e.g. making a complaint about a guardian will not affect the outcome of an asylum application).

5. Is legal aid available to ensure the child can benefit from free independent legal advice in the exercise of their right to an effective remedy?

Principles 8 and 9. Co-operation

Policy makers may consider:

1. Identifying all institutional and professional actors, that need to co-operate and co-ordinate at national and local level.

2. Providing a legal basis to require and facilitate co-operation, including identifying the roles and responsibilities of each institutional representative and the ways co-operation should take place in practice (regular meetings, regular exchange of information, other forms adapted to the national and local context).

3. Adopting a joint protocol to formalise these arrangements and provide for a basis to hold institutions accountable for failing to engage with their obligations to co-operate and co-ordinate in the child's best interests. Professionals with experience working in the relevant institutions should be involved in the development of these protocols to ensure that they are adapted to the needs of the professionals and children they concern.

4. Identifying opportunities and instances for international co-operation between guardianship authorities (e.g. co-operation in the context of missing children and

risks of child/human trafficking across borders, or co-operation in the context of family reunification or transfers between States in the interests of a durable solution).

5. Providing guidance and procedures to outline how international co-operation should be implemented in practice and any reporting requirements.
6. Designating the authority responsible for reporting to and participating with international monitoring mechanisms.

Checklist for Guardianship Authorities

Guardianship authorities should consider the adoption of Protocols/Policies to provide clarity and legal certainty to all actors concerned (guardians, unaccompanied and separated children and other professionals who may need to interact with the guardianship system). Protocols/policies should provide clarity about the legal and regulatory requirements related to all of the principles identified in the guidelines, notably:

- 1. Screening and recruitment:** by identifying the parameters of screening and recruitment procedures, including minimum qualifications, criminal records checks, character and reference requirements.
- 2. Training:** guardians should be supported both through initial and on-going training about their own role but also about relevant procedures applicable to the children they are responsible for. The guardianship authority could create and keep up to date training modules and materials provided to guardians.
- 3. Appointment/designation:** these procedures should be clearly set out in the interests of legal certainty, including clarity on how a guardian is to be appointed/designated, by whom, in what timescale, and the ways in which this procedure is adapted to the best interests of the child.
- 4. Support and materials available to guardians:** Guardianship authorities should develop tools and materials for guardians to enable them to discharge their functions in accordance with all principles set out in the Guidelines. This may include developing checklists for decision-making procedures, guidance on the rights and obligations of guardians and information materials to assist guardians to communicate with children in their care during their mandate. This may also include guidance on file management and data collection to improve the data available to policy makers.
- 5. Supervision during mandate:** Guardianship authorities may wish to adopt a code of practice for guardians to provide clarity about the ways in which a guardian must discharge their functions. This should include information on the legal responsibilities of guardians and indicators to guide the guardian as to whether or not their practice is in compliance with the code of practice.
- 6. Complaints and disciplinary procedures:** As part of their monitoring and regulatory functions, guardianship authorities should develop clear complaints and disciplinary procedures to provide legal certainty to both guardians and children. This is key to guarding against arbitrary decision-making and to protect the child from any potential conflict of interest.

7. Co-operation at national and international level: Guardianship authorities should play a central role in setting up and monitoring both national and international co-operation mechanisms. Guardianship authorities should consider the adoption of joint standard operating procedures or protocols to ensure effective multi-disciplinary co-operation at national and local level.

Checklist for Guardians

Before acting for a child: it is important to be aware of the professional standards and requirements applicable to guardians. Your qualifications and any screening procedures should be up to date and you should have completed any mandatory training requirements.

When you are appointed/designated to act for a particular child: you may consider doing some brief research into the child's country of origin. What languages are spoken there? What religions are present? What is the capital city? This information may be helpful to build rapport and a relationship of trust with the child.

When you meet the child for the first time: remember to introduce yourself, explain what your role is and what your role is not (help the child understand that you do not work for the police or immigration officials, you are independent).

Take a few minutes at the beginning of each meeting to see how the child is feeling, find out about their interests and aspirations, which football team do they support, what do they dream of doing when they are grown up?

During your mandate: Explain the different stages of each procedure to the child as they occur, remember to use language that is adapted to their age, gender, maturity and understanding. Ask the child if they feel worried about anything and help them to understand what is happening to them, what the potential consequences of each procedure will be and the possible options to challenge the outcome of a procedure.

Listen to the child's views and help them understand how you have taken their opinion into account. Remember to explain why something is or is not in their best interests. For example, they may be feeling very afraid and anxious about having their fingerprints taken or undergoing a mandatory medical screening. Help them understand the aim of the procedure and what will happen to the data/samples taken by the authorities.

Consider if the child is eligible to have the guardianship measure prolonged beyond the age of 18 and explain why this is or is not possible to the child and why it may or may not be in their best interests to prolong the measure.

Identify and co-ordinate with other actors involved in the decision-making process, for example by making relevant referrals for the child to access medical care, or anti-trafficking mechanisms. Consider your professional obligations in relation to data protection and confidentiality and the duty to act in the best interests of the child.

At the end of your mandate: Take time to explain to the child/young person why your mandate has come to an end and that it has not ended because they have done anything wrong but because an event has occurred that means they no longer need

you to act as a guardian (perhaps they have changed immigration status, or they are being reunited with their family, or they have reached 18). Help the child/young person to identify the next steps for them and the organisations/people that can help them to continue their integration or to access a durable solution.

Comply with any file closure/reporting obligations.

A useful [toolkit for guardians](#) developed in the framework of the ProGuard Project (2019) provides information, tools and best practices for guardians in charge of unaccompanied children. It provides more details on the roles of guardians.

For more information on providing child-friendly information to the child see: [How to convey child-friendly information to children in migration: A Handbook for frontline professionals](#).

[Practical guidance on preventing and responding to trafficking and disappearances of children in migration](#).

Key Information for children concerned with Guardianship

You have the right to have a guardian appointed to you without undue delay, try to speak to a lawyer if you don't have a guardian or are having trouble accessing a guardian (legal advice about this is normally free). You don't have to pay your guardian.

Their job is to help you understand: your rights, the procedures that affect you and to make decisions in your best interests. They should listen to your opinion before making a decision and explain their decision to you. This does not mean that they must do what you want every time, sometimes they may decide that something is in your best interests even if you do not agree. They should explain this to you to help you understand how and why they have reached that decision.

Your guardian should treat you with respect and not do anything to make you feel uncomfortable. They should also make sure that all of the other people you must interact with (including social workers, care staff at your accommodation, health care workers, teachers, immigration officials etc.) also respect your rights. They can help you to access a lawyer and make a complaint or appeal, if appropriate, if there is something you don't agree with, for example if you don't agree with a decision about your age or immigration status.

You can also talk to your guardian if you don't agree with them and they should tell you how to make a complaint or ask for a change of guardian if something happens and you can't work with the guardian anymore.

Your guardian should be supervised by the guardianship authority, they should normally be trained and have specialist knowledge to make sure they can help you properly.

If there is something you don't understand, just ask, you can also search for information on the internet, there are lots of leaflets, videos and advice available, ask your guardian to help you find information in your language.

Migration puts children, especially those unaccompanied or separated from their parents, in a very vulnerable position, increasing the risk of their fundamental rights and freedoms being violated.

This Recommendation, its guiding principles and implementing guidelines and its Explanatory Memorandum, target both decision makers and practitioners working to secure the protection, reception, care and wellbeing of unaccompanied and separated children – through guardianship. They provide guidance for the formulation of legislation and the planning of public policies and institutional measures, ensuring these children's access to justice and effective remedies. They also provide guidance on how to strengthen co-operation and co-ordination among relevant stakeholders, including at international level.

The implementation of this Recommendation is expected to ensure that the rights of unaccompanied and separated children, and their best interests, are respected in line with international and European standards, and that in each country guardianship is effectively provided and is appropriate to the rights and specific needs of the children concerned.

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.