

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



Legal instruments

Recommendation CM/Rec(2025)5
and explanatory memorandum



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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

Recommendation CM/Rec(2025)5
adopted by the Committee of Ministers
of the Council of Europe
on 28 May 2025
and explanatory memorandum

French edition:

*Protection des droits et de l'intérêt
supérieur de l'enfant dans le cadre
des procédures de placement –
Recommandation CM/Rec(2025)5
et exposé des motifs*

ISBN 978-92-871-9629-3

ISBN 978-92-871-9630-9 (PDF)

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contact publishing@coe.int.

Cover and layout: Publications
and Visual Identity Division
(DPIV), Council of Europe

Council of Europe Publishing
F-67075 Strasbourg Cedex
<http://book.coe.int>

ISBN 978-92-871-9627-9

ISBN 978-92-871-9628-6 (PDF)

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October 2025

Printed at the Council of Europe

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LIST OF ABBREVIATIONS (IN ORDER OF APPEARANCE)

UNCRC	United Nations Convention on the Rights of the Child
Convention	European Convention on Human Rights (ETS No. 5)
The Court	European Court of Human Rights
CRC	United Nations Committee on the Rights of the Child
Istanbul Convention	Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence
HCCH	The Hague Conference on Private International Law

Recommendation CM/Rec(2025)5

of the Committee of Ministers to member States on the protection of the rights and best interests of the child in care proceedings

*(Adopted by the Committee of Ministers on 28 May 2025
at the 1529th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1),

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and promoting the ideals and principles which are their common heritage, *inter alia*, by encouraging the adoption of common standards and policies and harmonising legislation on matters of common interest through common action in the field of human rights;

Reaffirming the principle of the inherent and equal dignity of all human beings, and underlining the importance of guaranteeing that all children within the jurisdiction of a Council of Europe member State enjoy the full exercise, protection and promotion of, and respect for, their human rights and fundamental freedoms, without discrimination on any ground;

Having regard for the obligations towards children as set out in relevant international and European conventions, notably the United Nations Convention on the Rights of the Child, the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), and their respective additional protocols, and the European Social Charter (ETS No. 35, and its revised version, ETS No. 163);

Recalling the relevant case law of the European Court of Human Rights, as well as the standards and guidance of the Committee of Ministers in the areas of the rights of the child, family law and relevant legal proceedings, notably the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*;

Bearing in mind the Council of Europe Strategy for the Rights of the Child (2022-2027), which includes the strategic objectives “2.1. Freedom from violence for all children”, “2.4. Child-friendly justice for all children” and “2.5. Giving a voice to every child”;

Acknowledging the views and opinions of children consulted from selected member States of the Council of Europe;

Recognising the important role of civil society, including non-governmental organisations, in supporting children, parents and families, in co-operation with State actors within a common framework;

Noting with concern that, while the best interests of the child should be a primary consideration, and in some circumstances the paramount consideration, in all decisions and actions concerning the child, the child’s best interests may, in practice, not always be adequately assessed, determined and implemented in care proceedings;

Convinced that the status of children as rights holders should be accorded appropriate legislative, procedural and substantive recognition and that these children should benefit from appropriate support in exercising their rights in all decisions and matters affecting them;

Recognising that children should grow up in a supportive family environment where their physical, psychological and emotional development and well-being are cared for and that any decision to remove a child from his or her family environment should be made in accordance with the best interests of the child and should be a measure of last resort;

Underlining the important role of States to ensure measures are in place to foster supportive family environments for children and to ensure that, where placement in alternative care is in the best interests of a child, family-based and family-like placements for children are available;

Wishing to guide member States in improving their legislation, policies and practice regarding care proceedings, and to support them in providing guidance

to the competent authorities, relevant officials and professionals, as well as the parents and children involved in such proceedings;

Emphasising that this Recommendation aims at establishing a common framework for the best interests determination procedure in care proceedings, while acknowledging the diversity of legal systems of the member States,

Recommends that governments of the member States:

1. ensure that, in care proceedings:
 - a. the best interests of the child are a primary consideration or, where required by law, the paramount consideration;
 - b. the rights of the child are respected and safeguarded throughout the proceedings;
 - c. decisions concerning the child are made, implemented or enforced in an effective and timely manner, in accordance with the best interests of the child;
2. take or reinforce all measures they consider necessary or useful with a view to implementing the principles set out in the appendix to this Recommendation in relevant national law, policy and practice;
3. ensure that this Recommendation, including the guidelines in its appendix, is translated and disseminated as widely as possible among the competent authorities, relevant professionals and other stakeholders involved in care proceedings;
4. review regularly the status of implementation of this Recommendation with a view to enhancing its impact and inform the Committee of Ministers of the measures taken by member States and other stakeholders, the progress achieved and any shortcomings which remain five years after its adoption.

Appendix to Recommendation CM/Rec(2025)5

I. Scope and definitions

Scope

1. This Recommendation applies to all proceedings concerning the care of a child where the monitoring of the care of the child at home or the placement of the child in alternative care is under consideration.

Definitions

2. For the purpose of this Recommendation:
 - “alternative care” refers to formal care provided in an environment other than with the child’s parent(s), such as:
 - a. family-based care placements, including kinship care, foster care and *kafala*;
 - b. family-like care placements;
 - c. residential care; or
 - d. supervised independent living arrangements for the child;
 - “proceedings” refer to administrative and judicial proceedings before a competent authority;
 - “competent authority” refers to a judicial or an administrative body that is competent to make a decision or take action about the arrangements concerning a child involved in care proceedings;
 - “alternative dispute resolution” refers to processes whereby the participants try to come to an agreement to secure the best interests of the child with the assistance of one or more professionals; this may take place before, during, after or instead of care proceedings, as provided for by national law;
 - “best interests determination procedure” refers to an established procedure by which a competent authority assesses and makes decisions on the best interests of the child and which includes mechanisms for reviewing and adapting decisions over time;
 - “child” means any person under the age of 18 years;
 - “parents” refer to the persons who are considered to be the parents of the child under national law;
 - “parental responsibility” refers to the set of rights and duties that aim to promote and safeguard the rights and well-being of the child, in accordance with the child’s evolving capacities, as provided for by national law;
 - “other holder of parental responsibility” refers to any person, institution or other body having parental responsibility in addition to or instead of the parent(s) of the child, in accordance with national law;
 - “contact” refers to stays of limited duration, meetings and communication in any form between the child and another person when the child is not living with that person;

- “guardian” refers to a person who is appointed or designated in accordance with national law to support, assist and, where provided by law, represent the child and who acts independently to ensure that the child’s rights, best interests and well-being are guaranteed;
- “siblings” also include half-siblings and stepsiblings;
- “family reunification” refers to the return of a child to the parent(s) or other holder(s) of parental responsibility after placement in alternative care.

II. Overarching principles

Best interests of the child

3. The best interests of the child should be a primary consideration or, where required by law, the paramount consideration in decisions and actions taken in all proceedings falling under the scope of this Recommendation.

Right to be heard

4. The child should have the right to be informed and consulted, and to express his or her views. Due weight should be given to the child’s views in accordance with his or her age and maturity.

Rule of law

5. Due process standards should apply to children in the same way as to adults; these standards should be applied in a child-sensitive and age-appropriate way, and should not be minimised or denied under the pretext of the child’s best interests.

Dignity

6. Every child should be treated with sensitivity and respect at all times; special attention should be given to the child’s level of maturity, personal situation and specific needs.

Timeliness

7. Proceedings in which a child is involved should be initiated, concluded and followed up in a timely manner and should be treated with exceptional diligence. Delays in proceedings are generally not in the best interests of the child and may indeed be prejudicial to the child.

Non-discrimination

8. The rights of the child should be secured and his or her needs met, without discrimination on any ground.

Right to development

9. Member States should ensure, to the maximum extent possible, the development of the child.

Right to respect for private and family life

10. Member States should ensure the right to respect for the private and family life of children and parents as well as other family members. In accordance with the principle of proportionality, any interference with this right is only justified where the child's own family is unable or unwilling, even with appropriate support, to provide adequate care for or protection of the child, thereby putting the child at risk of significant harm.

III. Assessment of the child's best interests

11. The best interests of the child should be regarded as a primary consideration or, where required by law, as the paramount consideration, and should be assessed and determined individually in all decisions and actions taken within the scope of this Recommendation.

12. When assessing the best interests of a child, consideration should be given to the circumstances of the case and all factors relevant to securing the rights of the child and meeting his or her needs, taking duly into account any possible short-, medium- and long- term consequences for the child. These factors should include, but are not limited to:

- a. the child's age, level of maturity and evolving capacities;
- b. the child's views where he or she has chosen to express them or, for a child who is unable to form or express her or his own views, the child's perspective;
- c. the benefit of stability for the child, including appropriate preservation of the child's family and social environment or, where applicable, the benefit of a new environment in alternative care;
- d. the benefit to the child of having meaningful personal relations with his or her parents, siblings and other persons who are significant to the child;

- e. the willingness and ability of each parent, without discrimination on any ground, to care for and meet the needs of the child;
- f. the history of the child's upbringing and care;
- g. the protection of the child from physical or psychological harm, or from being subject to or exposed to abuse, neglect or violence;
- h. any situation of vulnerability or risk, and sources of protection and support;
- i. the child's developmental, emotional, educational and health-related needs;
- j. considerations relating to the child's right to preserve and develop his or her identity, including, but not limited to, the child's religious, cultural and linguistic background;
- k. the child's usual day-to-day activities and hobbies.

13. The content and weight of each factor vary in each specific case depending on the circumstances. If the assessment of the factors taken into account in a case leads to conflicting conclusions, they should be carefully balanced, with due consideration also being given to any possible short-, medium- and long- term consequences for the child.

14. In proceedings in which more than one child is affected, or likely to be affected, the best interests of each child should be assessed individually.

15. The competent authorities should be able to call on the relevant services and expertise using a multidisciplinary approach to assess the needs of the child. Multidisciplinary and interagency services can provide important assistance in assessing the best interests of the child.

16. In proceedings involving a parent or a child with a disability or with special or additional needs or vulnerabilities, appropriate arrangements should be in place to enable the meaningful participation of that parent or child in the proceedings.

17. In making decisions on care proceedings and contact rights, the competent authority should give effect to the child's rights and the principle that a child should have as much direct contact with each parent, and other persons having family ties with the child or being otherwise significant to the child, as is consistent with his or her best interests.

18. The young age of a child should not be a decisive factor in depriving the child of the right to establish and maintain contact with his or her parents.

19. Where unrestricted contact is not in the best interests of the child, the possibility of supervised contact or other forms of contact should be considered. The possibility that, in some cases, having no contact or suspending contact might be in the best interests of the child should also be recognised.

IV. Right to be heard

20. The child should be provided with a genuine and an effective opportunity to express his or her views, either directly or otherwise, and be supported in doing so through a range of child-friendly mechanisms and procedures. The child's level of understanding and ability to communicate, as well as the circumstances of the case, should be taken into account.

21. The competent authorities should assess on a case-by-case basis the level of understanding of the child. Irrespective of age, in particular when a child asks to be heard, a sufficient level of understanding should be presumed. Where national law prescribes an age limit below which a child is not considered to have a sufficient level of understanding to express his or her views, such an age limit should be subject to periodic review and member States are encouraged to consider removing it.

22. Where a child needs assistance to express his or her views, this should be provided. Where a child is unable to express his or her views due to age or capability, the child's perspective on relevant matters should, where appropriate, be ascertained and conveyed by a specially appointed and skilled representative or professional.

23. Due weight should be given to the child's views or, where appropriate, perspective, in accordance with his or her age and level of maturity.

24. It should be made clear to the child that his or her views are an important factor in the decision-making process, but that they do not necessarily determine the decision of the competent authority; the competent authority should take the child's views into account, together with other relevant factors, for the purpose of determining his or her best interests.

25. Where proceedings concern more than one child, each of them should be provided with the opportunity to express his or her views separately.

26. The child's views may be ascertained in various ways, such as:

- a. through the child being interviewed by the competent authority, subject to appropriate safeguards;

- b.* through a report based on an interview with the child by a trained professional appointed by the competent authority.

27. The mechanism or procedure to be used in any particular case should take account of the specific circumstances, the child's age and level of understanding, and his or her ability to communicate; where considered appropriate, the child should be consulted on the manner in which he or she wishes to be heard. Whenever appropriate, the child should be heard directly.

28. In order to avoid undue stress and discomfort, the hearing of a child's views should take place in a child-friendly environment.

29. Adequate safeguards should be in place to ensure, as far as possible, that the child is able to express himself or herself freely and that any views expressed are not the result of undue influence or duress.

30. The child should never be subject to cross-examination on the content of his or her views.

31. For reasons of procedural fairness, a report on the views expressed by the child should be brought to the attention of the parties in accordance with the best interests of the child and by any appropriate means to ensure the child's protection. To this end, preference should be given to a summary report instead of a full report. Where appropriate, the child should be consulted on how his or her views are portrayed in the report.

V. Right to information and assistance

Right to information

32. Member States should ensure that child-friendly information services are in place to inform the child about, in particular:

- a.* the reasons for the proceedings;
- b.* his or her rights, including the right to be heard, and role in the proceedings;
- c.* the stages and the likely duration of the proceedings;
- d.* the mechanisms or institutions as well as procedural adjustments available to support him or her during and after the proceedings;
- e.* where relevant, access to appeals, including any applicable time limits, and independent complaints mechanisms.

Right to assistance and right to legal counsel and representation

33. Member States should ensure that the child has the right to receive independent support and legal assistance and, in accordance with national law, legal representation separate from that of his or her parents or other parties throughout the proceedings, in accordance with the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*.

34. The child should have the right to be assisted by a person who is able to support and accompany him or her throughout the proceedings. The child should be able to contact this person directly at any time. The child should be consulted on the choice of this person in accordance with his or her age and level of understanding.

35. Access to an effective, sustainable and reliable legal aid scheme should be available for the child and his or her parents or other holder(s) of parental responsibility. Where relevant, access to a free legal aid scheme should be available for the child under the same or more lenient conditions than those applicable to adults, in accordance with the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*.

Complaints mechanism

36. An independent and effective non-judicial, child-sensitive complaints mechanism should be accessible to the child.

VI. Conduct of care proceedings

37. Services should be in place to inform and support children and parents before, during and after care proceedings to strengthen and stabilise families. This includes services to assist the parents in exercising their responsibilities towards the child, which would support positive parenting in accordance with the rights and the best interests of the child.

38. Member States should encourage and support professionals in reporting violence against children, including by removing barriers that professionals could encounter when reporting, in accordance with the standards laid down in Recommendation [CM/Rec\(2023\)8](#) of the Committee of Ministers to member States on strengthening reporting systems on violence against children.

Before proceedings

39. Mechanisms or measures should be in place to enable the timely identification of families and children in need of support and their referral to appropriate services.

40. Specialised services should be in place to inform and support children in reporting situations of risk and in seeking help, including without the prior knowledge and participation of their parent(s).

41. Where concerns about the care of a child exist, the competent authority should develop a pre-proceedings family support and child protection plan to ensure that:

- a. objectives of service provision are identified in accordance with the best interests of the child;
- b. relevant assessments are conducted and documented;
- c. the services provided are suitable and effective to support the child and his or her family in reaching the objectives identified; and
- d. the child and his or her parents, or other holder(s) of parental responsibility, are duly informed, consulted and able to participate in an appropriate way in the development, implementation and review of the plan.

42. The competent authorities and service providers should have access to a range of service models, such as family group conferences and other alternative dispute resolution services, as well as home-based assistance and supervised direct contact to support families experiencing conflict or difficulties in caring for a child.

43. The competent authorities should be able to order the mandatory use of specialised services as appropriate, in accordance with the best interests of the child.

44. Member States should ensure that care proceedings are initiated by a competent authority. Children and parents should be able to request that a competent authority consider the initiation of care proceedings in accordance with the applicable law.

Best interests determination procedure

45. The competent authorities should conduct a best interests determination procedure that includes a best interests assessment, the decision making, the review and, where appropriate, any adaptation.

46. The best interests determination procedure should be carried out in an independent, transparent and objective manner, fully respecting the substantive and procedural rights of the child, the parents or other holder(s) of parental responsibility, and any other parties involved in the case.

47. The procedure should be carried out using a multidisciplinary and inter-agency approach.

Emergency and interim measures

48. In situations of imminent risk to the health or safety of a child, national law should make available urgent referral and accelerated procedures in order to obtain emergency decisions or interim protective measures. In accordance with the child's best interests, emergency measures may be adopted without a prior hearing of the child, provided that the child has the opportunity to be heard before the final decision on the merits is taken.

49. Where, due to the circumstances of the case or the nature of the proceedings, a final decision is likely to be delayed, especially when the case needs further investigation, appropriate interim measures to safeguard the rights and best interests of the child should be taken.

50. In cases where a child is at risk of abuse or harm by a parent or another person having contact rights, the competent authority should be able to suspend promptly direct contact on an interim basis or to order indirect, supervised or supported contact, or any other measure that is consistent with the best interests of the child.

51. In cases where the child persistently refuses to participate in contact, interim measures in this regard, consistent with the best interests of the child, should be foreseen until a final decision is taken.

52. Emergency and interim measures should be immediately enforceable, be in principle of short duration and be followed by further decisions which fully respect procedural safeguards for the rights of the child and all relevant parties.

Decision

53. Any decision to limit parental responsibility or place the child in alternative care within the scope of this Recommendation should only be made where necessary to protect the child from significant harm when the parents are unwilling or unable to do so, even with appropriate support.

54. In case of a decision resulting in the limitation or withdrawal of parental responsibility, provision should be made for the transfer of parental responsibility from the parent(s) or other holder(s) of parental responsibility, to a qualified guardian, person or entity.

55. The decision should explain how the views of the child or, where appropriate, the child's perspective, have been gathered and how they have been given due weight; where a child has not been heard, the decision should specify the reasons.

56. The decision should provide clear and transparent reasoning, explaining how the relevant factors have been assessed, verified and assigned weight, and showing how the best interests of the child have been given due consideration when balancing the rights and needs of the child with the legitimate interests of the parties.

57. The content of the decision should be communicated and explained promptly to the child having regard to his or her age and maturity.

Alternative dispute resolution processes

58. Member States are encouraged to develop and promote alternative dispute resolution processes, and to identify matters where alternative dispute resolution could be beneficial with the aim of resolving concerns relating to the care of a child and reaching agreement on specific measures to be taken in accordance with the best interests of the child.

59. The competent authority may recommend referral of a case, or specific elements of it, to an alternative dispute resolution process where appropriate and consistent with the best interests of the child.

60. Prior to referral, information explaining the benefits of alternative dispute resolution processes should be provided.

61. Alternative dispute resolution processes are not appropriate where domestic violence or violence against the child has been established, or where there are well-founded risks of violence or abuse, unless the appropriate safeguards are in place to ensure the safety of the child and the parties and their capacity to reach a mutual agreement freely.

62. The professional facilitating the process should encourage the parents or other holders of parental responsibility to focus on the best interests of the child at all times and remind them of their primary responsibility for the well-being of the child and the need for them to inform and consult the child.

63. The right of the child to be heard and to participate in alternative dispute resolution processes should be secured, in accordance with the best interests of the child.

Implementation and enforcement

64. The competent authorities should ensure that services are provided to the child and, as appropriate, the parent(s) or other holder(s) of parental responsibility, siblings and other family members, services which allow them to implement the decision or support them in implementing it.

65. Where the circumstances warrant, services should be put in place to support parents in developing their capacities and skills to care for and meet the needs of their child.

66. Orders relating to the enforcement of decisions affecting the child should always promote and protect the best interests of the child and should be determined on a case-by-case basis.

67. In cases where a decision is not respected by a party, the competent authority should consider promoting voluntary compliance accompanied by appropriate service provision to support implementation of the decision.

Administrative and judicial oversight and review

68. Member States should ensure that the decision concerning the child can be subject to effective administrative or judicial oversight.

69. Mechanisms should be in place to ensure that decisions and agreements as well as consequential decisions, are subject to periodic review and, where appropriate, adaptation.

70. During the review, the competent authority should be able to order the use of mandatory services, to limit or reinstate parental responsibilities or to order enforcement measures using a gradual approach in accordance with the best interests of the child.

71. Review and adaptation should ensure that decisions in care proceedings are always in line with the best interests of the child, taking account of his or her development and evolving situation, as well as the evolving situation of his or her parent(s) or other holder(s) of parental responsibility and other family members, as relevant in the circumstances of the case.

72. The mechanism should ensure that, throughout the review and adaptation stage:

- a. the child, the parent(s) and any other parties to the proceedings are able to request a review;
- b. any risk, threat or danger to the child is identified and addressed effectively;
- c. the views of the child or, where appropriate, the child's perspective are heard and given due weight, in accordance with the age and level of maturity of the child.

73. The mechanism should ascertain that review and, where appropriate, adaptation are continued until a sustainable solution for the child has been identified, implemented and evaluated to be in accordance with the best interests of the child.

VII. Alternative care placements

Placement in the best interests of the child

74. Any decision to place a child in alternative care should be:

- a. made by a competent authority where placement has been determined to be in the best interests of the child;
- b. a measure of last resort and for a time period which is appropriate to the individual child and, in principle, limited in time;
- c. accompanied by an individual care plan; and
- d. regularly reviewed.

75. A placement should be selected which is as close as possible to the child's family and social environment, except where this is contrary to the best interests of the child.

76. Member States should ensure that a range of care services and alternative care placements are available and accessible, with the understanding that a child should grow up in a family environment. The form, type and modalities of the placement in a specific case should be chosen in accordance with the best interests of the child. The possibility of placement in kinship care should always be considered.

77. Where a competent authority decides to place siblings in care, they should, if possible, be placed together, except where this is contrary to the best interests of one of the siblings.

Individual care plan

78. A child placed in alternative care should receive special protection, assistance and support provided by the State.

79. For each child placed in alternative care, an individual care plan should be drawn up to ensure measures and services for the child and his or her family are planned and provided in accordance with the best interests of the child. The individual care plan should ensure support for the development of the child's capacities and abilities while respecting his or her autonomy, as well as support for maintaining personal relations and direct contact, on a regular basis, with family members and other persons who are significant to the child, as is consistent with the best interests of the child.

80. The individual care plan should aim to ensure stability and continuity of care and the development and implementation of a sustainable solution in the best interests of the child.

81. The individual care plan should be reviewed periodically using a multi-disciplinary approach and adapted where necessary by a competent authority in consultation with the child and, except where this would be contrary to the best interests of the child, with the child's parents or other holders of parental responsibility or other family members.

82. Where a child reaches the age of majority while in alternative care, the individual care plan should ensure that the child has effective access to support for the transition to adulthood and independent life in accordance with his or her individual needs.

Support for family reunification

83. Support for family reunification should be prioritised unless, in exceptional circumstances, it is established to be contrary to the best interests of the child. In that case, the competent authority should take a reasoned decision based on the best interests assessment.

84. The competent authority should ensure that the placement is accompanied by multidisciplinary services and support to the parents to develop their abilities to care for and meet the needs of the child and assume their responsibilities towards the child.

Support for providers of alternative care

85. Member States should ensure that alternative care providers, including foster parents and kinship carers, receive support in providing care and protection for the child, as well as special assistance, in accordance with the best interests of the child and taking account of the individual needs of the child and any vulnerabilities.

86. All forms of family-based alternative care should be appropriately supported in accordance with national law. Kinship care should be supported in the same manner as other forms of family-based alternative care.

87. Persons providing alternative care should have their decision-making responsibility for day-to-day decisions affecting the child clearly defined. They should be trained to focus on the best interests of the child at all times.

Child safeguarding in alternative care

88. Member States should ensure that service providers and care providers for the child are subject to vetting and supervision. Professional providers of services for children and families, including alternative care services, should be subject to approval and accreditation procedures, as well as regular monitoring.

89. Member States should ensure that professional providers of services for children and families, including alternative care services, have child well-being and safeguarding protocols in place.

90. Regular, independent and child-centred monitoring of the situation of the child placed in care should be ensured.

VIII. Care proceedings involving placement outside the State jurisdiction

91. The decision to place the child in alternative care outside the State jurisdiction should be made by a competent authority, following a best interests determination procedure, and in accordance with national law. When making this decision, the competent authority should exercise exceptional care and vigilance.

92. Where the best interests assessment indicates that a placement outside the State jurisdiction may be in the best interests of the child, such placement may, exceptionally, be considered in accordance with applicable law.

93. Where the child's placement outside the State jurisdiction is under consideration, the following minimum safeguards should be in place to secure the contact rights:

- a. the chosen location should, as far as possible and appropriate, facilitate the preservation of the child's family and social environment and enable the child to maintain personal relations and direct contact on a regular basis with his or her parents, siblings, other family members and with other persons who are significant to the child, except where this is not in the best interests of the child;
- b. where regular direct contact is no longer feasible or possible, the arrangements should include provision for regular remote communication and for the receipt of correspondence and gifts to mark significant dates and events in the child's life, in accordance with the best interests of the child.

94. The decision should only be made in agreement with the competent authority of the receiving State. The agreement should cover, as a minimum:

- a. the choice and qualification of the caregiver and quality of care;
- b. the time frame, type and modalities of the placement;
- c. entry and residence, where relevant;
- d. responsibilities for monitoring, periodic review and adaptation;
- e. any costs related to the care and needs of the child.

95. Subject to the provisions of relevant international agreements, sending States should ensure that appropriate mechanisms are in place to enable their competent authorities to satisfy themselves that the quality of care to be provided and the levels of expertise in the receiving State meet the required standards.

96. Any decision to place a child outside the State jurisdiction should contain a clear reasoning on how the best interests of the child have been assessed and given due consideration, and should set out why this placement serves the best interests of the child better than a placement within the sending State's jurisdiction. The decision should also explain how the views of the child have been heard and how they have been taken into account in reaching the decision.

97. In principle, services should be provided with continuity and in a language that the child understands.

98. If provided for under national law, the competent authority of the sending State should review the decision to place the child in another State at regular intervals, especially in the case of residential care. If the periodic review shows that the required standards are no longer met or that the placement is no longer in the best interests of the child, the sending State should request the receiving State to return the child. As soon as a State receives such a request, the child should be returned to the sending State without delay, in accordance with national law.

IX. Miscellaneous provisions

Data protection

99. Any proceedings involving a child should, to the extent possible, be held behind closed doors to protect the privacy of the child.

100. The personal data of the child and other persons involved in care proceedings should be collected, used, shared and stored in accordance with law.

101. Where it is in the best interests of the child, the sharing of his or her personal data between the relevant competent authorities, professionals and service providers should be ensured in practice.

102. The child and, where applicable, his or her parent(s) or other holder(s) of parental responsibility, guardian or legal representative, should be informed about the procedures for exercising the child's data protection rights, including the right to apply for rectification of incorrect or incomplete personal data in relevant records.

103. Member States should protect children involved in care proceedings from being identified or identifiable in media coverage.

Training and professional standards

104. Member States should ensure that the competent authorities and professionals involved in care proceedings, including judges, lawyers, psychologists, social workers and guardians, as well as professional caregivers, foster parents and providers of kinship care, service providers and professionals involved in alternative dispute resolution processes, receive appropriate support, practical guidance and training in order to attain the necessary level of expertise regarding the needs and the rights of the child in care proceedings, and regarding child hearing techniques and child-friendly communication.

105. Codes of good practice on care proceedings and alternative dispute resolution processes should be put in place to ensure high professional standards at all times.

Monitoring and research

106. All legislative, policy and budgetary decisions concerning family support and alternative care should be based on monitoring, scientific research findings and statistical data.

107. Member States should ensure that the development and review of services for children, parents and families concerned by care proceedings are based on periodic consultations with children, parents, caregivers and professional service providers from relevant disciplines.

International co-operation

108. Member States should strengthen their co-operation in order to secure and promote effectively the best interests of the child in care proceedings with a cross-border dimension.

109. Member States should ensure that mechanisms are in place to facilitate the co-operation of the competent authorities at all stages of care proceedings involving more than one jurisdiction. This should include transmitting and receiving information on children for the best interests assessment.

110. Member States should promote the cross-border exchange of experience, research and service models, as well as cross-border training of the competent authorities and relevant professionals.

Explanatory memorandum

Introduction

Decision making on the best interests of the child in care proceedings

1. In care proceedings, competent authorities make decisions that have a significant impact on the lives of children, parents and other family members, as individuals and as a family. Not only what is decided, but also the way in which decisions are taken, are likely to affect the day-to-day life, family and social relations, education, health, welfare, development and life chances of the children concerned.
2. In care proceedings, the competent authorities are in charge of making decisions on the best interests of the child with regard to service provision to families; granting, limiting, reinstating or terminating parental responsibilities; placing a child in care; or providing for family reunification after placement.
3. This Recommendation focuses on decision-making processes on the rights and best interests of children involved in care proceedings. It embraces a continuum of decision making and service provision before, during and after care proceedings and focuses on decisions made by competent authorities in the context of administrative and judicial proceedings, as well as decision making in the context of alternative dispute resolution processes. Irrespective of the context, decision making on the rights and best interests of the child in care proceedings should be guided by a common set of fundamental, overarching principles and safeguards for children, rooted in international and European standards.
4. The Recommendation is targeted at Council of Europe member States and, through its appendix, aims to provide practical guidance to State officials and professionals, as well as parents and other relevant actors involved in decision making and policy making affecting children in the context of care proceedings.
5. The principles and practical guidance set out in this Recommendation and its appendix aim to establish a common framework for the assessment and consideration of the best interests of the child in the context of care proceedings, while acknowledging the diversity of legal and judicial systems in member States.

6. In recognition of the important role of non-governmental organisations and other civil society actors in supporting children, parents and families before, during and after care proceedings, this Recommendation also provides a common framework for their actions in this field, and their collaboration with State actors.

**The best interests principle:
balancing the rights of the child, parental rights,
responsibilities and duties with State obligations**

7. The United Nations Convention on the Rights of the Child (UNCRC) sets out the rights of the child, obligations of State authorities and duties and responsibilities of private actors, such as parents and guardians or private service providers.

8. The child has the right to be cared for by his or her parents and not to be separated from the family, except where this would be in the best interests of the child (Articles 7 and 9 of the UNCRC). Family relations are considered as an essential element of the child's identity, alongside the child's name and nationality, which the State has to undertake to preserve (Article 8 of the UNCRC). In situations where the child does not live with one or both parents, the child has the right to maintain personal relations and direct contact on a regular basis with both parents (Article 9 of the UNCRC). These rights apply also in situations of cross-border family separation (Article 10 of the UNCRC).

9. The UNCRC sets out, as a principle, that both parents have common responsibilities for the upbringing and development of the child and the best interests of the child will be their basic concern (Article 18, paragraph 1 of the UNCRC). Where the parents are unable or unavailable to provide for their children, this responsibility is passed to a legal guardian. Parents or legal guardians are responsible for ensuring living conditions that are adequate for the child's physical, mental, spiritual, moral and social development, within their abilities and financial capacities (Article 27, paragraphs 1 and 2 of the UNCRC). Article 5 obliges States to respect parental responsibilities, rights and duties to provide appropriate direction and guidance to the child in exercising his or her rights in a manner consistent with the evolving capacities of the child.

10. Under the UNCRC, States have obligations to support parents in exercising their rights, duties and responsibilities through social and financial assistance, childcare services and facilities, and other support programmes, and should intervene where parents do not fulfil their duties and responsibilities, without interfering with private and family life in an arbitrary manner. In

exercising their responsibilities and duties, parents enjoy a certain degree of self-determination and discretion. In view of this complex interplay of roles, the UNCRC considers parental rights, duties and responsibilities as limited in time and scope, as determined by the evolving capacities and the best interests of the child, and functional in nature as they are to provide for the care, protection and well-being of the child.¹ The best interests principle plays a fundamental role in qualifying these limitations and functions.

Legal and policy framework: international and Council of Europe standards

11. The European Convention on Human Rights (the Convention, ETS No. 5) and the UNCRC, with their respective additional protocols, the European Social Charter (ETS No. 35) and its revised version (ETS No. 163), as well as the case law of the European Court of Human Rights (the Court), provide the overarching human rights framework underlying this Recommendation.

12. The Recommendation builds further on international and Council of Europe standards that are relevant for the rights and the best interests of the child in care proceedings, child-friendly justice and family law. Whereas the examples given in the preamble are not exhaustive, these standards include:

- legally binding standards;²

1. Ruggiero R., Volonakis D. and Hanson K. (2017), “The inclusion of ‘third parties’: The status of parenthood in the Convention on the Rights of the Child”, in Brems E., Desmet E. and Vandenhoe W. (eds), *Children’s Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?*, Routledge Research in Human Rights Law, Oxfordshire, pp. 71-89. See also Law J. and Martin E. A. (2014), *A Dictionary of Law* (7th ed.), Oxford University Press, Oxford.
2. Notably: United Nations Convention on the Rights of the Child and its Optional Protocols; European Convention on Human Rights and its protocols; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS. No. 126); European Convention on the Exercise of Children’s Rights (ETS No. 160); revised European Social Charter (ETS No. 163); Convention on Contact concerning Children (ETS No. 192); Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, Lanzarote Convention); Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210); Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its protocols; Framework Convention for the Protection of National Minorities (ETS No. 157); United Nations Convention on the Rights of Persons with Disabilities (2006); United Nations Convention on the Elimination of all Forms of Discrimination Against Women (1979); Hague Conference on Private International Law, Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, (HCCH 1996 Child Protection Convention).

- recommendations and guidelines of the Committee of Ministers, as well as texts adopted by the Parliamentary Assembly of the Council of Europe;³
- general comments and decisions on individual communications of the United Nations Committee on the Rights of the Child (CRC);⁴
- decisions and recommendations of other international and Council of Europe monitoring bodies and committees.⁵

3. Notably: Guidelines and recommendations of the Committee of Ministers of the Council of Europe to member States: Recommendation [No. R \(84\) 4](#) on parental responsibilities; Recommendation [No. R \(87\) 6](#) on foster families; Recommendation No. R (91) 9 on emergency measures in family matters; Recommendation No. R (98) 1 on family mediation; Recommendation [Rec\(2002\)10](#) on mediation in civil matters; Recommendation [Rec\(2005\)5](#) on the rights of children living in residential institutions; Recommendation [Rec\(2006\)19](#) on policy to support positive parenting; Recommendation [CM/Rec\(2009\)10](#) on integrated national strategies for the protection of children from violence; *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, Council of Europe Publishing (2010); Recommendation [CM/Rec\(2011\)12](#) on children's rights and social services friendly to children and families; Guidelines on child-friendly health care (2011); Recommendation [CM/Rec\(2012\)2](#) on the participation of children and young people under the age of 18; Recommendation [CM/Rec\(2015\)4](#) on preventing and resolving disputes on child relocation; Recommendation [CM/Rec\(2018\)5](#) concerning children with imprisoned parents; Recommendation [CM/Rec\(2023\)8](#) on strengthening reporting systems on violence against children. Resolutions of the Parliamentary Assembly of the Council of Europe: Resolution 2232 (2018) "Striking a balance between the best interest of the child and the need to keep families together"; Resolution 2049 (2015) "Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States"; Resolution 1762 (2010) "Children without parental care: urgent need for action"; Resolution 1714 (2010) "Children who witness domestic violence"; Recommendation 1071 (1988) "Child welfare – Providing institutional care for infants and children".
4. Notably: CRC, General Comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24; General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20; General Comment No. 19, Public budgeting for the realization of children's rights (Article 4), CRC/C/GC/19; General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, paragraph 1), CRC/C/GC/14, 29 May 2013; General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Article 31), CRC/C/GC/17; General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, CRC/C/GC/13; General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12; General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Articles 19; 28, paragraph 2; and 37, *inter alia*), CRC/C/GC/8; General Comment No. 9 (2006) on the rights of children with disabilities, CRC/C/GC/9/Corr.1, 13 November 2007; General Comment No. 7 (2005) on implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006; General Comment No. 5 (2003), General Measures of Implementation for the Convention on the Rights of the Child, (Articles 4, 42 and 44, paragraph 6), CRC/GC/2003/5.
5. Notably: United Nations, *Guidelines for the Alternative Care of Children*, Resolution adopted by the General Assembly, [A_RES_64_142-EN](#), 24 February 2010; Hague Conference on Private International Law (2012), *Mediation, Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, 2012, Council of Europe; [Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse](#), 21 October 2019.

13. The principles and practical guidance provided by this Recommendation aim to support member States in ensuring these standards are fully and effectively implemented in practice in accordance with Council of Europe strategic objectives in this field. The Council of Europe Strategy for the Rights of the Child (2022-2027) “Children’s rights in action: from continuous implementation to joint innovation”, as part of a series of strategies adopted in the framework of the programme “Building a Europe for and with children”, aims at advancing the protection and promotion of the rights of the child and putting the child at the centre of the Council of Europe’s work.⁶ A child-friendly version of the strategy is available on the Council of Europe website.⁷ The Recommendation cuts across several of the strategy’s objectives, particularly “child-friendly justice for all children”, “giving a voice to every child”, “freedom from violence for all children” and “equal opportunities and social inclusion for all children”.

14. This Recommendation is a non-binding legal instrument. The frequent use in this instrument of the modal verb (“should”) must not be understood as reducing the legal effect of relevant principles taken from binding Council of Europe or other international legal instruments. When implementing this Recommendation, member States are free to apply higher standards or more favourable measures to secure and promote the rights and best interests of the child in care proceedings.

Recommendations

15. In all administrative and judicial proceedings concerning the child in the context of care proceedings, as well as relevant alternative dispute resolution processes, member States should ensure that the best interests of the child are a primary consideration or, where required by law, the paramount consideration. This Recommendation has implications for matters of substantive and procedural law and practice.

16. The CRC explains the best interests of the child principle as a substantive right; a fundamental, legal interpretive principle; and a rule of procedure. As a substantive right, Article 3, paragraph 1, of the UNCRC is considered self-executing and directly applicable and can be invoked before a court: each

6. Council of Europe, “[The new Strategy for the Rights of the Child \(2022-2027\) adopted by the Committee of Ministers](#)”, Newsroom on Children’s Rights, 24 February 2022. Council of Europe, [Strategy for the Rights of the Child \(2022-2027\): “Children’s Rights in Action: From continuous implementation to joint innovation”](#), CM(2021)168-final.

7. Council of Europe (n.d.), “[Guide for children and young people to the Council of Europe Strategy for the Rights of the Child \(2022-2027\)](#)”, Building a Europe for and with children”.

child has the right to have his or her best interests assessed and taken as a primary consideration. As a fundamental, interpretive legal principle, the best interests principle offers guidance for the application of laws: when there is room for interpretation and discretion in applying a specific law, the interpretation which most effectively serves the best interests of the child should be applied. As a rule of procedure, the principle implies that in all procedures concerning children, in particular those aimed at assessing and determining the best interests of a child, an evaluation of the possible positive and negative effects on the child should be made. This applies to individuals or groups of children or to matters concerning children in general. Procedural safeguards should be in place to ensure that decision making on the best interests of the child is transparent and lawful.⁸

17. The case law of the Court affirms the interpretation of the best interests of the child as a substantive right. The principle places an obligation on State authorities to ensure that the child is protected against harm to his or her health and development, and is able to maintain family relations, except in cases where the family has proved particularly unfit. State authorities are expected to do everything to preserve family relations and, if and as appropriate, to rebuild and reunite the family. Family ties can only be severed in very exceptional circumstances and in accordance with Article 8, paragraph 2, of the Convention.⁹ The Court's case law refers to General Comment No. 14 of the CRC and affirms thereby the authoritative value of the guidance it provides to State authorities. It underlines that States should put in place formal processes for the assessment and determination of the best interests of the child, which are protected by procedural safeguards. These processes should be transparent and objective and guide decisions made by legislators, judges and administrative authorities, which directly affect the child or children.¹⁰

18. The CRC underlines that the use of "shall" in Article 3, paragraph 1, of the UNCRC places a "strong legal obligation on States and means that States may not exercise discretion as to whether children's best interests are to be assessed and ascribed the proper weight as a primary consideration".¹¹

8. CRC, General Comment No. 14 (2003), op. cit., paragraph 6.

9. European Court of Human Rights, *Gnahoré v. France*, Application No. 40031/98, 19 September 2000, paragraph 59; *Strand Lobben and Others v. Norway* [GC], Application No. 37283/13, 10 September 2019, paragraph 207.

10. Court, *Strand Lobben and Others v. Norway*, op.cit; *Haddad v. Spain*, Application No. 16572/17, 18 June 2009, paragraph 72.

11. CRC, General Comment No. 14 (2003), op. cit., paragraph 36.

19. As “a primary consideration”, the best interests of the child need to be highlighted. The CRC justifies this strong position “by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked.”¹² The CRC explains that any conflicts – or potential conflicts – between the rights and best interests of a child and the rights of other persons should be resolved on a case-by-case basis: “If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child’s interests have high priority and [are] not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.”

20. The Court underlines that, in decisions concerning children, the best interests of the child are of paramount importance and must be a primary consideration.¹³ It has emphasised further that “in cases involving the care of children and contact restrictions, the child’s interests must come before all other considerations”.¹⁴

21. As provided for in relation to adoption (Article 21 of the UNCRC) and international standards preceding the UNCRC,¹⁵ the best interests of the child shall be “the paramount consideration”.

22. The United Nations Convention on the Rights of Persons with Disabilities (2006) reiterates the wording of Article 3, paragraph 1, of the UNCRC and provides that “in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration” (Article 7, paragraph 2).

12. CRC, General Comment No. 14 (2013), op. cit., paragraphs 36-40.

13. Court, *Chbihi Loudoudi and Others v. Belgium*, Application No. 52265/10, 16 December 2014, paragraph 131; *Strand Lobben and Others v. Norway*, op. cit., paragraph 204.

14. Court, *Jansen v. Norway*, Application No. 2822/16, 6 September 2018, paragraph 91; *Jovanovic v. Sweden*, Application No. 10592/12, 22 October 2015, paragraph 77; *Gnahoré v. France* op. cit., paragraph 59.

15. United Nations Declaration of the Rights of the Child, 1959, Principle 2; United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, Articles 5.b, 16.d and f. See: Council of Europe Commissioner for Human Rights, “The principle of the best interests of the child – what it means and what it demands from adults”, lecture by Thomas Hammarberg, Warsaw, 30 May 2008, [CommDH/Speech\(2008\)10](#), p. 3.

23. Governments of member States should ensure that the rights of the child are respected and safeguarded throughout the care proceedings. The Recommendation addresses a set of rights that typically require specific attention in substantive and procedural matters relevant to proceedings within its scope: the right of the child to be heard; the right to information; the right to have the child's best interests assessed and made a primary consideration or, where provided for by law, the paramount consideration; the right to care, appropriate direction and guidance in accordance with the evolving capacities of the child; the right to be protected from all forms of violence, exploitation and neglect; the right to maintain family relations, as well as direct and regular personal contact; the right to respect for private and family life; the right to an adequate standard of living and the right to development (see "The best interests principle: balancing the rights of the child, parental rights, responsibilities and duties, and State obligations"). In addition, the Recommendation focuses on the procedural rights of children involved in care proceedings.

24. Governments of member States should ensure that decisions concerning children are made, implemented or enforced in accordance with the best interests of the child and in an effective and timely manner.

25. The term "implementation" refers to the measures taken by State authorities, service providers or private actors to ensure administrative and judicial decisions are executed.

26. The term "enforcement" means putting into effect judicial decisions, and also other judicial or non-judicial enforceable decisions in compliance with the law, which compels the respondent to do, to refrain from doing or to pay, what has been adjudged, as set out in Committee of Ministers Recommendation [Rec\(2003\)17](#) on enforcement.¹⁶ Recommendation [Rec\(2003\)17](#) notes that the enforcement of a court judgment is an integral part of the fundamental human right to a fair trial within a reasonable time, in accordance with Article 6 of the Convention.

27. The Recommendation recognises that member States have taken steps to secure and promote the rights and best interests of the child in the context of care proceedings and recognises the diversity of national legal and judicial systems, as well as systems for social welfare, child protection and family support. Acknowledging national progress achieved thus far, member States are

16. Committee of Ministers, Recommendation [Rec\(2003\)17](#), Principle I.a. and Recommendation [Rec\(2003\)16](#) on the execution of administrative and judicial decisions in the field of administrative law.

recommended to take or reinforce all necessary measures to ensure the full and effective implementation of the principles set out in the appendix to the Recommendation. This may include, but is not limited to, legislative, policy and administrative measures, specific consideration of the rights and best interests of the child in the context of judicial reforms, a review of services for children and parents with a view to strengthening support in the context of care proceedings, training and budgetary appropriations.

28. Member States should ensure the translation of the text of the Recommendation, including the guidelines in its appendix, and disseminate them as widely as possible among all relevant actors. Translation and dissemination are fundamental for making the text widely available and accessible to all relevant State and non-state actors, as well as to parents, children and the general public, to ensure it is known and used in service provision, proceedings, training, communication and monitoring.

29. Relevant actors include, but are not limited to, State authorities at the national, regional and local levels; the judiciary, including judges, judicial and court staff and, where applicable, prosecutors; institutions, organisations and professionals in the field of social and family services, child protection services and childcare; lawyers, mediators and other professionals providing alternative dispute resolution services; representatives and guardians of children; child psychologists; healthcare professionals; relevant professional associations, civil society and non-governmental organisations; and, where applicable, central authorities, notary and consular staff.

30. Member States should also ensure that the principles set out in the Recommendation are made available to children, including children concerned by proceedings within the scope of the Recommendation and the child population more widely, in child-friendly language, through a range of child-friendly information materials and communication channels.

Drafting process

31. The Recommendation was drafted by the Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE), under the supervision of the Steering Committee for the Rights of the Child (CDENF) and the European Committee on Legal Co-operation (CDCJ).¹⁷

17. Council of Europe, [Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care Proceedings \(CJ/ENF-ISE\)](#).

32. In parallel to this Recommendation, the CJ/ENF-ISE also drafted Recommendation [CM/Rec\(2025\)4](#) on the protection of the rights and best interests of the child in parental separation proceedings, which shares the overarching principles and other relevant elements of this Recommendation.

33. The drafting process was informed by several steps:

- the completion by member States of a questionnaire to gather information on the rights and best interests of the child in the context of care proceedings in member States (2020-2021);
- the development of a feasibility study on a legal instrument on the protection of the best interests of the child in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care (2021);¹⁸
- consultations of children in three member States (2022);
- an international conference followed by a hearing of stakeholders (representatives of international non-governmental organisations, professional associations and international networks of lawyers, family mediators and other professionals) organised under the Presidency of Ireland of the Committee of Ministers of the Council of Europe (2022);¹⁹
- a written stakeholder consultation (2024).

Consultations of children

34. During 2022, the Council of Europe collaborated with the Hintalovon Children’s Rights Foundation (Hungary), the National Ombudsperson for Children and Adolescents (Italy) and the National Commission for the Promotion of the Rights and the Protection of Children and Young People (Portugal) to consult children on the rights and the best interests of the child in parental separation and care proceedings. Some 59 children and young adults aged between the ages of 7 and 19 participated in the consultations. In Portugal, the consultation focused on care proceedings and involved 42 children and young people. The objective was to ensure that children’s views and experiences informed the drafting of the Recommendation and its appendix.

18. Wenke D. (2021), “[Legal instrument on the protection of the best interests of the child in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care](#)”, feasibility study, Council of Europe.

19. Bekkhus B. T. (2022), “[Rights and the best interests of the child in parental separation and in care proceedings – Hearing of relevant stakeholders](#)”, Council of Europe.

35. The consultations revealed that the participating children had never or rarely had opportunities to speak about the issues they were consulted on, even though they had experience with care proceedings themselves and perceived these situations as complex, often highly emotional and sensitive.²⁰

36. The participating children emphasised that adults, both parents and professionals, should listen to and consult children on matters concerning them, with care and respect, without judging or assuming that they, as adults, know what is best for the children.

37. They expected adults to be reassuring and help children stay calm and cope with their daily lives, but also with difficult and stressful situations, without hiding the truth or making them believe that everything is fine when it is not. They need time to express their concerns and questions, and that those are important. They would like adults to explain their decisions in a language they can understand, and which enables them to have an overview in the short and long term.

38. Ensuring well-being, stability and continuity in a child's life and relations was important to them. At the same time, when changes are unavoidable, the children would appreciate having time to understand, prepare and adapt to the changes.

39. The children underlined the importance of a systematic individual assessment, transparency in decision making, access to information and open dialogue. The individual assessment should not only focus on the child as an individual but should also consider the child's relations with different family members. Where parents are not able to care for their child, relations with other family members, including siblings and half-siblings, are nonetheless important and children care about the possibility of maintaining direct contact and personal relations, also when they are in an alternative care placement.

40. During placement in alternative care, the children underlined that it was important to recommended making the placement feel like a home, where children feel respected, protected and cared for as individuals; where they have a say on the rules and every-day matters, such as food and the timing of meals, the opportunity to study, access to technology, particularly the internet, and good standards of hygiene. The children thought it was important

20. This section is based on: Council of Europe, "[Summary report on child consultations](#)", report prepared by Hintalovon Children's Rights Foundation, CJ/ENF-ISE(2022)10, Council of Europe, 22 September 2022.

to learn how to handle money from an early age and to enjoy some degree of autonomy in deciding how they use their mobile phones, spend their leisure time and go out. Residential institutions for children should not be too large and should allow the child to maintain his or her privacy. The children noted that hobbies, music, sports and other leisure time activities were important and that they should be able to develop and maintain social relations with friends, peers and family members during placement. They should have the opportunity to talk to and meet with family members in different settings, such as by phone or video-calls, and in personal visits, in accordance with what is considered safe and good for them.

41. The children recognised that adults make mistakes, just as children do, and recommended that, whenever a mistake is made, a person should be transparent and rectify the mistake as far as possible.

42. The children felt that it could be difficult to concentrate in a formal setting or when meeting with service providers or judges. If information is provided at the time of the hearing, a child may not be able to understand all of it at that time and in that environment. The children recommended that there should be time to reflect on information they receive and to look it up again in written or digital materials. They would appreciate having easy access to detailed child-friendly information, “tips” and ideas for coping with situations of care proceedings.

43. The children recommended further that children should be able to prepare for their involvement in legal proceedings to allow the child to understand what will happen, his or her own role and the level of influence he or she has on decisions, the alternatives and options available for the child and how the child’s views will be used, shared and taken into consideration. They would appreciate being informed about decisions in a timely and transparent manner.

44. The children underlined that they would benefit from having someone to turn to, whom they can trust and who supports them throughout the proceedings and as long as they need support. They noted that a hearing should not feel like a school exam and that children do not like being judged, or feeling as if they are judged, when participating in proceedings.

45. The children commented on the training and skills of officials and professionals involved in proceedings. It was important to them that officials and professionals understand the rights and best interests of the child and promote them in their work, are skilled in child-sensitive communication and are aware of children’s emotional needs. Children would prefer to encounter

professionals whom they feel they can trust, who are calm and patient and respectful, who listen genuinely and engage children in a dialogue. They recommended that, at the same time, professionals working with children should be fair, consistent and firm, explaining rules and decisions and making sure everyone abides by them.

46. It was important for the children that the responsibility for decisions rests on adults, either the parents or a judge or other relevant professionals. They recognised that children's views could change over time and that, if they have views, their views should be carefully considered and given appropriate weight in the decision-making process.

Commentary

Appendix to Recommendation [CM/Rec\(2025\)5](#)

I. Scope and definitions

Scope

47. This Recommendation applies to all proceedings concerning the care of a child where the monitoring of the care of the child at home or the placement of the child in alternative care is under consideration. The term “monitoring” refers to measures taken by a competent authority, including through delegated service providers, to secure the care of the child before or during care proceedings and may involve a partial limitation of parental responsibilities by the competent authority in accordance with applicable law and procedures and the best interests of the child. The provision of services to help and support children, parents and families before, during and after care proceedings, as well as alternative dispute resolution processes, is included within the scope of this Recommendation.

48. The Recommendation aims to secure the rights and best interests of the child with continuity before, during and after care proceedings. It provides recommendations, principles and practical guidance on:

- a.* decision making concerning children in care proceedings, including specific safeguards for proceedings involving the placement of a child in alternative care outside the State jurisdiction;

- b. measures to support parents in providing care and direction to children in accordance with their parental rights and responsibilities before, during and after care proceedings;
- c. measures ensuring the implementation and, where necessary, enforcement of decisions; and
- d. miscellaneous and ancillary matters.

Definitions

49. International and Council of Europe standards do not define “alternative care” but clarify the forms it can take and the different environments in which it can be provided. As explained in the United Nations Guidelines for the Alternative Care of Children,²¹ alternative care may be provided as:

- a. kinship care, which refers to “family-based care within the child’s extended family or with close friends of the family known to the child, whether formal or informal in nature”;
 - b. foster care, which refers to “situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children’s own family”;²²
 - c. other forms of family-based care placements;
 - d. family-like placements;
 - e. residential care, which refers to “care provided in a non-family-based group setting, such as places of safety for emergency care, transit centres in emergency situations, and all other short- and long-term residential care facilities, including group homes”;
 - f. supervised independent living arrangements for children.
- Foster or kinship care may include *kafala* of Islamic law, which describes an alternative family care situation without severing family ties.²³

21. United Nations, Guidelines for the Alternative Care of Children, op. cit., paragraph 29.c.

22. The definition of foster care provided by the UN Guidelines complements the previous definition of “fostering” set out in Committee of Ministers Recommendation No. R (87) 6 on foster families, which provides that “fostering occurs when a child is entrusted, otherwise than with a view to adoption, to a couple or an individual (‘foster parents’) who takes care of the child for more than a short time or for an undetermined time and who does not have legal custody of the child and who is not a parent”.

23. Better Care Network (2024), *Adoption and kafala*. Foreign *kafala* can be recognised and/or given the force of law in Contracting States through the HCCH 1996 Child Protection Convention (see Articles 3.e, 16, paragraph 2, and 33).

- This Recommendation applies to alternative care provided in a formal care arrangement upon a decision of a competent authority. Placements in juvenile justice institutions, institutions that provide healthcare for children, institutions for unaccompanied or separated migrant or asylum-seeking children or care by adoptive parents from the moment the adoption is official through an adoption order are not within the scope of this Recommendation.
- “Proceedings” refers to all administrative and judicial proceedings before a competent authority that are within the scope of the Recommendation.
- “Competent authority” refers to State authorities, such as courts of law and other judicial or administrative bodies, social services or child protection services which are competent to make a decision or take action concerning a child involved in care proceedings. In this context, “decision” refers not only to decisions on the merits, but also other decisions made in the case, such as consequential decisions regarding specific measures to be taken, as well as decisions on the review of a specific situation or, if applicable, giving legal effect to an agreement reached in the context of alternative dispute resolution processes. More than one authority may be competent during different stages of care proceedings, depending on the decisions or actions required in the case.
- “Alternative dispute resolution” refers to processes whereby the participants try to seek an agreement to secure the best interests of the child with the assistance of one or more professionals who are specifically trained to carry out such processes in the context of care proceedings. Alternative dispute resolution processes are typically complementary to legal proceedings and may be initiated before, during, after or instead of care proceedings, as provided for by national law. In care proceedings, a competent authority is involved in the process and the participants vary in accordance with the circumstances of the case and the best interests of the child. Participants may include one or both parents or other holders of parental responsibility, the child and other family members. Such alternative dispute resolution processes may include, *inter alia*, mediation, collaborative negotiations, contact facilitation, therapeutic family justice and similar instruments.
- “Best interests determination procedure” refers to an established procedure for assessing and making decisions on the best interests of the child and includes mechanisms for evaluating the impact of the

decision on the rights and best interests of the child and for reviewing and adapting decisions over time.

- “Child” is defined as any person who has not yet reached the age of 18, in accordance with Article 1 of the UNCRC.
- This Recommendation applies to children under the age of 18, as every child, without discrimination, has the right that his or her best interests are given due consideration in decisions and actions concerning him or her.
- The Recommendation refers to “parents” as the persons who are considered to be a child’s parents under national law. A parent is typically also a holder of parental responsibility. However, the parental responsibility of a parent may have been limited by a competent authority’s decision. Furthermore, a parent may be required to undertake certain steps to be recognised as a holder of parental responsibility, in particular if the parents are not married to each other or if another person has acquired parental responsibility in lieu of a parent. For the purpose of this Recommendation, reference to “parents” covers all of the above.
- “Parental responsibility” is understood as the set of rights and duties connected with the upbringing of, care, decision making and support for a child, as defined in the applicable national law. In many member States, the set of duties and rights connected with the upbringing, care and decision making – but without maintenance of the child – have been given a narrower meaning, but, at the same time, duties and rights differs in name and content depending on the member State (see definition of contact).
- “Other holder(s) of parental responsibility” are persons, institutions or other bodies to whom a competent authority, by means of an administrative or judicial decision, has assigned parental responsibility in addition to or instead of the child’s parent(s), in accordance with national law.
- Definitions of “contact” in member States’ national law differ in wording and scope: as some jurisdictions refer to “access” or “custody” rather than “contact”, there is currently no unified terminology regarding contact. The Recommendation defines “contact” in accordance with the European Convention on Contact concerning Children (ETS No. 192) of 2003 (Article 2, paragraph *a*) as:
 - a.* the child staying for a limited period of time with or meeting a parent or other person with whom the child has close relations, such as siblings, grandparents or other members of the extended family or

other persons significant to the child, and with whom he or she is not usually living;

- b. any form of communication between the child and such a person;
 - c. the provision of information to such a person about the child or to the child about such a person.
- Under the national law of member States, the right to contact may or may not comprise a right to information. Some member States provide for the availability of a right to contact, which does not comprise a right to information about the child; this may apply to persons who are significant to the child.
 - The term “guardian” is defined as a person who is appointed or designated in accordance with national law to support, assist and, where provided by law, represent the child in processes concerning the child and who acts independently to ensure that the child’s rights, best interests and well-being are guaranteed. This operational definition, which follows Committee of Ministers Recommendation [CM/Rec\(2019\)11](#)²⁴ on effective guardianship for unaccompanied and separated children in the context of migration, takes into account that the terms used, as well as the functions and manner of appointment of a guardian, vary from jurisdiction to jurisdiction. In some situations, the guardian may hold all or part of parental responsibilities.
 - The term “siblings” refers to brothers and sisters, as well as any half-siblings and stepsiblings. Siblings may refer also to persons who have been living in the same household and whom the child considers siblings.
 - The expression “family reunification” refers to situations where, after placement in alternative care, the child is returned to the parent(s) or person(s) recognised as “other holder(s) of parental responsibility” under the applicable law. Family reunification is considered achieved when the competent authority decides on full reinstatement of parental responsibilities. It can be undertaken gradually, for instance by physically returning the child to the family home, with social service support, even before parental responsibilities are fully reinstated. Legal reunification requires a decision by a competent authority, which marks the end of the State’s legal responsibility for the child’s care arrangements and through which the parental responsibilities of the parent(s) or another previous holder of parental responsibility are fully reinstated. Cases where

24. Committee of Ministers, Recommendation [CM/Rec\(2019\)11](#), II.1.d.

a person applies for family reunification in a situation of migration do not fall within the scope of the Recommendation.

II. Overarching principles

50. The overarching principles reiterate human rights standards as set out under international and Council of Europe law and policy. They provide an overarching framework to guide the implementation and interpretation of the Recommendation and the principles contained in its appendix, in substantive and procedural matters.

Right to respect for private and family life

51. Member States should guarantee the respect for private and family life of children and parents as well as other family members concerned by proceedings and measures within the scope of this Recommendation.

52. The Court underlines that “[r]egard for family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8 (*Strand Lobben and Others v. Norway* [GC], § 205)”²⁵ Once the existence of a family tie with a child is established, “the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be established that render possible as from the moment of birth, or as soon as practicable thereafter, the child’s integration in his family (*Kroon and Others v. the Netherlands*, paragraph 32)”²⁶

53. Measures hindering the enjoyment of family life amount to an interference and constitute a violation of Article 8 of the Convention unless they are “in accordance with the law”, pursue an aim or aims that is or are legitimate under the second paragraph of this Article and can be regarded as “necessary in a democratic society”.²⁷ Any decision to limit parental responsibility within the scope of this Recommendation may therefore only be justified where necessary to protect the child from significant harm, the parents being either unwilling or unable to provide adequate care for or protection of the child, even with appropriate support. In accordance with this principle of proportionality, care proceedings are considered justified by the fact that, even with appropriate

25. Court, “Guide on Article 8 of the European Convention on Human Rights, Right to respect for private and family life, home and correspondence”, updated on 28 February 2025, paragraph 334.

26. *Ibid.*, paragraph 339.

27. See, among others, Court, *Strand Lobben and Others v. Norway*, *op. cit.*, paragraph 202 and *K. and T. v. Finland* [GC], Application No. 25702/94, 12 July 2001, paragraph 151.

support to the family, the child's education and physical, emotional, intellectual and social development are seriously compromised while in the care of the parents.

54. The right to respect for private and family life is also an element of child-friendly justice which applies before, during and after administrative and judicial proceedings or alternative dispute resolution processes (see data protection in Chapter IX). Effective respect for this right is essential for protecting the child's dignity.²⁸

Best interests of the child

55. In accordance with Article 3, paragraph 1, of the UNCRC, all administrative and judicial proceedings and alternative dispute resolution processes within the scope of the Recommendation should secure the right of the child to have his or her best interests assessed and given due consideration. "Due consideration" refers to primary or paramount consideration, in accordance with national law (see paragraph 16). The best interests of the child apply in substantive and procedural law, in accordance with the overarching principles set out in international and Council of Europe standards and the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*.

Right to be heard

56. In accordance with Article 12 of the UNCRC and the Council of Europe Guidelines on child-friendly justice, children have the right to be heard in all matters affecting them and their views should be given due weight, in accordance with the age and maturity of the child. The right to be heard applies to the private and family context, the child's contact with service providers, as well as in the context of administrative and judicial proceedings and alternative dispute resolution processes (see Chapter III on the assessment of the child's best interests and Chapter IV on the right to be heard).

28. UNCRC, Article 16; Convention, Article 6; Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108); Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223, Convention 108 +); *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010) pp. 22 and 82; CRC, General Comment No. 24 (2019), op. cit., paragraphs 66-71.

Rule of law

57. The Council of Europe Guidelines on child-friendly justice set out the overarching principles of access to justice and rule of law specifically for children: “Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child’s best interests. This applies to all judicial and non-judicial and administrative proceedings.”²⁹

58. The Council of Europe Guidelines on child-friendly justice guide member States in ensuring legal proceedings involving children respect and secure the rights of children while being sensitive to the needs and any vulnerabilities of the individual child. They provide guidance on appropriate measures to secure and respect the rights of the child in legal proceedings, without minimising or denying due process standards under the pretext of the child’s best interests. By way of example, the protection of a child from being exposed to administrative or judicial proceedings should not be a pretext for denying the child his or her right to participate in the proceedings. Whenever the best interests of a child would appear to contradict adult-centred due process standards, member States should ensure a child-sensitive adaptation of these standards.

Dignity

59. Respect for the inviolability of the child’s inherent dignity is a fundamental human right and a principle of child-friendly justice.³⁰ It applies in all phases before, during and after legal proceedings and alternative dispute resolution processes. Competent authorities and professionals involved in proceedings and alternative dispute resolution processes within the scope of this Recommendation should always treat children with care, sensitivity and respect.

Timeliness

60. Proceedings in which children are involved should be prioritised and considered as urgent, and be completed in the shortest time possible, while

29. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010), op. cit., III.E.2.

30. *Ibid.*, III.C.

respecting the rule of law.³¹ Where the judicial systems of member States provide for specialised family courts trying exclusively civil law proceedings involving children, the principle of prioritisation may be considered implicit within the specialised jurisdiction. The principles of timeliness and exceptional diligence apply irrespective of any specialisation of jurisdiction.

61. Timeliness and exceptional diligence are overarching principles in each phase of proceedings involving children and in all stages of a best interests determination procedure: case assessment, decision making, including any interim and emergency decisions, as well as review and any adaptation in the implementation stage. “Exceptional diligence” refers in this context to the efforts of the competent authority to ensure the swift processing of the specific case.

62. The Court recognises that in care proceedings “there is always the danger that any procedural delay will result in the *de facto* determination of the issue submitted to the court before it has held its hearing. Equally, effective respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere effluxion of time.”³²

63. Timeliness is relevant for children of all ages and may require specific considerations for very young and young children, as well as for adolescents. Decision makers should consider how a decision could benefit the child in the specific situation of the moment and in the medium and longer term and consider the child’s perception of time.

Non-discrimination

64. The rights of the child should be secured without discrimination on any grounds such as sex, “race”,³³ colour, language, religion, political or other opinion, ethnic/national or social origin, association with a national minority, property, birth, gender, sexual orientation, gender identity and expression, sex

31. Ibid., IV.D.4.

32. Court, *Strand Lobben and Others v. Norway*, op. cit., paragraph 212, with reference to *W. v. the United Kingdom*, Application No. 9749/82, 8 July 1987, paragraph 65.

33. Regarding the use of terminology, compare, *mutatis mutandis*, the explanation provided in Committee of Ministers Recommendation [CM/Rec\(2024\)4](#) on combating hate crime: “Since all human beings belong to the same species, the Committee of Ministers rejects, as does ECRI, theories based on the existence of different ‘races’. However, in this document, the term ‘race’ is used in order to ensure that those persons who are generally and erroneously perceived as ‘belonging to another race’ are not excluded from the protection provided [by this Recommendation]”.

characteristics, age, state of health, disability or other status of the child, the child's parents or other holders of parental responsibilities, or other relevant family members, or any combination of these grounds.³⁴

65. Article 2, paragraph 2, of the UNCRC obliges States parties to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members.

66. In addition to effective legal protection against discrimination, proactive and preventive measures may be necessary to support children and parents in vulnerable situations.³⁵

Right to development

67. States should ensure to the maximum extent possible the survival and development of the child (Article 6 of the UNCRC). The CRC defines "development" as a "holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development"³⁶ (see Chapter III on the assessment of the child's best interests, developmental needs).

III. Assessment of the child's best interests

68. The best interests of the child should be assessed and determined individually in each case. Principles concerning the best interests assessment are common to all decision-making processes and all actions taken within the scope of this Recommendation, irrespective of whether the assessment is undertaken by a competent authority, such as a court of law, administrative body or service provider, or private actors.

69. The overall objective of the assessment is to obtain a thorough, accurate and comprehensive understanding of the child's situation as the basis for decision making to ensure the full and effective enjoyment of all the rights of

34. Appendix to Rec [CM/Rec\(2024\)4](#); Article 2.b, UNCRC Article 2, paragraph 1; Convention, Article 14 and Protocol No. 12; Court, "Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention, Prohibition of discrimination" (updated 28 February 2025).

35. Newell P. and Hodgkin R. (2002), *Implementation Handbook for the Convention on the Rights of the Child*, fully revised edition, UNICEF, Geneva, p. 19.

36. CRC, General Comment No. 14 (2013), op. cit., paragraph 4.

the individual child, as set out by the Court and the UNCRC, and the holistic development of the child, in view of guidance provided by the CRC³⁷ (see “Recommendations”, below).

70. The assessment should establish all relevant factors to enable decision makers to assess the impact of a decision on the child in the immediate, medium and longer term and, subsequently, in the review stage, to evaluate the actual impact of the decision on the child.

71. Whereas the rights of the child are universal, a child’s needs comprise the universal needs of all children in addition to individual and specific needs. Children may require different levels of support, including special individualised support, to be able to enjoy their rights on equal terms.

72. The best interests assessment aims to identify the child’s needs as a basis for the provision of services and measures necessary to secure the rights of the individual child without discrimination. In order to respond to the child’s needs and secure his or her rights, the best interests assessment is always an individual assessment.

73. In the context of administrative and judicial proceedings, the best interests assessment has not only a substantive but also a procedural dimension. The Court has stated that, as a general rule, national courts are responsible for assessing the evidence before them, including the means to ascertain the relevant reasons. Recognising the primordial interest of the child in the decision-making process, the Court however also noted that national authorities have to undertake a thorough examination of the family situation and perform a genuine balancing exercise between the interests of the child and the family. To enable this balancing exercise, the case assessment has to take into account a range of factors, including factual, emotional, psychological, material and medical factors. The Court underlined the importance of assessing a case with diligence taking into account the dynamics of the situation and new evidence that may become available during the proceedings³⁸ (see timeliness in Chapter II and administrative and judicial oversight and review in Chapter VI). The assessment of the facts and evidence in the specific case constitutes the basis on which the national court makes a decision, giving sufficient reason for its decision.³⁹

37. Ibid., paragraph 4; CRC, General Comment No. 13 (2011), op. cit., paragraph 61.

38. Court, *Haddad v. Spain*, op. cit., paragraphs 61 and 63; *Strand Lobben and Others v. Norway*, op. cit., paragraphs 213, 220 and 224.

39. Court, *B.B. and F.B. v. Germany*, Application Nos. 18734/09 and 9424/11, 14 March 2013.

74. Several member States have set out in national law a list of factors that competent authorities must consider when making decisions on the best interests of the child.⁴⁰ Research has shown that legally binding criteria for the best interests assessment raise awareness of decision makers about the complexity of the assessment and link the assessment with specific rights of the child, while reducing the level of discretion in decision making on the best interests of the child.⁴¹ In its General Comment No. 14, the CRC also sets out a list of factors to guide the best interests assessment, emphasising that they are to be considered non-exhaustive and non-hierarchical.⁴²

75. The Recommendation lists relevant factors that should be considered in the best interests assessment and which reflect the rights of the child as afforded by the UNCRC.⁴³ The list of factors is not considered exhaustive; it is not static and does not impose any hierarchy or ranking of factors in terms of importance. The relevance of factors may vary in accordance with the circumstances of the case.

76. Several of the factors reflect the understanding that obligations of the State and the responsibilities and duties of parents and other third parties under the UNCRC are closely connected.⁴⁴

77. The best interests assessment should always take account of the child's age, level of maturity and evolving capacities, recognising that physical, emotional, cognitive and social needs evolve as the child grows up. Consideration of the child's age and an assessment of the child's level of maturity and evolving capacities are of cross-cutting importance; consideration of these factors will influence the assessment of other relevant factors and allow for the appropriate

40. See for instance: Austria, General Civil Code, paragraph 138; Finland, Child Welfare Act (417/2007), Chapter 1, Section 4.2; Ireland, Child and Family Relationships Act 2015 and Child Care (Amendment Act) 2022; Romania, Law No. 272/2004 regarding the protection and promotion of the rights of the child; Spain, Law on the Legal Protection of Minors of 1996, Article 2.

41. Skivenes M. and Sørsdal L. M. (2018), "[The Child's Best Interest Principle across Child Protection Jurisdictions](#)" in Falch-Eriksen A. and Backe-Hansen E. (eds), *Human Rights in Child Protection*, Palgrave Macmillan, Cham, pp. 59-88.

42. CRC, General Comment No. 14 (2013) op. cit., Chapter IV.B, V.A.1 and paragraph 44. See further: Sormunen M. (ed.) (2016), *The best interests of the child - A dialogue between theory and practice*, Council of Europe Publishing, p. 149.

43. In General Comment No. 14, the CRC also sets out a list of factors to guide the best interests assessment, emphasising that they are to be considered non-exhaustive and non-hierarchical.

44. Newell P. and Hodgkin R. (2007), *Implementation Handbook for the United Nations Convention on the Rights of the Child*, [Revised third edition](#), UNICEF, Geneva, pp. 40-41.

participation of the child in the determination of his or her best interests and in the relevant proceedings or processes (see Chapter IV on the right to be heard).

78. Every child who is capable of forming his or her own views has the right to express those views freely and to have his or her views heard and given due weight, in accordance with Article 12 of the UNCRC and the Council of Europe Guidelines on child-friendly justice. This factor reflects the concept of children's evolving capacities and agency without imposing on children an obligation or power to decide or replacing parental responsibilities and duties to offer appropriate care and protection, guidance and direction to the child, in accordance with Article 5 of the UNCRC. The CRC underlines that the principles of the best interests of the child and the right to be heard (Article 3, paragraph 1, and Article 12 of the UNCRC) are complementary⁴⁵ (see Chapter IV on the right to be heard).

79. As part of the best interests assessment, a social enquiry and family assessment should be undertaken to assess the appropriate preservation of the child's family and social environment and, in particular, the benefit of stability for the child and of being able to maintain meaningful relationships with each parent, siblings, other family members and with other persons significant to the child, such as friends and peers. Meaningful relationships may include direct personal, assisted or supervised contact or communication, in accordance with the best interests of the child and the circumstances of the case. Where a child has been placed in alternative care, the assessment conducted in the review phase should consider the benefit of stability for the child in the new environment, such as family ties with foster parents and children in the foster family and the child's new social environment. What makes a relationship meaningful, and the amount of time a child should be able to spend with each parent or other relevant person to enable a meaningful relationship, should be decided taking into consideration the circumstances of the case and the best interests of the child. The assessment should aim also at identifying any obstacles to meaningful relationships, including practical, logistical and financial obstacles, and provide suggestions for removing such obstacles as far as possible.

80. The Court has observed on numerous occasions that "measures that totally deprive an applicant of his or her family life with the child and are inconsistent with the aim of reuniting them" should only be applied in exceptional

45. CRC, General Comment No. 14 (2013), op. cit., paragraph 43. See further: CRC, General Comment No. 12 (2009), op. cit., paragraph 70.

circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests.⁴⁶ The Court explained further that "it is clear that it is equally in the child's interest for its ties with its family to be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that the interest of the child dictates that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to 'rebuild' the family."⁴⁷

81. A parental capability assessment will reveal the willingness and ability of each parent or other person to care for and meet the needs of the child. The assessment should enable decision makers to devise appropriate support services to strengthen the capability of parents to care for and meet the needs of the child, wherever possible, in accordance with the best interests of the child. The assessment should also aim to ascertain if parents are willing and able to understand and respond to the needs of the child in a timely manner, considering that the timeliness of response should be appropriate to the child's age and level of development.

82. The willingness and ability of each parent to care for and meet the needs of the child should be assessed without discrimination on any ground and with due consideration to the obligations of the State to support parents in their childcare and child-rearing roles in accordance with their individual and specific needs.

83. Special consideration of possible grounds of discrimination, as well as proactive measures to prevent discrimination against a parent, may need to be considered in relation to parents who have a chronic illness or disability, including cognitive impairments; parents who are non-nationals, with or without a regulated immigration status, or stateless persons; parents belonging to minority groups, including due to their religion or the colour of their skin; parents affected by poverty or other forms of marginalisation or exclusion; or parents at risk of discrimination due to their gender identity or sexual orientation.

46. Court, *Jansen v. Norway*, op. cit., paragraph 93; *Johansen v. Norway* (dec.), Application No. 17383/90, 7 August 1996, paragraph 78; *Aune v. Norway*, Application No. 52502/07, 28 October 2010, paragraph 66.

47. Court, *Gnathoré v. France*, op. cit., paragraph 59; *Görgülü v. Germany*, Application No. 74969/01, 26 February 2004, paragraph 48; and, for a review of the case law, *Jansen v. Norway*, op.cit., paragraphs 88-93.

84. The assessment of the history of the child's upbringing and care should aim to understand the experiences of the child and the family relevant to the decision making. Understanding the child's and the family's experiences is essential for the identification of any needs, including specific needs, or any vulnerabilities rooted in the past, any aspects or events in the past that are still causing family conflict, a history of violence, abuse or neglect of a child or of violence or abuse by or against a parent, as well as relations with persons who have been important for the child, possible support persons and sources of protection that have been relevant to the child and the family and should be maintained or (re-)activated to provide support during the separation process and beyond.

85. The assessment of the history of a child's upbringing and care may bring to light to what extent the needs and rights of the child, as well as rights and responsibilities of each parent, have been met and respected in the past. While ensuring continuity of care and stability for the child is an important principle,⁴⁸ this principle applies to situations that have been assessed to be in compliance with the rights and best interests of the child. It should not be a pretext for upholding or prolonging situations simply created by the passage of time and where a child or a parent is deprived of a right or a child's need remains unmet, for instance where a very young child has been deprived of the opportunity to develop emotional bonds with both parents and where the development of these bonds is in the child's best interests. The assessment, therefore, should aim to identify any measures suitable for ensuring continuity and stability in accordance with the rights and the best interests of the child, while rectifying any situations that are not consistent with the rights and the best interests of the child.

86. The best interests assessment should further aim to identify the level of protection and safety of the child, as well as any incidents or risks of violence against the child, or another family member, with a view to ensuring a non-violent upbringing and effective child protection, in accordance with Article 19 of the UNCRC. Violence perpetrated in the family or in other settings, including in the digital environment, such as corporal punishment,⁴⁹ domestic violence⁵⁰

48. CRC, General Comment No. 14 (2013), op. cit., paragraph 84.

49. CRC (2007), General Comment No. 8 (2006), op. cit., paragraph 11.

50. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention), Article 3.b.

or sexual exploitation and sexual abuse,⁵¹ is harmful and can have a lifelong impact on the child. Wherever acts or risks of violence are identified, reporting or referrals to child protection services and reports to law-enforcement services should be ensured in accordance with national law, regardless of whether violence is directed against the child or another family member. The same applies to any actual or potential harm to the child's health; physical, psychological and emotional integrity; survival; or development.⁵²

87. The Court found on numerous occasions that corporal punishment of children in the home or in school was a form of degrading punishment in violation of Article 3 of the Convention.⁵³ In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.⁵⁴ Under the European Social Charter (ETS No. 35, the Charter), children's rights to protection from abuse and ill-treatment fall mainly under Articles 7 and 17, which require States to protect children from all forms of ill-treatment. The European Committee on Social Rights has interpreted Article 17 of the Charter as requiring a legal prohibition against any form of violence against children in all settings.

88. The Istanbul Convention defines domestic violence as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim" (Article 3.b). In situations of domestic violence, children are considered victims of violence irrespective of whether the violent act is directed against the child, or the child witnesses such violence between the parents or other

51. "Sexual exploitation and sexual abuse" are defined in accordance with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, (CETS No. 201), Article 3.b.

52. Committee of Ministers, Recommendation [CM/Rec\(2023\)8](#) on strengthening reporting systems on violence against children.

53. Court, *Tyrer v. the United Kingdom*, Application No. 5856/72, 25 April 1978; *Campbell and Cosans v. the United Kingdom*, Application Nos. 7511/76, 25 February 1982; 7743/76. *Y v. the United Kingdom*, Application No. 14229/88, 8 October 1991; *Costello-Roberts v. the United Kingdom*, Application No. 13134/87, 25 March 1993; *A. v. the United Kingdom*, Application No. 25599/94, 23 September 1998.

54. In the context of physical and verbal harassment of a child, see Court, *V.K. v. Russia*, Application No. 68059/13, 7 March 2017. CRC, General Comment No. 8 (2006), op. cit., paragraph 11.

family members.⁵⁵ In member States that have ratified this convention, the European Convention on Human Rights is to be interpreted in the light of its provisions.⁵⁶

89. Research has shown that children who witness violence in the home often develop emotional problems, cognitive functioning disorders and accept attitudes around violence that need to be addressed in the long term. It is thus of crucial importance to ensure their access to psychological counselling and therapy as soon as these children come to the attention of the authorities.

90. The vulnerability assessment of a child and parents should aim to identify and assess risks or threats to the child and parents. The vulnerability assessment should be multidisciplinary and consider all the rights and needs of the child, including any risks to the child's health, development, safety and well-being, as well as risks stemming from the family's social and economic situation. It should further identify and assess possible sources of support, protection and strength suitable to redress and remedy identified risks and prevent or reduce harm to the child or a parent. Support and protection can be provided by public or private actors and, where appropriate, within the child's family, by social support networks and community-based service providers.

91. A child's developmental needs depend on the child's age and level of maturity, the child's situation and any specific needs or vulnerabilities, and are in constant evolution as the child grows up and develops skills and capacities and interacts with his or her physical and social environment. A child's developmental needs differ for newborns and very young children,⁵⁷ adolescents⁵⁸ and those transitioning to adulthood and independent life. The age and level of maturity development of children concerned by care proceedings as they approach 18 should be subject to careful assessment to plan and provide appropriate support for their transition to adulthood and independent life.

92. The World Health Organization defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".⁵⁹ The assessment of the child's health aims at identifying the child's needs – including general and specific needs – to ensure the child's

55. Council of Europe, "[Domestic violence](#)", undated; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210), leaflet, "[Children's rights](#)", undated.

56. Court, *I.M. and Others v. Italy*, Application No. 25426/20, 10 November 2022.

57. CRC, General Comment No. 7 (2005), op. cit.

58. CRC, General Comment No. 20 (2016), op. cit.

59. World Health Organization, [Constitution of the World Health Organization](#), 1946, Preamble.

health and well-being, healthcare and medical treatment, including with regard to nutrition, hygiene and sanitation, preventive healthcare, dental care, sexual-reproductive healthcare and mental healthcare, as well as the need for psychological, emotional or psycho-social support.

93. The child's education should be assessed with a view to ensuring full and effective access to quality early childhood, primary and higher education, vocational training and non-formal or informal education in accordance with the rights of the child to education and the aims of education as afforded under Articles 28 and 29 of the UNCRC and taking into consideration any special needs or vulnerabilities of the child.⁶⁰

94. The assessment should consider the child's need to feel recognised and valued as a person and in his or her own identity, taking account of all personal characteristics including, but not limited to, consideration of the child's religious, cultural and linguistic background and other grounds mentioned in paragraph 80. The UNCRC sets out the right of the child to preserve his or her own identity (Article 8), including nationality, name and family relations. The CRC explains that the "identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity and personality. Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities."⁶¹ The CRC explains, however, that "[c]ultural identity cannot excuse or justify the perpetuation by decision-makers and authorities of traditions and cultural values that deny the child's rights guaranteed by the Convention."⁶²

95. The Court has found that the competent authorities' failure to ensure that a foster family observed the religious neutrality clause in which they had undertaken to respect the religious views of the child and of his or her birth family could amount to a violation of the child's right to freedom of religion (Article 9 of the Convention).⁶³ This right is also endorsed by the Framework Convention for the Protection of National Minorities (ETS No. 157).⁶⁴

60. CRC, General Comment No. 1 (2001) on the aims of education, CRC/GC/2001/1, 17 April 2001.

61. CRC, General Comment No. 14 (2013), *op. cit.*, paragraph 55.

62. *Ibid.*, paragraphs 55-57.

63. Court, *Loste v. France*, Application No. 59227/12, 3 November 2022, paragraph 116; *Abdi Ibrahim v. Norway* [GC], Application No. 15379/16, 10 December 2021.

64. See Article 5 of the Framework Convention for the Protection of National Minorities.

96. Where a child is placed in alternative care, consideration of the right of the child to get to know and preserve his or her own culture and identity should be given not only in choosing a placement that is sensitive to the child's culture and identity but also in contact arrangements with parents and other relevant members of the child's family and social environment.⁶⁵

97. In line with Article 31 of the UNCRC, decisions on the best interests of the child should take into consideration the child's usual day-to-day activities and hobbies, such as leisure time and recreational activities, arts and sports. These activities, therefore, should be assessed.

98. The content and weight of each factor considered during the best interests assessment vary in each specific case depending on the circumstances. The views of the child should always be given due weight, in accordance with the age and maturity of the child. If the assessment of the factors taken into account in a case leads to conflicting conclusions, they should be carefully balanced, with due consideration also being given to any short-, medium- and long-term consequences for the child. The CRC emphasises that the relevance of the elements that have been assessed will be always individual in each case and the weight to be given to each element depends on the weight given to the other elements.⁶⁶

99. In assigning weight to different elements, decision makers should consider the following.

- a. The safety of the child is a fundamental principle, hence any threat or danger to the child outweighs other factors. Where support and protective services are unable to remedy an identified risk to the child, such a risk constitutes a threat or danger to the child and should have a particularly strong weighting in decisions on the best interests of the child.
- b. The right of the child to be brought up by his or her parent(s) is a fundamental principle and hence the decisions made and services provided in a case should aim to support children, parents and other family members in preventing separation or working towards reunification after separation, enabling the child to grow up in his or her family of origin, except where this is not in the best interests of the child.

65. Court, *Jansen v. Norway*, op. cit., paragraphs 57 and 100; *A.I. v. Italy*, Application No. 70896/17, 1 April 2021, paragraphs 101-104.

66. CRC, General Comment No. 14 (2013), op. cit., paragraph 80.

- c. Continuity and stability in the child's situation and care are important, and hence consideration should always be given to continuity and stability in regard to as many factors as possible, as is consistent with the best interests of the child, such as care arrangements, family relations and direct contact, social relations and peer contacts, relevant professionals such as social workers, caretakers and medical staff working with and for the child, living arrangements and place of residence, education and other relevant factors. To secure continuity and stability in the child's life, whenever he or she is considered to be at risk in the family environment, the option of removing the alleged perpetrator of violence instead of placing the child in alternative care should be available to competent authorities.⁶⁷

100. With regard to the balancing exercise in making decisions on the best interests of a child in care proceedings, the Court held in *Jansen v. Norway* that "the potential negative long-term consequences of losing contact with her mother for [the child] and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible were not sufficiently weighed in the balancing exercise" when making a decision on the best interests of the child.⁶⁸

101. The Council of Europe Guidelines on child-friendly justice provide that, in proceedings in which more than one child is affected or likely to be affected, the best interests of each child should be assessed individually. This may be the case where a child has siblings, including half-siblings or stepsiblings, within the same family, irrespective of whether the children are living in the same household or not. Where the assessment of the best interests of these children leads to different decisions for each child, and the children are living in the same household or in the same conditions, such differences should be justified by clear reasons based on the assessments made. These principles apply also in the repeated assessments conducted during the periodic review of the situation of a child where one or more siblings are placed in alternative care (see Chapter IV on the right to be heard).

102. The best interests of the child should be assessed by a multidisciplinary team of trained professionals with appropriate oversight by competent authorities, where justified in the circumstances of the case.⁶⁹

67. As provided by Article 14, paragraph 3, of the Lanzarote Convention.

68. Court, *Jansen v. Norway*, op. cit., paragraph 57.

69. CRC, General Comment No. 14 (2013), op. cit., paragraph 64; *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010), op. cit., IV.5.

103. Multidisciplinary and interagency services can provide important assistance in assessing the best interests of the child. To this end, member States are encouraged to have such services in place when carrying out best interests assessments, as well as review and adaptation, which are appropriate to the circumstances of cases, such as case conferences, family justice centres or child-friendly justice centres inspired by the Barnahus model.⁷⁰

104. The operation of appropriate multidisciplinary and interagency service methods, models or centres should be established by law or policy or organised through co-operation protocols or other appropriate agreements to regulate the co-operation of competent authorities and relevant professionals involved in assessing the best interests of the child and providing services in care proceedings.

105. Where a parent or a child is affected by a disability or chronic illness, or another significant impairment of the ability to communicate, or his or her physical or mental health, of a temporary or permanent nature, appropriate arrangements should be in place to enable his or her effective and meaningful participation in the proceedings or process. Such arrangements may include facilitated physical access and transportation, interpretation, making relevant documents available in easy language, specially trained (legal) representatives and other relevant professionals, and other appropriate assistance. The specific needs of a parent or child should be assessed by qualified professionals in each case.

106. The right of the child to maintain personal relations and direct contact with both parents on a regular basis is a principle that should be afforded specific attention when awarding contact rights during placement, in accordance with the best interests of the child. This may require consideration of the right and need of the child to be able to develop a meaningful relationship with each parent.

107. The European Convention on Contact concerning Children states in Article 5 that “[s]ubject to his or her best interests, contact may be established between the child and persons other than his or her parents having family ties with the child”.⁷¹ In cases of very young children, the frequency and duration

70. Greijer S. and Wenke D. (2023), “Barnahus, a European journey – Mapping study on multidisciplinary and interagency child-friendly justice models responding to violence against children in Council of Europe member states”, Council of Europe, p. 101, paragraph 10.

71. Council of Europe, Convention on Contact concerning Children (ETS No. 192), Article 5, paragraph 1.

of the contact may evolve gradually. Sufficient time should be allocated to enable the child to maintain and develop a meaningful relationship with each parent and other persons having family ties with the child, in accordance with the best interests of the child. Where a parent or a child has specific needs related to disability, vulnerability or any other factor or where the family members are separated by a long distance, careful consideration should be given to the identification of any obstacles to contact and measures to remedy the situation, as far as possible. The amount of time and the modalities of contact between the child and each parent should be determined in each case on the basis of the best interests assessment, bearing in mind the quality and quantity of contact between the child and each parent.

108. As emphasised by the stakeholders heard in the drafting process of this Recommendation, to “make contact and visitation rights effective, children and parents should be able to fully exercise their rights. This includes ensuring that parents have adequate means for travelling and making use of (public) transport to the childcare location and receive the necessary support to do so. It was stressed that the further away the location from the parent’s domicile, the higher the responsibility for the State to give practical support for access and transport. Where appropriate, the notion of ‘contact’ should be interpreted to not only be limited to physical contact but could also include opportunities for non-physical contact such as through digital platforms for messaging.”⁷² Support may include financial support, support in arranging contact in a location and at a time that is conducive to the needs and best interests of the child and the needs of the parents, support with transportation and access where required, interpretation support where necessary and any other support needed.

109. In the case of young and very young children, age should not be a decisive factor determining decisions about the right of the child to establish and maintain personal relations and direct contact with both parents. The rights and needs of the child in relation to his or her age should be duly assessed and considered alongside all other relevant factors in the case.

110. The best interests assessment, as well as the continued assessment of the child and family during the review and adaptation stage of care proceedings, should aim to identify cases where unsupervised contact between a parent and a child is not in the best interests of the child, and where supervised contact or other forms of contact, or no contact, is in the best interests of the child.

72. Bekkhus B. T. (2022), *op. cit.*, paragraph 29.

111. Where it is not in the best interests of a child to maintain unsupervised contact with a parent, for instance in the case of allegations or suspicions that a parent may constitute a risk to the child, the possibility of assisted or supervised contact with the parent should be considered, as appropriate to the circumstances of the case.

112. Necessary resources and infrastructure should be put in place to ensure safe, effective and sensitive supervised contact, including sufficient training for personnel involved in the supervision of contact, and that clear rules and protocols are provided to govern contact. Providers of supervised contact should effectively remove any obstacles to the access to and use of these services, for instance by providing appropriate facilities for such contact to take place, appropriate transportation for parents and children or interpretation services when supervisors do not understand the language used by the parent and child.

113. Where appropriate, the observations made during supervised contact sessions should be taken into consideration for the best interests assessment, as well as in the review and adaptation stage of care proceedings, in accordance with applicable law regarding the sharing of data in care proceedings.

IV. Right to be heard

114. In administrative and judicial proceedings, as well as in alternative dispute resolution processes falling under the scope of this Recommendation, the child should be provided with the opportunity to be heard, if he or she so chooses, either directly or through a representative or a trained professional (see Chapter II on the overarching principle on the right to be heard). The right to a genuine and effective opportunity to be heard applies to each child, irrespective of age, level of maturity, evolving capacities or any disability.

115. The Court developed the general principles set out originally in *Sahin v. Germany* in view of the right of the child to be consulted and heard when his or her best interests are under assessment.⁷³ Depending on the age and level of maturity of the child concerned, interviews by experts and subsequent reports for the judge referred to in the judicial decision could be considered appropriate to secure the right of the child to be heard. For children of sufficient age, the

73. Court, *Sahin v. Germany* [GC], Application No. 30943/96, 8 July 2003, paragraphs 70 and 72; *Sommerfeld v. Germany* [GC], Application No. 31871/96, 8 July 2003 (extracts).

Court favours the national judge hearing them in person in any proceedings affecting their rights under Article 8 of the Convention.⁷⁴

116. The CRC advises States Parties to the UNCRC to recognise the right of the child to express his or her views on the basis of a general presumption that children are capable of forming their own views.⁷⁵ In particular, when a child takes the initiative to be heard, a sufficient level of understanding should be presumed.⁷⁶ To achieve this, competent authorities should assess on a case-by-case basis the level of understanding of the child.

117. Committee of Ministers Recommendation CM/Rec(2012)2 on the participation of children and young people under the age of 18, underlines that the right of children to be heard applies without discrimination on any grounds and there is no age limit on the right of the child to express his or her views freely.⁷⁷ At the same time, the right to be heard should not be regarded as an obligation or duty for the child to express his or her views.

118. Where national law requires that the child's level of understanding be assessed to determine whether the child should be heard in person, this assessment should be documented and the outcome should be communicated to the child and parent(s), other holder(s) of parental responsibility or guardian and, where applicable, the child's legal representative.

119. Where age limits below which a child is not considered to have a sufficient level of understanding to express his or her views exist in legislation, such age limits should be subject to periodic review. A review may examine if the age limit continues to correspond to a typical child development in the society, taking into account that children have been encouraged and have become used to participating in family life and that, conscious of their rights, they expect and demand to be heard on matters concerning them. A review may further consider how competent authorities are applying relevant age limits in practice, particularly where national law leaves them a margin of discretion, and if or how the relevant case law has evolved.

74. Court, *M. and M. v. Croatia*, Application No. 10161/13, 3 September 2015, paragraph 181 (extracts); *C v. Croatia*, Application No. 80117/17, 8 October 2020, paragraph 78; and for the relevant international instruments, *M.K. v. Greece*, Application No. 51312/16, 1 February 2018, paragraphs 91 and 92, *C v. Croatia*, op. cit., paragraph 76.

75. CRC, General Comment No. 12 (2009), op. cit., paragraph 20.

76. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010), op. cit., explanatory memorandum, paragraph 110.

77. Committee of Ministers, Recommendation [CM/Rec\(2012\)2](#), p. 6.

120. The Council of Europe Guidelines on child-friendly justice promote the understanding that it is generally in the best interests of the child to be heard in administrative and judicial proceedings concerning the child.⁷⁸

121. Where a child needs assistance to express his or her views, such assistance should be provided. The child should be heard by a trained professional where this is assessed to be in the best interests of the child. Such professionals may include specifically trained judges, social workers, child psychologists or forensic interviewers specifically trained in interviewing and hearing the views of children in the context of legal proceedings. Where a child is unable to form or express views, for instance due to very young age or limited capacity, such professionals may be tasked with conveying the child's perspective.

122. The professional who hears the child's views or conveys the child's perspective should be independent from the parties to the proceedings and have no vested interests. The professional may be employed by the competent authority, but it should be ensured that, when reporting the child's views or delivering an expert opinion on the child's perspective, the professional is only bound by his or her professional expertise and training and prepares the report or opinion in accordance with the rights and the best interests of the child.

123. In accordance with Article 12 of the UNCRC, due weight should be given to the child's views or, where appropriate, perspective in accordance with his or her age and level of maturity.

124. The CRC notes that "[t]he fact that the child is very young or in a vulnerable situation (e.g., has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests".⁷⁹

125. It should be made clear to the child and parents that, while the child's views are an important factor that will be given due weight in the decision making, the child's views are not the only factor to be taken into account and the child will not be responsible for the final decision or for the weight assigned to his or her views in the final decision (see Chapter V on the right to information and assistance).

78. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010), op. cit., IV.D.3.

79. CRC (2013), General Comment No. 14 (2013), op. cit., paragraph 54.

126. The Court observed that the views of children are not necessarily immutable, and their objections, which must be given due weight, are not necessarily sufficient to override the parents' interests, especially in having regular contact with their child. No unconditional veto power should be given to a child without any other factors being considered and an examination being carried out to determine his or her best interests and the child's reasons for objecting to contact.⁸⁰

127. Where there is more than one child concerned by proceedings or their outcome, for instance in the case of siblings, each of them should be provided with a genuine opportunity to express his or her views separately. Where children express the wish to be heard together, their wish can be accommodated by arranging for their hearings at the same place and time. In such cases, the hearings may be structured into a joint hearing of the siblings, however the competent authorities and professionals should make the relevant arrangements to ensure that each child has a genuine and effective opportunity to form his or her opinion and express his or her views by hearing each child individually as well, without the other sibling(s) being present, in accordance with the individual needs of the child.

128. The Court has observed that, in view of children's evolving capacities and specific circumstances of cases before national courts, States should ensure that different mechanisms are in place to hear children in legal proceedings and this may include the need to seek expert opinions on whether it is possible, given the younger children's age and maturity, to interview them in court, with the assistance of a specialist in child psychology if necessary.⁸¹ The Court has further observed that, taking into account the margin of appreciation enjoyed by domestic authorities, which are better placed than the Court, the domestic courts could reasonably consider that it was not appropriate, given the expert advice, for them to hear the child in person.⁸²

129. States should ensure that professionals who hear children in the context of administrative or judicial proceedings are specifically trained and qualified for this purpose. In particular, they should be trained in child-sensitive and age-appropriate communication and be sensitive to children's behaviour and expressions.

80. Court, *Zelikha Magomadova v. Russia*, Application No. 58724/14, 8 October 2019, paragraph 115; *K.B. and Others v. Croatia*, Application No. 36216/13, 14 March 2017, paragraph 143.

81. Court, *Zelikha Magomadova v. Russia*, op. cit., paragraph 116.

82. Court, *R.M. v. Latvia*, Application No. 53487/13, 9 December 2021, paragraph 117.

130. Officials and professionals who hear children in the context of proceedings should be able to avail themselves of appropriate tools and methods for hearing the child in a manner appropriate to the child's age and level of maturity and the circumstances of the case, as well as any specific needs or vulnerabilities a child may have. The use of evidence-based interviewing protocols helps to adapt the interview to the child's age and level of maturity and to prevent the person who hears the child from influencing the child's statement by posing leading or suggestive questions.

131. Where appropriate, the child should be consulted on the way in which he or she would like to be heard. Where a child refuses to be heard, for instance in court or to be heard directly by a judge or other competent authority, the competent authority should seek to identify the reasons for the child's refusal and make appropriate adjustments to the manner in which the child will be heard, including the provision of appropriate support and assistance, in accordance with the best interests of the child, always bearing in mind that the right to be heard should not be regarded as an obligation or duty on the child to express his or her views.

132. The length of the hearing should be adapted to the child's age and attention span and the timing should take into account the needs of the child.⁸³

133. In order to avoid undue stress and discomfort, the hearing of a child's views should take place in a child-friendly environment, in accordance with the Council of Europe Guidelines on child-friendly justice.⁸⁴ A child-friendly environment is ensured where, for example, children are heard in specific settings, facilities or centres for children, such as child-friendly justice centres inspired by the Barnahus model, family justice centres or other multidisciplinary and interagency service centres for children in contact with the justice system.⁸⁵ As a minimum, when the hearing of a child takes place in a courthouse, the judge should have access to a child-friendly room and should not wear a robe. Providing a child-friendly environment also requires consideration of how the child reaches the place of the hearing and spends time in any waiting areas.

134. Adequate safeguards should be in place to ensure, as far as possible, that any expressed views are those of the child and are not the result of undue

83. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010), op. cit., IV.D.6. paragraphs 66 and 67; CRC, General Comment No. 12 (2009), op. cit., paragraph 24.

84. *Ibid.*, IV.D.5

85. Greijer S. and Wenke D. (2023), op. cit, p. 131, paragraph 10.

influence or duress. The Court has held that, should a court base a decision on the views of children who are palpably unable to form and articulate an opinion as to their wishes – for example, because of a conflict of loyalty and/or their exposure to the alienating behaviour of one parent – such a decision could run contrary to Article 8 of the Convention.⁸⁶

135. The expression “adequate safeguards” refers to measures suitable for ensuring the child’s safety and well-being in accordance with the child’s age, evolving capacities and level of maturity and with due regard to any specific needs and individual vulnerabilities. This includes measures to inform the child (see Chapter V on the right to information and assistance), to prepare the child for a hearing and to ensure appropriate follow-up support after the hearing.

136. The CRC explains that the term “freely” means that the child:

- a. can express his or her own views without pressure and can choose whether or not he or she wants to exercise the right to be heard;
- b. should not be manipulated or subjected to undue influence or pressure; and
- c. has the right to express his or her own views and not the views of others.⁸⁷

137. States should ensure that the child who is heard in proceedings within the scope of this Recommendation is not subject to cross-examination on the content of his or her views.

138. For reasons of procedural fairness, a report of the views expressed by the child should be brought to the attention of the parties. When sharing this report, consideration should be given to the protection of the child against any form of harm resulting from the nature of his or her views as expressed in the hearing, including any reprimands, harassment or secondary victimisation or any other adverse consequences. This report could be made orally by the judge or formulated in a written report by the judge shared with the lawyers without being given to the parents.

139. In preparation for the child’s hearing, and at the moment of the hearing, the child should be duly informed about how his or her views will be conveyed

86. Court, *K.B. and Others v. Croatia*, op. cit., paragraph 143.

87. CRC, General Comment No. 12 (2009), op. cit., paragraphs 22-23.

to the parents and if or how they will be shared with other persons, authorities or service providers in accordance with national law.

V. Right to information and assistance

Right to information

140. States should ensure that information services are in place to provide child-friendly information to the child involved in or affected by proceedings within the scope of this Recommendation, collectively and individually. Information services should define which officials or professionals are responsible for informing the child at each procedural stage. The child should be effectively informed on all matters relevant to enable his or her genuine and effective participation, such as:

- a. the reasons for the proceedings;
- b. the child's role during different phases of the proceedings, including:
 - i. the rights of the child in the proceedings and the rights and responsibilities of parents;
 - ii. the role of different actors involved and how they relate to the child, including any competent authorities and professionals;
 - iii. the right of the child to be heard and any decisions concerning the hearing of the child, such as the means by which a child is heard, the date, time and location of the hearing, the person hearing the child as well as any decision not to hear the child where this is assessed to be in the child's best interests and the relevant reasons for such decisions;
 - iv. the right of the child to be assisted by a person who is able to support and accompany him or her throughout the proceedings;
- c. the stages and likely duration of the proceedings, including the outcomes of the proceedings, the reasons for decisions made or agreements reached and, where applicable, the different forms of follow-up services and alternatives available to the child;
- d. the mechanisms, institutions or services available to support the child during the proceedings, including any possible adjustments available to facilitate and support the child's participation;
- e. where, under national law, a child has the right to appeal decisions, the child should receive information on access to appeals, including any applicable time limits, as well as the available complaints mechanisms,

including internal complaints mechanisms of State authorities, institutions and private service providers, and an independent complaints mechanism.

141. The above provisions also apply to the child's right to be informed during alternative dispute resolution processes falling under the scope of this Recommendation.

142. "Child-friendly information" refers to information that is provided to children "in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive".⁸⁸ When communicating child-friendly information, officials and professionals should give due consideration to the specific needs of the child, for instance with regard to any disability or trauma, and ensure the child understands the information.

143. Child-friendly information materials should be available and accessible to children, parents, service providers and State officials involved in proceedings or alternative dispute resolution processes. Children should be supported in accessing child-friendly information from a range of sources and be given time to reflect on information they have been provided with, look it up again and ask questions.

144. States should ensure that parents and other holders of parental responsibilities receive support in providing information to their child, in accordance with the specific needs of the child and of the parents or other holders of parental responsibilities.

145. Information services should ascertain that the child, as well as the child's parents or other holders of parental responsibilities and, where applicable, the child's guardian and legal representative, are promptly and adequately informed, on a continuous basis, throughout the proceedings.

146. In addition to the provision of information to individual children affected by proceedings, children should collectively have access to child-friendly material informing them about care proceedings, including legal, social and psychological aspects, as well as emotions and behaviours that these situations could provoke in them and where to turn to for support. Child-friendly material may include written brochures or booklets, as well as websites or other digital formats.

88. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010), op. cit., IV.A.1.2.

Right to assistance and to legal counsel and representation

147. States should ensure that the child has the right to receive independent support and legal assistance and, in accordance with national law, legal representation, separate from the other parties. Such support should be provided throughout all phases of proceedings.⁸⁹ Support may include legal advice and counselling, as well as psycho-social and emotional support, in accordance with the rights and needs of the child.

148. In care proceedings, in view of the inherent risk of conflicts of interest between the child and one or both parents, a guardian should be appointed to represent the child. Such a guardian should enjoy the required level of independence and impartiality to represent the child's best interests. The types and forms of guardianship differ between States.

149. The guardian's task is to complement the limited legal capacity of the child where a parent is unavailable or unable to exercise this role or in case of conflicting interests between child and parent, and to act as a link between the child and all other stakeholders with responsibilities for the child. The guardian's tasks include securing the rights and best interests of the child also vis-à-vis the lawyer or legal representative. The scope of guardianship may include representation in legal proceedings, where provided for by national law, but is broader and not limited to this function. In some jurisdictions, a guardian *ad litem* is appointed specifically to represent a child in legal proceedings.

150. The children consulted in the course of the drafting process of this Recommendation advised that children involved in care proceedings should benefit from the support of a person of trust who is suitable to counsel and support the child throughout all stages of the proceedings. The child should be able to contact the person of trust directly in any situation and at all reasonable hours and without requesting another person's permission. The person of trust should be available and accessible to the child at all times to help the child to access and understand relevant information and understand the legal process. The person of trust should be available and prepared to accompany the child to any hearings in the proceedings in accordance with national law, and to provide emotional support.

151. A person of trust may be provided by appropriate service providers, such as social services, child protection services, psycho-social support or independent advocacy services for children in contact with the justice system,

89. Ibid., IV.D.2.

or community-based services. A person from within the child's private support network, whom the child trusts, could also be able to provide this service, except where this is not in accordance with the best interests of the child. A person of trust should not be a party or participant to the proceedings and should not have a vested interest in the case. The child should be consulted on the choice of this person, in accordance with his or her age and level of understanding, to ensure the person is acceptable to the child.

152. States should ensure that an effective, sustainable and reliable legal aid scheme is available and accessible to children and parents concerned by proceedings and alternative dispute resolution processes within the scope of this Recommendation. Where relevant, access to free legal aid schemes should be available to the child under the same, or more lenient, conditions than those applicable to adults. The Council of Europe Guidelines on child-friendly justice explain that the recommendation to provide children with access to free legal aid should not necessarily require a completely separate system of legal aid: "It might be provided in the same way as legal aid for adults, or under more lenient conditions, and be dependent on the financial means of the holder of the parental responsibility or the child him- or herself. In any case, the legal aid system has to be effective in practice."⁹⁰

Complaints mechanism

153. An independent and effective non-judicial, child-sensitive complaints mechanism should be available and accessible to the child and his or her parents or other holders of parental responsibility, guardian *ad litem* or legal representative, to report infringements of the rights of the child or to complain about misconduct of service providers and professionals working with the child in the context of the proceedings, such as social workers, child psychologists, professional interviewers, interpreters and cultural mediators, educational or medical staff, guardians, professional caretakers, lawyers and legal representatives, law-enforcement services and other relevant professionals. Children should be effectively informed on how to access the complaints mechanism.⁹¹ In addition to national complaints mechanisms children should be informed, where applicable, about the communications procedure under the Third Optional Protocol to the UNCRC.

90. Ibid., IV.D.2 and p. 102.

91. Ibid., III.E.3.

VI. Conduct of care proceedings

154. States should ensure that three levels of preventive services are in place, which are specialised in strengthening and stabilising families, supporting positive parenting, providing care and protection and securing the best interests of the child with continuity.

- a. Primary prevention comprises universal services and programmes targeting all families with children in the population, supporting and empowering children, parents and families in accordance with their needs and preventing them from getting into vulnerable situations. Family support services, including parenting programmes, should be provided for parents of children in different age groups and children with specific needs and vulnerabilities, and take account of the needs of parents, including specifically with regard to family conflicts, domestic, gender-based and other forms of violence. Parenting programmes should be based on the rights and best interests of the child, informed by research and evidence and adopt a multidisciplinary approach. They should enable parents to strengthen their capacities for positive, non-violent child rearing.⁹²
- b. Secondary prevention covers selective services that support children and adults in preventing harm when in a vulnerable situation, reducing vulnerability and becoming independent of service provision.
- c. Tertiary prevention involves indicated services or programmes targeting children, parents and families who have experienced violence and who are living in situations of particular vulnerability and risk.⁹³ They aim at ending violence in the family and preventing the continuation of or new experiences of violence.

155. Economic family support services should be in place to prevent poverty from affecting the ability of parents to care for and meet the needs of their child and to prevent or redress any risks to the child as a consequence of poverty. The United Nations Guidelines for the Alternative Care of Children clarify that “financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care.”⁹⁴

92. Council of the Baltic Sea States, *Parenting for non-violent childhoods – Positive parenting to achieve and end to corporal punishment*, Stockholm, 2018.

93. *Ibid.*, pp. 11-12.

94. United Nations, Guidelines for the Alternative Care of Children, *op. cit.*, paragraph 15.

156. Family support services should enable families to access their social rights, as set out by the European Social Charter, and reduce social or economic disadvantages. Families affected by social and economic marginalisation or exclusion should receive targeted support in ensuring a supportive family environment for childcare and child rearing.

157. Committee of Ministers Recommendation [Rec\(2006\)19](#) on policy to support positive parenting, defines “parenting” as all the roles falling to parents in order to care for and bring up children; parenting is centred on parent–children interaction and entails rights and duties for the child’s development and self-fulfilment. The recommendation sets out principles of support to positive parenting.⁹⁵ The expression “positive parenting” refers to parental behaviour based on the best interests of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involve the setting of boundaries to enable the full development of the child.⁹⁶

158. Member States should ensure that sufficient human and material resources are allocated to systems for social welfare, family support, childcare and protection. Specific attention should be paid to preventive actions and early interventions. These allocations should be maintained or increased, if necessary, during economic crises. Resources should be channelled and monitored to ensure effective support for children and families and to support multidisciplinary methods and models for multiprofessional co-operation. Insufficient financial resources should not be used as a justification for not respecting the rights of the child in care proceedings.

159. States should enable and facilitate the effective access to services of parents and children, including through the provision of information for parents and child-friendly information.

160. Service providers should be trained to hear the child and to give due weight to the child’s views in service provision and to support the child in forming and expressing his or her views. They should have access to specific working methods and tools to hear and consult children and be trained in using them effectively with children of different ages and from different backgrounds (see Chapter IV on the right to be heard).

161. As required by Committee of Ministers Recommendation [CM/Rec\(2023\)8](#) on strengthening reporting systems on violence against children, member

95. Committee of Ministers, Recommendation [Rec\(2006\)19](#), paragraph 2.

96. *Ibid.*, paragraph 1.

States should clearly define a legal and policy-based obligation to report for professionals, institutions and organisations working for and with children, or establish a mandatory code for specific professions, to report concerns or suspicions of violence against children.⁹⁷ States should also ensure that professionals reporting risks and safety concerns to a child are not hindered by any obstacles or barriers to reporting violence or risks of violence, such as legal uncertainty with regard to principles of confidentiality and reporting obligations.⁹⁸

162. Recommendation [CM/Rec\(2023\)8](#) defines violence against children in line with international standards to include “acts such as physical, sexual or psychological violence, maltreatment and abuse, as well as omissions such as neglect and negligent treatment, which violate the rights of the child and result in actual or potential harm to the child’s health, physical, psychological and emotional integrity, survival or development. This includes disciplinary measures that humiliate the child or inflict pain, however light, as well as exploitation and harassment, the exposure to domestic violence and the witnessing of violence.”⁹⁹

Before proceedings

163. Mechanisms or measures should be in place to enable the timely identification of families and children in need of support, such as screening for violence, specific needs and vulnerabilities as an integral part of universal services for children, parents and families, including in the healthcare sector, in home-visiting programmes for new parents, in social service provision and in schools and other appropriate sectors. Officials and professionals in relevant positions should have effective and evidence-based screening tools and should be trained in their use. Where children, parents or families are identified as having specific needs or vulnerabilities, timely referral and effective follow-up should be ensured to remedy any identified risks and reduce vulnerability.

164. Children should have the opportunity to report situations of risk or violence and to seek help. Specialised services should be in place to inform and enable them to contact relevant service providers, helplines or local authorities safely. Children should have access to child-friendly information

97. Committee of Ministers Recommendation [CM/Rec\(2023\)8](#), appendix, paragraph 8.

98. Ibid., appendix, paragraphs 12 and 13.

99. Ibid., appendix, paragraph 2.

on whom to contact when they are seeking help, including independently, without the prior knowledge or participation of their parent(s).

165. Where concerns about the care of a child exist, services to support the family should be planned and structured by a pre-proceedings family support and child protection plan. Service providers should develop the plan in close consultation with the child and the family members concerned in order to ensure that:

- a. objectives of service provision are identified in accordance with the best interests of the child;
- b. relevant assessments are conducted and their outcomes are documented; relevant assessments may include a best interests assessment considering the factors identified in Chapter III, to identify the needs of the child, the parents and other family members as relevant; the assessments should be documented to ensure that the findings will be available to inform continued service provision and any proceedings, to set up a baseline on which to document progress towards the objectives and to prevent repeated assessments or hearings on the same matters;
- c. the services provided are suitable and effective to support the child and the family in reaching the identified objectives; and
- d. the child and parents, or other holder(s) of parental responsibility, are informed and consulted and are able to participate in an appropriate way, consistent with the best interests of the child, in the development, implementation and review of the plan; to this end, the plan provides a structure to consult the child, parents or families with continuity in the planning phase, in service provision and in assessing progress made towards the identified objectives.

166. Competent authorities and relevant service providers should be equipped with specific service models and methods to support children and parents and strengthen families.

167. A range of advisory and support services should be in place to support parents and children, in accordance with the best interests of the child, in reaching and implementing an amicable agreement on disputes and resolving difficulties related to childcare and other family matters, such as home-based assistance, supervised contact, family therapy, family group conferences, family mediation and other preventive and alternative dispute resolution processes (see alternative dispute resolution processes in Chapter VI).

168. Where appropriate in the circumstances of the case and consistent with the best interests of the child, service provision should aim for the voluntary use of services by parents and children. The competent authorities should be able, however, to require parents or the child to use services that are relevant and appropriate in the case, in accordance with the best interests of the child, such as parenting programmes, treatment of substance abuse or addictions, or other therapy in response to the child's established needs. The provision of mandatory services should be motivated and reasoned in accordance with the best interests assessment. It should be regulated and subject to periodic review and adaptation.

169. States should ensure that care proceedings are initiated by a competent authority. Care proceedings may also be initiated upon request by a parent or by a child, in accordance with the applicable law. In view of the right to respect for the private and family life of the child, the parents and other holders of parental responsibility and other family members (Article 8 of the Convention), care proceedings should only be initiated in accordance with the law, to pursue an aim or aims that is or are legitimate and can be regarded as "necessary in a democratic society"¹⁰⁰ (see Chapter II on the overarching principle on the right to respect for private and family life).

Best interests determination procedure

170. The Court has underlined in its case law that States have to put in place formal processes for the assessment and determination of the best interests of the child, with relevant procedural safeguards. These processes should be transparent and objective and guide decisions made by legislators, judges and administrative authorities that directly affect a child or children.¹⁰¹ States should ensure that procedural safeguards are practical, effective and child sensitive where decisions are made to limit parental responsibility, or to place a child in care, and to determine the best interests of the child in this regard.¹⁰²

171. The best interests determination procedure is a structured process aiming at identifying the most suitable decision or measure responding to the child's individual needs. The procedure consists of three phases: the best

100. See, among others, Court, *Strand Lobben and Others v. Norway*, op. cit., paragraph 202; and *K. and T. v. Finland* [GC], op. cit., paragraph 151.

101. Court, *Strand Lobben and Others v. Norway*, op. cit., paragraph 207; CRC, General Comment No. 14 (2003), op. cit., paragraph 87.

102. Court, *Haddad v. Spain*, op. cit., paragraph 72; *Strand Lobben and Others v. Norway*, op. cit. paragraph 207; CRC, General Comment No. 14 (2003), op. cit., paragraph 85.

interests assessment, decision making and the review phase, which includes measures for adaptation where necessary. Each step should be initiated and concluded in a timely manner.

172. The best interests determination procedure aims to ensure that the competent authority upholds and secures the substantive and procedural rights of the child, the parents and any other parties involved in the proceedings.

173. In conducting the best interests determination procedure, the competent authority should be independent from the child, both parents and any other parties and participants in the proceedings and have no vested interests in the case.

174. The procedure should be conducted in a transparent and objective manner, ensuring that all steps are documented and that decisions are motivated. The substantive and procedural rights of the child and the parent(s) and any other party in the case should be secured at all times (see sections III, IV and V of the Recommendation).

175. A multidisciplinary and interagency approach should be used at all stages of the best interests determination procedure and in particular during the best interests assessment and the review and adaptation stage, which require a comprehensive and well-balanced perspective on the child and family situation.¹⁰³ The term “multidisciplinary” refers to different professional disciplines: child protection, social services, healthcare professionals, child psychology, the judiciary and other professionals deemed necessary to be involved in the assessment. The term “interagency” refers to various State agencies and or public entities that should collaborate with the relevant services. Such an approach should facilitate the co-operation and exchange of information between relevant institutions and services and the competent authority, in accordance with applicable data protection rules and, where applicable, rules of professional ethics and confidentiality.

Emergency and interim measures

176. In care proceedings, a competent authority should be able by law to adopt emergency or interim measures, on its own motion, or at the request of a party or of a competent authority. Emergency and interim measures include measures for urgent referral, accelerated procedures to obtain an emergency

103. CRC, General Comment No. 14 (2013), op. cit., paragraph 64. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, op. cit. IV.5.

decision or interim protective measure, provisional decisions or preliminary judgments in situations where there is an imminent risk of harm.

177. Where an emergency or interim measure has been ordered, the necessary assessments and investigations should be conducted without delay to gather all relevant facts and evidence for the review of the measure with full procedural safeguards.

178. Where, due to the circumstances of the case or the nature of the proceedings, a final decision is likely to be delayed, especially when the case needs further investigation, appropriate interim measures to safeguard the rights and best interest of the child should be taken.

179. In cases where a child is at risk of abuse or harm by a parent or another person having contact rights, such as another family member, the competent authority should be able to suspend promptly direct contact on an interim basis, or provide for appropriate solutions, such as supervised contact or other interim measures considered relevant and appropriate in the case.

180. In cases of the child's persistent refusal to participate in contact, interim measures in this regard, consistent with the best interests of the child, should be taken until a final decision is taken.

181. Decisions on emergency and interim measures should be immediately enforceable. They should be of short duration and not exceed the duration of the proceedings.

182. Emergency and interim measures may be taken without the prior hearing of the child and without ensuring full compliance with procedural safeguards, on the condition that full respect for the procedural and substantive rights of the child and all relevant parties to the proceedings is ensured in the timely review of the measure and before the final decision on the merits is made.

Decision

183. Any decision to limit parental responsibility within the scope of this Recommendation should only be made where necessary to protect the child from significant harm in accordance with the best interests of the child, where the parents are unwilling or unable to do so, even with appropriate support. Significant harm refers to ill-treatment or neglect of the child in a manner that seriously affects or is likely to seriously affect the child's health, development or welfare, as well as violence against the child within the family.

184. Where a competent authority decides to limit or withdraw parental responsibility, provision should be made for the transfer of parental responsibility from the parents or other holder(s) of parental responsibility to a qualified guardian, person or entity that is legally appointed and mandated to complement the child's limited legal capacity and represent the child in lieu of the parents. Effective communication between the guardian, person or qualified entity, the competent authority, the parents and the child should be ensured.

185. The Recommendation sets out principles and practical guidance regarding the decision on the merits of the case. Clear reasons should be given for decisions, explaining how the relevant factors have been assessed, verified and assigned weight, while ensuring that this explanation does not jeopardise the child's health or safety (see Chapters III and IV). The decision should explain how the different rights and needs of the child, the rights and responsibilities of each parent and other parties, as well as the obligations of the State towards the child and parents, have been given weight and how, in this balancing process, the best interests of the child were made a primary or, where provided for by law, the paramount consideration.

186. The decision should explain how the views of the child or, where appropriate, the child's perspective, have been gathered and how they have been given due weight; where a child has not been heard, the decision should specify the reasons.¹⁰⁴

187. The content of the decision, its meaning and consequences, should be communicated promptly and explained to the child, in a manner appropriate to his or her age and level of maturity (see Chapter V on the right to information). It should be clear who is responsible for communicating the decision to the child. Preferably, the competent authority which made the decision should give the child this explanation in a child-friendly manner, for instance in a follow-up meeting with the child in a child-friendly environment. Competent authorities and practitioners should not rely upon the parents of the child to communicate this information.

Alternative dispute resolution processes

188. States are encouraged to develop and promote alternative dispute resolution processes and to identify matters where alternative dispute resolution could be beneficial to support parents, children and, where applicable,

104. [Guidelines](#) of the Committee of Ministers of the Council of Europe on child-friendly justice, op. cit., IV.D.49.

other family members in resolving concerns relating to the care of the child and reaching an agreement on the action to be taken and working together to implement this action in accordance with the best interests of the child. As a general rule, the participation in alternative dispute resolution processes should always be voluntary and conditional on the informed consent of the persons involved.

189. Alternative dispute resolution processes engage the parties in a structured dialogue to reach a shared understanding of the best interests of the child. The benefits of alternative dispute resolution processes have been evidenced and widely acknowledged. They help parents, children and other family members in reaching an agreement on specific measures while focusing on the needs and best interests of the child. Participants tend to feel a stronger sense of ownership in agreements reached during alternative dispute resolution processes and, therefore, tend to be more willing to adhere to the agreement.¹⁰⁵ In family conflicts, which can be a source of danger for a child's development, families may be able to resolve such conflicts and prevent harm to the child with the support of appropriately trained professionals, in accordance with the best interests of the child.

190. Alternative dispute resolution processes may be in the best interests of the child before care proceedings are initiated, for instance where a family is assisted by social services or child protection services. They may also be in the best interests of the child when care proceedings have been initiated and take place as complementary to legal proceedings. In this case, alternative dispute resolution processes may help, among other things, to reach an agreement on the ways of implementing decisions made by a competent authority.

191. Alternative dispute resolution measures include a diversity of methods and models suitable to the needs of parents and children involved in care proceedings, such as family group conferences and models of therapeutic or restorative justice. Where other family members or other persons who are significant to the child have a role in resolving family disputes or reaching an agreement on the action to be taken in the best interests of the child, their participation in dispute resolution processes should be considered.

192. States are encouraged to identify those matters that are suitable to be addressed by an alternative dispute resolution process in the context of care proceedings such as all instances where the parents and, where appropriate,

¹⁰⁵. Hague Conference on Private International Law (2012), *op. cit.*, pp. 21-26.

the child and other family members, would benefit from assistance when engaging in a structured dialogue, for instance to:

- a. identify and recognise the risks and safety concerns for the child that have caused or contributed to the initiation of care proceedings;
- b. identify existing resources, sources of support and protection for the child and parents, including within the family and the social support network of the family;
- c. identify specific protection measures for the child;
- d. participate in the development of the individual care plan for the child;
- e. identify areas of agreement and disagreement, as well as issues that are non-negotiable;
- f. strengthen the communication between parents, with the child and in the family more generally;
- g. focus on the needs and best interests of the child;
- h. reach an agreement and propose possible measures or decisions to the competent authority, including any interim and final decisions, which may help to shorten the duration of the proceedings and foster the acceptance of and compliance with the final decision by all parties.

193. The competent authority should decide if trying an alternative dispute resolution process is appropriate in the case, based on the best interests assessment. Such a referral may be appropriate before hearing a case or at any stage before, during or after the proceedings. The competent authority should decide upon this on a case-by-case basis, in accordance with the best interests of the child.

194. Recourse to alternative dispute resolution processes may be appropriate at an early stage where a family is struggling with conflict or having difficulties in caring for the child, when a competent authority decides to order mandatory services or to limit parental responsibility, after a child's placement in alternative care, and in the review and adaptation stage or at any moment where a significant change in the family requires a review of the family situation and the best interests of the child. In addition to family members, the foster family or guardian of a child placed in alternative care may participate in alternative dispute resolution processes, for instance to reach agreement on questions concerning medical treatment or the education of the child.

195. In assessing whether a matter is suitable for alternative dispute resolution, the professional facilitating the alternative dispute resolution process should ascertain that each participant has the capacity to engage in such a process, that is, is able and willing to protect his or her personal interests, as well as the rights and best interests of the child before, during and after the alternative dispute resolution process.

196. Prior to referral, information explaining the benefits of alternative dispute resolution processes should be provided to the parents or other holders of parental authority.

197. Providers of alternative dispute resolution processes should be able to avail themselves of appropriate guidance and tools for identifying those cases where alternative dispute resolution is unsuitable or, where applicable, prohibited by national law, paying specific attention to cases involving domestic violence, irrespective of whether the perpetrator of violence is a man or a woman.

198. The Istanbul Convention obliges States parties to prohibit mandatory alternative dispute resolution processes, such as mediation and conciliation, in relation to all forms of violence falling within the scope of this convention (Article 48, paragraph 1). The drafters of the convention recognised that, “in particular in family law, methods of resolving disputes alternative to judicial decisions are considered to better serve family relations and to result in more durable dispute resolution”. They also noted, however, “the negative effects these can have in cases of violence covered by the scope of this convention, in particular if participation in such alternative dispute resolution methods is mandatory”. The provision recognises that perpetrators of such violence may exude a sense of power and dominance, and the victim may not be able to enter the alternative dispute resolution processes on an equal basis with the perpetrator.¹⁰⁶

199. In view of these considerations, some member States provide for a general prohibition by law of mediation in cases of violence falling within the scope of the Istanbul Convention.

200. Where violence has been alleged, several factors should be considered, such as the severity and frequency of the alleged violence, the alleged

106. Council of Europe, [Explanatory report](#) to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, paragraphs 251 and 252.

perpetrator(s) and victim(s), the physical and mental health of the parents and the child and any risks or threats.¹⁰⁷

201. Whether or not a case is suitable for alternative dispute resolution needs to be assessed case by case. To facilitate this process, standardised risk assessment methods and screening tools for violence, including domestic violence, should be in place and be applied in the best interests assessment stage. The findings should inform the decision on whether referral to alternative dispute resolution processes is considered consistent with the best interests of the child and to determine any support the child or parent may need to participate in the process.

202. The Istanbul Convention obliges States parties to conduct risk assessments for persons who are victims of violence within the scope of the convention. Its Article 51 requires States parties to take the necessary legislative and other measures to ensure that the risks to persons are effectively assessed by all relevant authorities and to devise a safety plan, including for children who are victims or witnesses. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) recommends that risk assessments be carried out according to a standardised procedure and ideally as multi-disciplinary assessments.¹⁰⁸ As the risks to victims can be dynamic and evolve over time, the assessment should be updated periodically.

203. The competent authority that makes a decision on whether the case, or specific elements of it, is suitable for referral to alternative dispute resolution processes should take into account the findings of the risk assessment which was conducted as part of the best interests assessment.

204. In addition to the screening in the context of the suitability assessment prior to alternative dispute resolution processes, research findings indicate that screening should be continued throughout the alternative dispute resolution

107. Hague Conference on Private International Law (2012), op. cit., pp. 72-77; International Social Service (2017), "[Charter for International Family Mediation Processes](#) – a collaborative process", pp. 5-7.

108. Council of Europe (2020), "Risk-assessment standards and methodologies for diverse stakeholders in Ukraine: next steps in implementing international standards to ensure the safety of victims of violence against women and domestic violence", [Analytical report](#); Kostopoulou M.-A., "The work of GREVIO in promoting risk assessments in accordance with the Council of Europe Istanbul Convention", presentation at the E-PROTECT II international workshop entitled "Preventing secondary and repeat victimisation of child victims of crime: risk assessments and solutions in the best interests of the child", 24 March 2021.

process as this enhances the possibility of identifying acts or risks of violence that were not detected in the initial screening.¹⁰⁹

205. The best interests of the child should be a primary consideration in any alternative dispute resolution measure and the parents or other holders of parental responsibility should be encouraged to focus on the needs and best interests of the child at all times.

206. Professionals conducting alternative dispute resolution processes should be specifically trained on the rights and best interests of the child in situations of parental dispute, family conflicts and parental difficulties in caring for their child. States should ensure that such professionals can avail themselves of information material for parents and practical guidance to support parents in focusing on the rights and needs of the child.

207. The right of the child to be heard and to participate applies in alternative dispute resolution processes as in legal proceedings and should be secured in substantive and procedural terms, in accordance with sections IV and V of this Recommendation and in taking account of the best interests of the child.

208. Where a child is unable to form or express views, due to young age or capacity, the competent authority should ensure that the child's perspective is given due consideration in the alternative dispute resolution process, in accordance with Chapter IV.

Implementation and enforcement

209. The competent authorities should ensure that services are provided to the child and, as appropriate, the parent(s) or other holder(s) of parental responsibility, siblings and other family members; these services should be suitable to implement the decision or to support them in implementing the decision. The identification of suitable services should be based on the best interests assessment and be subject to periodic review and adaptation in accordance with the evolving situation of the child, the parents and other relevant family members. Services should take due account of the individual needs of the child and parents and other relevant family members and support them in complying with decisions while securing their rights.

210. Where the circumstances warrant, services should be put in place to support parents and families in developing their capacities and skills to care

109. McCutcheon R. (2021), "[Addressing domestic violence in mediation: the need for more uniformity and research](#)", *Harvard Negotiation Law Review*.

for and meet the needs of their child and should aim to prevent the separation of the child from his or her family or, where a child has been placed in alternative care, to support family reunification. The best interests assessment establishes the facts and evidence to determine if such services are appropriate in the individual case.

211. Orders relating to the enforcement of decisions affecting the child should always be based on a best interests assessment and aim to secure and promote the rights and best interests of the child. This requires an individualised approach in each case and clear reasons for the order issued, the specific enforcement measures chosen and how they have been assessed to be in accordance with the rights and best interests of the child. Such orders may concern, as an example, the enforcement of a decision regarding the use of mandatory services by a child or a parent, the placement of a child in alternative care or contact rights.

212. When identifying the most suitable enforcement measure in a case, the competent authority should consider the reasons for non-compliance, the impact of non-compliance on the child and the parents and other relevant family members involved in the case and any imminent risk or risk of significant harm in this regard. The competent authority should further assess the possible impact of a specific enforcement measure on the child in the immediate, medium and longer term.

213. Where appropriate in the individual case, enforcement procedures should provide for consideration of gradual measures, from requesting voluntary compliance, to encouraging and supporting the child and parents in complying with the decision, through to the issue of an enforcement order.

214. Before enforcement measures are ordered, the use of alternative means should be considered. Alternative means may include alternative dispute resolution processes, or the activation of relevant services or support measures for a parent or child to enable compliance and support them in the implementation of a decision. Alternative dispute resolution processes can support the child and parents in understanding and accepting a decision and improve their collaboration and communication in the implementation of the decision, while focusing on the needs and best interests of the child.

215. In the case of persistent non-compliance, the range of available enforcement measures should allow for more stringent measures, such as law-enforcement measures or initiation of legal proceedings against the non-compliant parent. Particularly stringent measures and the use of reasonable

force should remain a measure of last resort and be applied with due consideration of the rights and best interests of the child and in respect of principles of legality, necessity and proportionality, while recognising that the use of physical force against a child will never be in the child's best interests.

216. Where the authority competent for enforcement procedures differs from the competent authority having made the enforceable decision, their co-operation should be clearly regulated to ensure relevant data and case files are shared in a timely manner, with full respect for data protection regulations.

Administrative and judicial oversight and review

217. States should ensure that decisions made in care proceedings, that is the final decision on the merits of the case, are subject to effective administrative or judicial oversight.

218. According to the UNCRC, a child who has been placed by competent authorities for the purposes of care has the right to a periodic review of the treatment provided and all other circumstances relevant to his or her placement (Article 25 of the UNCRC).

219. States should establish mechanisms to ensure that such a review is carried out at periodic intervals.

220. The mechanism should ensure that the review informs the adaptation of any decisions and measures in accordance with the best interests of the child and the circumstances of the case. To this end, the competent authority should be able to use a gradual approach and a range of measures, such as ordering mandatory use of services, gradually limiting or reinstating parental responsibility in accordance with the best interests of the child or deciding upon the placement of the child in alternative care.

221. The review and adaptation stage aims at ensuring that the rights of the child, the parent(s), other holder(s) of parental responsibilities and other relevant family members are secured with continuity throughout all stages of care proceedings. As the provision of services to the child and family aims to safeguard the child while strengthening the family and preventing family separation, in accordance with the best interests of the child, the impact of such services should enable the family gradually to become more autonomous from service provision and to require less support. On the other hand, the family situation may deteriorate and any risks to the child may increase during the course of care proceedings and thus require an adaptation of measures.

The mechanism in place for review and adaptation should ensure that these developments are assessed and taken into account.

222. Review and adaptation should take due account of the age, level of maturity and needs of the child. This may require more frequent reviews in some cases, for instance where newborn, very young or young children are concerned, or where an identified risk to a child requires particularly close monitoring of the child's situation.

223. The mechanism for review and adaptation should ensure that the child is safe throughout all stages of care proceedings and that any risks, threats or dangers to the child are identified and addressed effectively in accordance with the best interests of the child and the principle of urgency (see emergency and interim measures in Chapter VI).

224. In accordance with Article 12 of the UNCRC and the Council of Europe Guidelines on child-friendly justice, the mechanism should ensure that the views of the child or, where appropriate, the child's perspective, are heard and given due weight, in accordance with the age and level of maturity of the child.

225. While the mechanism should set out a procedure for the periodic review of decisions, measures and services, it should also provide for the opportunity for the child and each party in the case to request a review at any time and that such requests are followed up effectively and in accordance with the principle of urgency. The child should have access to effective support and representation throughout the review and adaptation stage to be able to request a review and to have his or her views heard and given due weight.

226. The review and adaptation stage of care proceedings should continue until a sustainable, rights-based solution for the child has been identified, implemented and evaluated to be in accordance with the best interests of the child. In care proceedings, family reunification or adoption are typical sustainable family-based solutions for the child. Where these solutions are determined not to be in the best interests of the child, the child may leave the care placement upon reaching the age of majority and should receive appropriate after care support for his or her transition to adulthood and independent life.

227. The mechanism for review and adaptation should ascertain that the solution that was determined to be in the best interests of the child is in fact suitable to secure the rights and the best interests of the child not only in the

immediate, but also in the medium and longer term. The competent authority should undertake a child rights impact evaluation to ascertain that this is the case.

VII. Alternative care placements

Placement in the best interests of the child

228. The purpose of placing a child in alternative care can only be to secure the rights and best interests of the child. To this end, the decision to place a child in alternative care should be made by a competent authority as part of the best interests determination procedure, as set out in Chapters III and VI.

229. In accordance with the United Nations Guidelines for the Alternative Care of Children and the case law of the Court,¹¹⁰ the placement of a child in alternative care should always be a measure of last resort and for a time period which is appropriate to the individual child and, in principle, limited in time. Parliamentary Assembly Resolution 2232 (2018) “Striking a balance between the best interests of the child and the need to keep families together” reiterates these and other principles where a decision to remove a child from his or her family is made.¹¹¹

230. It is well established that removing children from the care of their parents to place them in the care of the State constitutes an interference with the right to respect for family life that requires justification under Article 8, paragraph 2, of the Convention.¹¹² *Strand Lobben and Others v. Norway* has recapitulated the relevant case-law principles (paragraphs 202-13). Notably, the Court emphasised the following guiding principles: the paramount importance of the child’s best interests, the necessity to facilitate family reunification as soon as reasonably feasible, the placement being regarded as a temporary measure to be discontinued as soon as circumstances permit, as well as the necessity of an adequate decision-making process. In the case of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible.¹¹³

110. Court, *Strand Lobben and Others v. Norway*, op. cit., paragraphs 207-208.

111. Parliamentary Assembly [Resolution 2232 \(2018\)](#), Principle 5.6. and Parliamentary Assembly [Resolution 2049 \(2015\)](#).

112. Court, *Strand Lobben and Others v. Norway*, op. cit., paragraph 202; *Kutzner v. Germany*, Application No. 46544/99, 26 February 2002, paragraphs 58-60.

113. Court, *Strand Lobben and Others v. Norway*, op. cit., paragraph 204; *Kilic v. Austria*, Application No. 27700/15, 12 January 2023, paragraphs 119-123.

231. The Court noted that “[t]aking children into care and thereby splitting up a family constitutes a very serious interference with the right to respect to family life protected under Article 8 of the Convention and should only be applied as a measures of last resort”.¹¹⁴ It underlined further that, in making decisions about placement, domestic courts should give detailed reasons why there was no other option available to protect the child which entailed less of an infringement of the family’s rights.¹¹⁵

232. The United Nations Guidelines for the Alternative Care of Children underline that placement “should, whenever possible, be temporary and for the shortest possible duration. Removal decisions should be regularly reviewed and the child’s return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child.”¹¹⁶

233. As a temporary measure, in principle, the placement of a child in alternative care should be limited in time while services are provided during the same period to the child and the parents and, where applicable, other family members, to support the family in a process that works towards family reunification in accordance with the best interests of the child. Such service provision should be planned and guided by an individual care plan.

234. The decision to place a child in alternative care is subject to administrative or judicial oversight or review in accordance with Chapter VI.

235. Where a child’s placement in alternative care was established to be in the best interests of the child, the child should be placed as close as possible to his or her family and social environment and within the same State jurisdiction, except where this is not in the best interests of the child.

236. To give effect to the best interests of children who are separated from their families and placed in alternative care, States should ensure that a range of care services and placements is available and accessible. In line with updated knowledge, practice and research on children’s needs, a diversity of alternative

114. Court, *Tlapak and Others v. Germany*, Application Nos. [11308/16](#) and [11344/16](#), 22 March 2018, paragraph 97; *Wetjen and Others v. Germany*, Application Nos. [68125/14](#) and [72204/14](#), 22 March 2018, paragraph 84; *Neulinger and Shuruk v. Switzerland* [GC], Application No. [41615/07](#), 6 July 2010, paragraph 136.

115. Court, *Tlapak and Others v. Germany*, op. cit., paragraph 98; *Wetjen and Others v. Germany*, op. cit., paragraph 85.

116. United Nations, Guidelines for the Alternative Care of Children, op. cit., paragraph 14.

care services is important to ensure that in each case, a placement can be identified that is consistent with the individual needs and any vulnerabilities of the child.

237. The form or type and modalities of a placement of a child should be chosen in accordance with the best interests of the child to ensure the placement is able to meet the needs of the child. Caregivers should be made aware of the individual needs and vulnerabilities of the child and receive information, training and support in providing care to the child and meeting the child's individual needs.

238. Children need to grow up in a family environment. Member States should give priority to placing children in family-based and family-like care wherever possible. Alternative care for young children, especially those under the age of 3 should, where appropriate, be provided in family-based settings. The use of residential care should be limited to cases where such a setting is in the child's best interests.¹¹⁷

239. The possibility of a placement in kinship care should always be assessed in the best interests assessment and, where possible and consistent with the best interests of the child, considered with priority.

240. Siblings should in principle not be separated by their placement in alternative care, unless separation is justified in accordance with the best interests of the child.¹¹⁸

Individual care plan

241. In accordance with Article 20, paragraph 1, of the UNCRC, 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, should be entitled to special protection and assistance provided by the State.

242. Articles 1 and 3 of the Convention require States to "take measures designed to ensure that individuals within their jurisdiction are not subjected

117. "Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse"; European Network of Ombudspersons for Children (ENOC), "Let's talk young, let's talk about the protection and promotion of the rights of children in alternative care", report on the work carried out in 2024 by the European Network of Young Advisors as part of ENOC's annual thematic policy area, 2024, p. 9; United Nations, Guidelines for the Alternative Care of Children, op. cit., paragraphs 21-23.

118. Ibid., paragraph 17.

to ill-treatment, including ill-treatment administered by private individuals”.¹¹⁹ This positive obligation applies to all persons within their jurisdiction and, in particular, to children and other vulnerable persons.

243. In *X and Others v. Bulgaria*, the Court noted that it “emerges from the Court’s case-law ... that the authorities’ positive obligations under Article 3 of the Convention comprise, firstly, an obligation to put in place a legislative and regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of treatment contrary to that provision; and, thirdly, an obligation to carry out an effective investigation into arguable claims of infliction of such treatment. Generally speaking, the first two aspects of these positive obligations are classified as ‘substantive’, while the third aspect corresponds to the State’s positive ‘procedural’ obligation.”¹²⁰

244. In the case of *Loste v. France*, the Court found that State authorities had failed in their obligation to protect a child against the sexual abuse to which she was subjected while in foster care, as they failed to comply with their obligations under national law to ensure regular follow-up after the decision to place the child in care, including through periodic inspections of the placement and one-to-one conversations with the child in compliance with the measures and mechanisms for preventing and identifying risks of ill-treatment in foster families as provided for by national law, as well as communication and co-operation between the competent authorities.¹²¹

245. For each child placed in alternative care, an individual care plan should be drawn up. The development of an individual care plan should be regulated by law or policy, setting out the structure of the care plan and the process for its implementation, including periodic review and adaptation. All stages of care planning should give due consideration to the rights and best interests of the child, both in terms of the objectives of care planning and in substantive and procedural terms. The care plan should provide for all the measures necessary to secure the rights and the best interests of the child with continuity during and after care proceedings and include medium- and longer-term provisions supporting the child in his or her transition to adulthood and independent life.

119. Court, *X and Others v. Bulgaria* [GC], Application No. 22457/16, 2 February 2021, paragraph 177; *O’Keeffe v. Ireland* [GC], Application No. 35810/09, 28 January 2014, paragraph 144; and *M.C. v. Bulgaria*, Application No. 39272/98, 4 December 2003, paragraph 149.

120. Court, *X and Others v. Bulgaria* [GC], op. cit., paragraph 178.

121. Court, *Loste v. France*, op. cit., paragraphs 101-103.

246. The individual care plan should identify the goals of the placement and the measures that are planned to achieve these goals.¹²² It should further identify measures to review progress over time and adapt the goals and measures in accordance with the best interests of the child.

247. The individual care plan should be “based on both the development of the child’s capacities and abilities and respect for his or her autonomy, as well as on maintaining contacts”.¹²³ It should set out clear steps and measures for maintaining the personal relations of the child and direct contact with family members and other persons who are significant to the child on a regular basis, as is consistent with the best interests of the child.

248. The individual care plan should aim to ensure stability and continuity of care and the development and implementation of a sustainable solution in the best interests of the child. A sustainable solution could be achieved through family reunification, or a permanent solution in alternative care, such as adoption, or ensuring continuity and stability in the child’s alternative care arrangements up to the age of majority while supporting the child in his or her transition to adulthood and independent life.

249. Planning towards a sustainable solution in the best interests of the child requires consideration for measures in the short, medium and longer term, including appropriate after care support in accordance with the needs and the best interests of the child.

250. Committee of Ministers Recommendation [Rec\(2005\)5](#) on the rights of children living in residential institutions, notes that the objective of after care support is the child’s reintegration into the family and society. This support should therefore be provided irrespective of whether the child is reunited with the family or leaves a care placement upon reaching the age of majority. The provision of after care support should be based on an assessment of the child’s needs.¹²⁴

251. In accordance with the United Nations Guidelines for the Alternative Care of Children, the “process of transition from care to aftercare should take into consideration children’s gender, age, maturity and particular circumstances and include counselling and support ... Children leaving care should be encouraged to take part in the planning of aftercare life. Children with special

122. United Nations Guidelines for the Alternative Care of Children, op. cit., paragraph 63.

123. Committee of Ministers, Recommendation [Rec\(2005\)5](#), “Guidelines and quality standards”.

124. Ibid., “Basic principles”.

needs, such as disabilities, should benefit from an appropriate support system, ensuring, *inter alia*, avoidance of unnecessary institutionalisation.”¹²⁵ Children and young adults leaving care should receive support for their integration in education, including secondary and tertiary education, vocational training and the labour market.

252. The individual care plan should be developed, implemented and reviewed based on a multidisciplinary approach in consultation with the child in accordance with his or her right to be heard and to participate in processes concerning him or her. The child should have the right and a genuine and meaningful opportunity to participate in the development, implementation and review of his or her care plan.

253. The care planning process should ensure that the child is prepared for any changes in the care arrangements. In particular, the child should be consulted on any changes and receive child-friendly information on how the development, review and adaptation of the care plan takes place and how it may lead to changes in care arrangements for the child.¹²⁶ Where placement of a child outside the State of jurisdiction is determined to be in the best interests of the child, the individual care plan should provide for specific measures to prepare the child for it and to ensure appropriate follow-up.

254. The parent(s) of the child and other relevant family members should be consulted and participate in the care planning process as appropriate in the circumstances of the case, except where this is not in the best interests of the child.

255. Where a child remains in alternative care up to the age of majority, the child should be prepared for and supported in his or her transition to adulthood and independent life. Consideration of the child’s transition to adulthood and necessary support should be given from the moment of the child’s referral to alternative care and in the development of the individual care plan. Support to the child’s transition to adulthood and independent life requires that effective after care be available and accessible for the child or young person in accordance with his or her needs. Such support should be provided with continuity before and after the child reaches the age of majority.

125. United Nations Guidelines for the Alternative Care of Children, op. cit., paragraph 132.

126. Ibid., paragraph 68.

Support for family reunification

256. The competent authority should ensure that the parents of the child, or other holders of parental responsibilities, receive multidisciplinary services and support in developing their abilities to care for and meet the needs of the child, to assume their responsibilities towards the child and to resolve or remove the causes for the child's placement. Appropriate support should be identified and provided in accordance with the best interests of the child (see paragraphs 171-178). The individual care plan for the child should aim at supporting family reunification as long as it has not been established to be contrary to the best interests of the child.

257. Family reunification may take place at once or as a process. In cases where families require multidimensional support in the medium or longer term, a reunification process that takes place in stages may be considered to be in accordance with the best interests of the child. In such cases, the competent authority may decide to enable the physical reunification of the family before fully reinstating parental responsibilities. A gradual approach can help the family in taking on responsibility and autonomy in steps while securing the rights of the child and enabling close monitoring and support from relevant service providers.

Support for providers of alternative care

258. Irrespective of the form of placement, the organisations, professionals and private persons who provide alternative care to children should be supported in providing care and protection and special assistance to the child, in accordance with Article 20, paragraph 1 of the UNCRC.

259. States should support alternative care providers to ensure that the care, protection and assistance they provide to children in alternative care takes account of the individual needs of the child, including specific needs and any vulnerabilities, in accordance with the rights and the best interests of the child. Support may be provided in different forms and should include financial support, general and specific information services, training and capacity building, supervision, counselling and advice on childcare suitable for the individual child and placement, kinship care support where appropriate and other relevant assistance in accordance with the circumstances of the case and the best interests of the child.

260. All forms of family-based alternative care should be appropriately supported in accordance with national law.

261. States should ensure that kinship care is supported in the same manner as foster care and other forms of family-based alternative care for children. In accordance with the United Nations Guidelines for the Alternative Care of Children, “kinship care” refers to “family-based care within the child’s extended family or with close friends of the family known to the child, whether formal or informal in nature”.¹²⁷ Stakeholders consulted in the drafting process of this Recommendation considered that kinship care may have the advantage of making it possible to place a child as close as possible to the child’s family and network.

262. Persons providing kinship care to a child may require specific support that takes into consideration their role as both family members of the child and caregivers in an alternative care situation. As kinship carers, they may find themselves in delicate situations concerning their relationship with the child’s parent(s) as their family member(s) while being responsible for securing the best interests of the child as providers of alternative care.

263. Persons providing alternative care should have clearly defined decision-making responsibility for day-to-day decisions affecting the child and should be trained to focus on the needs and the best interests of the child at all times.

264. Committee of Ministers Recommendation No. R (87) 6 on foster families, sets out principles regarding the role and responsibilities of foster parents in providing alternative care for a child.

Child safeguarding in alternative care

265. States should ensure that service providers and care providers are subject to vetting and supervision. All State and non-state actors providing professional services for children and families, including alternative care and related services, should be subject to approval and accreditation procedures that take due account of the rights and best interests of the child, as well as monitoring and inspection to ensure compliance with the applicable standards. Residential institutions for children should comply with the principles and standards set out in Committee of Ministers Recommendation Rec(2005)5 on the rights of children living in residential institutions.

266. States should ensure that national standards for vetting, approval and accreditation are set out in law or policy and are subject to periodic review.

127. Ibid., paragraph 29.c.i.

267. The United Nations Guidelines for the Alternative Care of Children underline that “[a]ll alternative care provision should be based on a written statement of the provider’s aims and objectives in providing the service and the nature of the provider’s responsibilities to the child that reflects the standards set by the Convention on the Rights of the Child, the present Guidelines and applicable law. All providers should be appropriately qualified or approved in accordance with legal requirements to provide alternative care services.”¹²⁸

268. All State agencies, institutions and professional private service providers should be required to develop child well-being and safeguarding protocols, irrespective of their level of direct engagement with children and families. The availability of child well-being and safeguarding protocols should be a precondition for approval and accreditation procedures. Staff should be responsible for compliance with relevant protocols and be trained periodically on the use of these protocols in their work practice.

269. The situation of children placed in alternative care should be subject to regular monitoring and external control. Such monitoring and control should be effective in all types and modalities of placement, including in residential care and family-based and family-like care.

VIII. Care proceedings involving placement outside the State jurisdiction

270. This chapter lays down specific safeguards for cases where placement outside the State jurisdiction is considered, in accordance with law. While the general safeguards provided in this Recommendation fully apply to all decisions on placement, including placements in another State, the specific safeguards laid down in this chapter apply to placements which do not lead to a transfer of jurisdiction.

271. A decision to place a child outside the State jurisdiction should be made by a competent authority, based on a best interests determination procedure and in accordance with applicable law. In making the decision, the competent authority should exercise exceptional care and vigilance. Where in force, such a decision should be made in accordance with Article 33 of the HCCH 1996 Child Protection Convention and the applicable law as determined by that convention. Where it is not in force, applicable law may include national or local legislation, international law or European Union law. Where the competent authority that has jurisdiction to order the cross-border placement of a child

128. Ibid., paragraph 73.

is from a Contracting State to the HCCH 1996 Child Protection Convention, the applicable law will be designated by the rules of that convention. The rules of the HCCH 1996 Child Protection Convention will apply even if the law designated by them is the law of a non-contracting State.

272. While it is generally in the best interests of the child to choose an alternative care placement as close as possible to the child's family and social environment to enable the child to maintain social contacts and family relationships, a placement outside the jurisdiction of the State may, exceptionally, be considered, where the best interests assessment indicates that this may be best for the child. In such a case, the best interests assessment should be completed in co-operation with the competent authority of the receiving State to gather all relevant facts on the placement under consideration.

273. Placement in another State jurisdiction may be considered, for example, where placement with a relative living abroad may be in the best interests of the child (kinship care), or when the child's foster family is itself relocating. In a limited number of cases, specialised care may be required to ensure proper treatment or therapy for a child with specific needs. Where the required specialised services, whether residential or otherwise, are not available in the State in which the child resides, in exceptional cases the child may need to be transferred to an adjoining State that provides such services. In such cases, the competent authorities of the transferring State have an additional duty to ensure that services in the recipient State are appropriate for the child's needs and meet the required standards of treatment and care. A similar obligation arises where a child who resides in a border area close to another State receives alternative care in the adjoining State.

274. Safeguards should be in place to secure the contact rights in care proceedings where a competent authority decides to place a child outside the State jurisdiction. Such safeguards should be in place in short- and long-term alternative care placement outside the State jurisdiction.

275. Safeguards to secure the contact rights should ensure, as a minimum, that:

- a. the chosen location, as far as possible and appropriate, facilitates the preservation of the child's family and social environment and enables the child to maintain personal relations and direct contact on a regular basis with parents, siblings, other family members and with other persons who are significant to the child, except where this is not in the best interests of the child;

- b. where regular physical contact is no longer feasible or possible, the placement arrangements include provision for regular remote contact and for the receipt of correspondence and gifts to mark significant dates and events in the child's life, in accordance with the best interests of the child.

276. In view of Committee of Ministers Recommendation [CM/Rec\(2015\)4](#) on preventing and resolving disputes on child relocation, which recognises the risk that a child would lose contact or experience a significant disruption of contact due to relocation, the maintenance of meaningful relationships should be given due priority in the best interests determination procedure. Those relationships that operate positively and beneficially for the child and which may be adversely affected by the child's placement in another jurisdiction should be identified and receive careful consideration.

277. The best interests determination procedure should give specific attention to the right of the child to maintain personal relations and direct contact on a regular basis with both parents. In addition to the parents, personal relations and direct contact on a regular basis with siblings, including stepsiblings and half-siblings, grandparents, as well as other significant persons, may be of particular meaning for the child and should be assessed and considered as part of the best interests determination procedure.

278. When deciding on arrangements for contact and personal relations between a child and both parents, the practicability of such arrangements should be assessed in an objective manner. The assessment should specifically have regard to the costs that each parent will incur to comply with contact arrangements and their sustainability in the medium and longer term. In addition, any risks or levels of disruption should be carefully considered.

279. The decision to place a child outside the State jurisdiction should only be made in agreement with the competent authority of the State receiving the child. The competent authority may be a central authority in accordance with law. Before agreement is reached, the sending State should share all relevant information with the competent authority of the receiving State, such as a report on the child, including the documentation of the best interests determination procedure, as a basis for making the agreement. The agreement should cover, as a minimum:

- a. the choice and qualification of the caregiver and quality of care;
- b. the time frame and other modalities of the placement;

- c. entry and residence in a State other than the child's place of habitual residence, where relevant;
- d. responsibilities for monitoring, the periodic review of the quality of services provided and respect for the rights and best interests of the child, as well as any adaptation in accordance with the best interests of the child. Adaptation may include the child's return without delay, in accordance with the best interests of the child, where the required standards are no longer met or where the periodic review shows that the placement is no longer in the best interests of the child;
- e. any costs related to the care of the child, including travel and transportation and costs of caregivers.

280. To ensure legal clarity regarding jurisdiction and continuity in securing the rights and best interests of the child, sending States should ensure that mechanisms are in place to facilitate the co-operation of competent authorities in all stages of care proceedings involving more than one jurisdiction, in accordance with applicable law, including the provisions of relevant international agreements (see paragraph 287). Appropriate mechanisms should be in place to enable competent authorities to satisfy themselves that the quality of care and levels of expertise in the receiving jurisdiction meet the required standards. This should include the provision of evidence of appropriate support and supervision and, where relevant, accreditation and competence.

281. Appropriate mechanisms may include, but are not limited to, central authorities as well as relevant networks for cross-border judicial or social service co-operation (see international co-operation in Chapter IX).

282. In the event of placement abroad, the competent authority should communicate and co-operate with the competent authority of the other State. Questions of co-operation between different jurisdictions may also arise within member States, especially in strongly decentralised or federal States and autonomous regions.

283. The competent authority should be responsible for providing clear reasoning regarding the decision to place the child outside the State jurisdiction. The reasoning should explain how the placement serves the best interests of the child better than a placement within the State jurisdiction. To do so, the competent authority should explain how the specific placement has been assessed to be in the best interests of the child and how the best interests of the child have been given due consideration in the decision-making process.

284. The views of the child regarding the placement outside the State jurisdiction should be heard and given particular attention. It should be noted that Article 23, paragraph 2, of the HCCH 1996 Child Protection Convention provides that: "Recognition [of measures taken by the authorities of a Contracting State] may however be refused ... b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State".

285. In principle, services should be provided with continuity and in a language that the child understands. "Services" include all services identified in the child's individual care plan, as well as services to secure the child's procedural rights.

286. If provided under national law, the competent authority of the sending State should review the decision periodically and make any necessary adaptations in accordance with the best interests of the child. Periodic review is important in all types of placements, including foster and kinship placements, as well as placements in family-like and residential care. Having made appropriate enquiries or ensured that an examination of the facilities has taken place, the competent authority of the sending State should make whatever adjustments are required in the best interests of the child.

287. During placement, and especially in the case of residential care, the competent authority of the sending State should make appropriate enquiries to ensure an examination of the quality of care and levels of expertise in the receiving State in order to satisfy itself that they meet the required standards. This should include, where relevant, the provision of evidence of appropriate accreditation, competence and supervision. The competent authorities of the receiving State should be informed about and expressly accept the placement of the child.

288. Where the periodic review shows that the required standards are no longer met or that the placement outside the State jurisdiction is no longer in the best interests of the child, the sending State should request that the receiving State return the child. As soon as a State receives such a request, the child should be returned to the sending State without delay, in accordance with national law.

289. Where the best interests assessment indicates that a transfer of jurisdiction for the purpose of alternative care is in the best interests of the child, the procedure for transfer of jurisdiction should be initiated and completed

without delay, in accordance with applicable law. This may be the case, for example, where a child's parents are deceased and kinship care in another State is identified to be in the best interests of the child or in other cases where the best interests assessment indicates that a placement in another State is more conducive to the best interests of the child in the longer term.

IX. Miscellaneous provisions

Data protection

290. Proceedings within the scope of this Recommendation should be held, to the extent possible, behind closed doors, to prevent identification of the child and to protect his or her privacy, as mandated by Article 8, and in accordance with Article 6 of the Convention.¹²⁹ The Council of Europe Guidelines on child-friendly justice state: "Whenever children are being heard or giving evidence in judicial or non-judicial proceedings or other interventions, where appropriate, this should preferably take place *in camera*. As a rule, only those directly involved should be present, provided that they do not obstruct children in giving evidence."¹³⁰ The guidelines' explanatory memorandum states, "this principle should, however, be reconciled with the principle of free access to judicial proceedings, which exists in many member states".¹³¹

291. States should guarantee the respect for private and family life of children, parents and other holders of parental responsibility, as well as other family members concerned by proceedings and measures within the scope of this Recommendation, in accordance with Article 8 of the Convention and the child's dignity (see Chapter II on overarching principles). The right to respect for private and family life is an element of child-friendly justice and a fundamental right of the child, and it applies before, during and after proceedings or alternative dispute resolution processes. Specific measures should be taken to protect the child's data processed in the context of proceedings or alternative dispute resolution processes, in accordance with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, 1981) and its protocols and the modernised Convention for the Protection of Individuals with Regard to Automatic Processing of Personal

129. See Court, *Moser v. Austria*, Application No. 12643/02, 21 September 2006, paragraph 97.

130. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010), op. cit., IV.A.9.

131. *Ibid.*, explanatory memorandum, paragraph 58.

Data,¹³² as well as other applicable law.¹³³ Effective respect for these rights is necessary to protect the child's dignity.

292. The Council of Europe Guidelines on child-friendly justice set out principles for the child's participation in proceedings in accordance with data protection standards: the limitation of access to case files and records containing personal and sensitive data about children; data transfer in accordance with data protection legislation; the hearing of the child other than in public or otherwise without the presence of the public; confidentiality rules for professionals; and the prevention of violations of privacy rights by the media.¹³⁴

293. Where it is in the best interests of the child, the sharing of his or her personal data between relevant competent authorities, professionals and service providers should be ensured in practice, in accordance with law, also in cross-border situations. To facilitate this, member States should ensure that child-centred, multidisciplinary and interagency co-operation and service models are in place and facilitate a collaborative assessment of a child's case (see Chapter III on the assessment of the child's best interests and a multidisciplinary approach).

294. The Committee of Ministers Recommendation CM/Rec(2011)12 on children's rights and social services friendly to children and families, provides that "rules on confidentiality should facilitate multidisciplinary co-operation by setting up a common framework for respecting the right to privacy. This entails allowing the sharing of information with persons bound by official or professional secrecy, and only if it is in the best interest of the child. Sharing information should be limited to what is strictly necessary to achieve this end and should generally be subject to the approval of the child and her or his parents."¹³⁵

132. UNCRC, Article 16; European Convention on Human Rights, Article 6; Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108); Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, (CETS No. 223, Convention 108 +, 2018); *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010), op. cit., pp. 22 and 82; CRC, General Comment No. 24 (2019), op. cit., paragraphs 66-71.

133. For instance: European Union (2016), Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. European Union (2019), Regulation EU 2019/1111 of the European Union concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels IIb Regulations). Hague Conference on Private International Law, 1996 Child Protection Convention.

134. *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010), op. cit. IV.A.2.

135. Committee of Ministers Recommendation [CM/Rec\(2011\)12](#), V.H.d.

295. Where a child is placed in another jurisdiction as a result of proceedings within the scope of this Recommendation, the sharing of his or her personal data within and across jurisdictions should be ensured in accordance with applicable law. Special measures to ensure this in practice may need to be in place to facilitate appropriate data transfer between member States, as well as between regions or autonomous regions of the same State.

296. The child should be informed about his or her data protection rights and how to exercise these rights in the context of administrative and judicial proceedings, as well as alternative dispute resolution processes, within the scope of this Recommendation. All relevant information should be provided to the child in child-friendly language (see Chapter V on the right to information).

297. The child's parents or other holders of parental responsibility and, where applicable, guardian or legal representative should be informed about the child's data protection rights. Where a child wishes to access personal data records and to rectify incorrect or incomplete personal data in relevant records, the child should have access to effective support in doing so.

298. Media reporting on children involved in proceedings within the scope of this Recommendation should uphold the child's right to respect for private and family life, in accordance with national law and the self-regulation of the media. Media reports should prevent the identification of children, for instance by referring to a child in an anonymous way or using a pseudonym, disguising voices and images, and ensure that descriptions of the child or the child's family do not enable the indirect disclosure of the child's identity. The media should uphold the right of the child to respect for private and family life also in cases where the child's parents breach this right and reveal personal data or images of the child in public or to the media. A breach of privacy, especially in media reporting, will cause harm to the child, which may have a significant detrimental and lifelong impact on the child. As set out in paragraph 89 of this Recommendation, proceedings within the scope of this Recommendation should not be held in public, as far as possible, to protect the child's privacy.

Training and professional standards

299. States should ensure that State officials and professionals involved in care proceedings are adequately and continuously trained in interacting with the child and have the necessary levels of expertise and access to practical guidance. This would entail encouraging professional bodies to incorporate relevant material in their training programmes. Training should be provided

as part of academic and vocational education and, subsequently, as continuous and on-the-job training, and include co-operation with professional associations.

300. Training programmes should address all aspects of the rights and best interests of children and child-friendly justice, child development, child-sensitive communication as well as the psycho-emotional needs of children at different ages. Training should prepare officials and professionals to guarantee the substantive and procedural rights of children concerned by proceedings and to comprehend, assess and respond to the child's psycho-social, emotional and affective needs.

301. Relevant professional groups, such as social and child protection workers, healthcare and medical staff and child psychologists, as well as law-enforcement services should receive training on methods for screening cases for domestic and other forms of violence and identifying children as victims of domestic and other forms of violence, including when they have witnessed it, assessing its harmful impact on the health and well-being of the child, as well as relevant risks before, during and after care proceedings.

302. Competent authorities and professionals should receive training in the use of service methods and tools required to conduct a best interests determination procedure, including the assessment of relevant factors in a best interests assessment, and continue receiving coaching and supervisory support in applying these methods and tools in practice (see Chapter III on the assessment of the child's best interests).

303. The European Programme for Human Rights Education for Legal Professionals (HELP) online courses offer targeted training courses for professionals, including judges, lawyers and other legal professionals that are relevant for the implementation of this Recommendation, such as courses on children's rights, child-friendly justice, family law and human rights, anti-discrimination, ethics for judges, prosecutors and lawyers, violence against women and domestic violence, data protection and privacy rights. The courses are available online in a range of languages and free of charge.¹³⁶ Member States should encourage the active use of these training resources, either directly by public officials or through relevant professional associations and organisations.

136. Council of Europe, [Human Rights Education for Legal Professionals](#).

304. European codes of conduct and ethical standards for mediation, such as the European Code of Conduct for Mediators (2004) of the European Union and the European Code of Conduct for Mediation Providers (2018) developed by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, apply to a broad scope of civil and commercial matters, including family law matters.¹³⁷ In addition, international guides and codes provide more specific details on the rights and best interests of the child, such as the guide to good practice in mediation of the Hague Conference on Private International Law and the Charter for International Family Mediation Processes of the International Social Service.¹³⁸

Monitoring and research

305. All legislative, policy and budgetary decisions concerning family support, childcare and alternative care and relevant proceedings should be based on monitoring and scientific research findings, as well as statistical data. Monitoring and research should be undertaken by, or on behalf of, State authorities, as well as independent, academic and civil society actors. Monitoring and research should include the use of participatory methods to ensure the voices of children and parents as service users and parties or participants in proceedings and alternative dispute resolution processes are heard and taken into account.

306. Legal and policy systems in member States, as well as services for children and families, should be responsive to social change. Laws, policies and services in the field of parenting and childcare, child protection and family strengthening should be reviewed periodically to ensure they comply with the evolution of the family and childhood and the specific needs of children and parents before, during and after care proceedings. To this end, States should ensure that the development, evaluation, funding and review of services for children, parents and families is informed by periodic consultations of children, parents and professional service providers from all relevant disciplines. Any barriers to the participation of children should be reduced and the outcomes of consultation should be shared with the participants.

137. [European Code of Conduct for Mediators](#), 2004. Council of Europe, CEPEJ, European Code of Conduct for Mediation Providers, CEPEJ(2018)24, 3-4 December 2018.

138. Hague Conference on Private International Law (2012), op. cit., International Social Service (2017), op. cit.

International co-operation

307. States should strengthen their co-operation in order to effectively secure and promote the best interests of the child in care proceedings with a cross-border dimension. Cross-border co-operation may be necessary in national cases where a family member has ties to more than one country and in cases where the placement of a child in alternative care outside the State jurisdiction is under consideration. To this end, relevant central authorities, cross-border judicial and social service networks and child protection services should be strengthened.

308. Strong cross-border co-operation is an important element to ensure the timely processing of care proceedings involving different jurisdictions, for example in avoiding delays due to the need to gather information. To prevent or reduce such delays to the minimum, States should develop effective mechanisms for co-operation and communication that facilitate all necessary steps of case assessment, decision making and, where applicable, implementation or enforcement (see also Chapter VII on alternative care placements).

309. For European Union Member States and for Contracting States to the relevant conventions of the Hague Conference on Private International Law, the implementation of relevant applicable standards¹³⁹ and the relevant networks define the co-operation in cross-border cases and aim to prevent international child abduction, as far as possible, and to protect the children at risk of or concerned by such abductions.

310. These mechanisms should facilitate the transmitting and receiving of information on a child for the best interests assessment, during the initial assessment and any review. The competent authorities of the sending and the receiving State should co-operate and communicate effectively with each other, including the sharing of information on the case, in accordance with data protection rules and the procedural rights of the parties.

311. States should promote the cross-border exchange of experience in supporting children and parents in relation to care proceedings. Transnational and multi-country research should be supported, for instance through the use of comparable indicators for data collection. Cross-border collaboration and

139. European Union (2019), Regulation EU 2019/1111 of the European Union concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, and on international child abduction (Brussels IIb Regulation). Hague Conference on Private International Law: HCCH 1980 Child Abduction Convention; HCCH 1996 Child Protection Convention.

exchange should further be supported with a view to fostering the exchange of effective service models, which are based on evidence, including multi-disciplinary and interagency, child-centred and rights-based service models, as well as cross-border training of competent authorities and professionals.

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

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

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

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ISBN 978-92-871-9628-6 (PDF)
€5/US\$10

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