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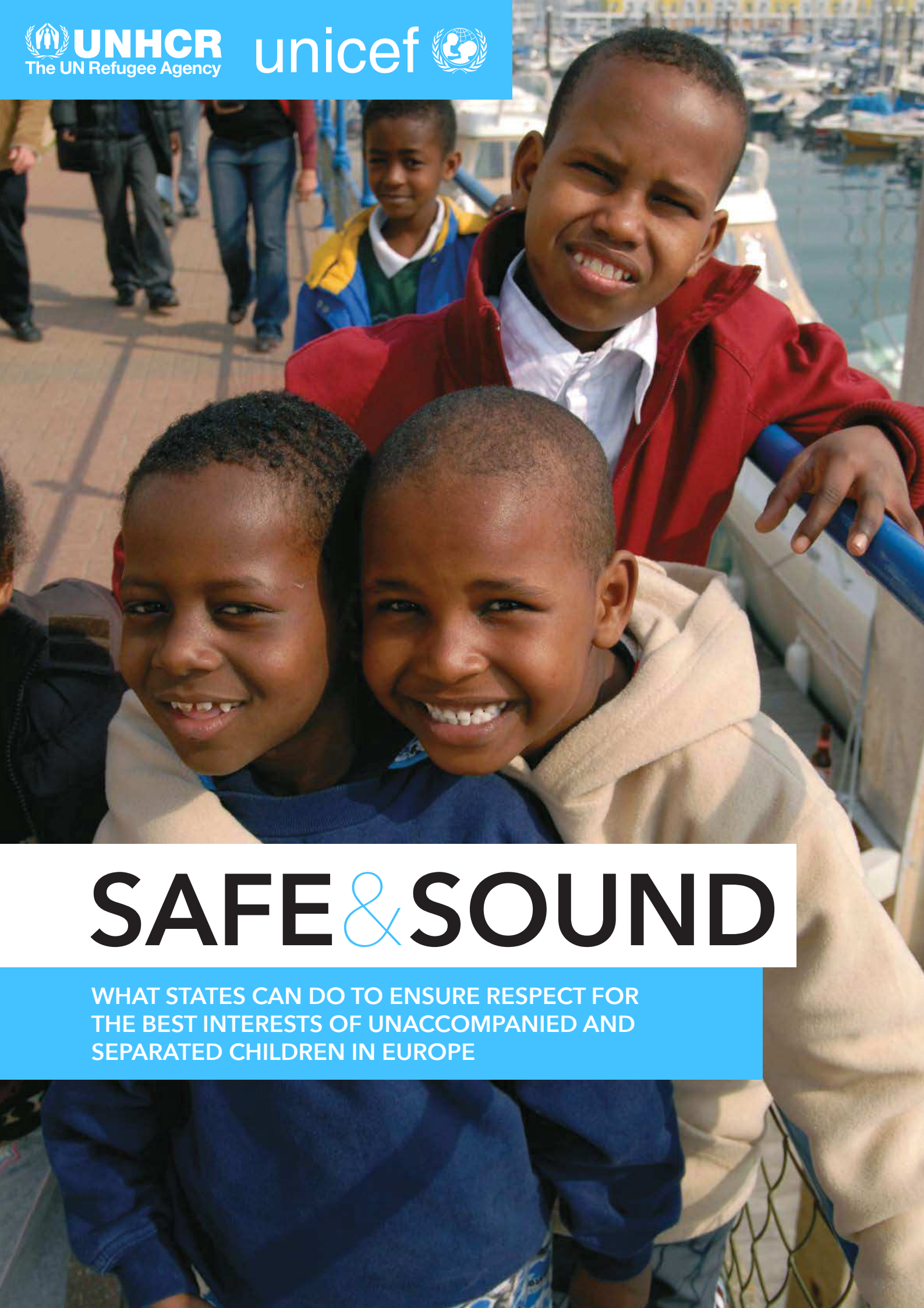

SAFE & SOUND

WHAT STATES CAN DO TO ENSURE RESPECT FOR THE BEST INTERESTS OF UNACCOMPANIED AND SEPARATED CHILDREN IN EUROPE

SAFE&SOUND

WHAT STATES CAN DO TO ENSURE RESPECT FOR THE BEST INTERESTS OF UNACCOMPANIED AND SEPARATED CHILDREN IN EUROPE

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The publication has benefited from input and expertise of a wide range of child protection actors in EU Member States and EFTA countries, including international organizations, governmental and non-governmental organizations, and academia and guardianship institutions. National consultation rounds with government stakeholders, civil society and children's ombudspersons were also held to inform the document and thanks is extended to the various experts who were available to meet with us to share their views.

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1 INTRODUCTION AND OVERVIEW

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1.1 Background

In recent years, a growing number of unaccompanied and separated children have been arriving in Europe. In 2012, a total of 13,320 children claimed asylum in the European Union (EU) and the European Free Trade Association (EFTA) countries of Iceland, Liechtenstein, Norway and Switzerland – up from 12,225 in 2011[1] and 10,845 in 2010. In 2013, 12,430 applications were lodged.[2] These figures, however, represent only a fraction of the total number of unaccompanied and separated children who are outside their country of origin or habitual residence and are present in the EU and EFTA countries.[3] Many unaccompanied and separated children do not register with the authorities either because they are unable or afraid to do so or because they have been advised by family members, peers or smugglers to keep on the move to another destination. Worryingly, others are not able to contact the authorities because they are being controlled by their traffickers and are destined for sexual, labour or other exploitation in Europe. Additional numbers of unaccompanied or separated children may not show up in statistics because they do not apply for international protection or were referred to specialized procedures for child victims of trafficking.

Unaccompanied and separated children leave their countries of origin for a variety of reasons. They may be fleeing from persecution, armed conflict, exploitation or poverty. They may have been sent by members of their family or decided to leave on their own – be it to ensure their survival, or to obtain an education or employment. They may have been separated from their family during flight or may be trying to join parents or other family members. Or they may have become victims of trafficking. Often it is a combination of factors.

However, regardless of the circumstances and reasons they are on the move, all unaccompanied and separated children share two fundamental characteristics. First, they are children and should first and foremost be treated as such. Second, as children temporarily or permanently deprived of their supportive family environment, they are entitled to special protection and assistance.[4]

Still, the relatively high number of unaccompanied and separated children arriving or moving internally in Europe poses very real challenges for States. These include pressures on resources to provide new arrivals appropriate care and support, trace families and determine the child's best interests in finding a durable solution. It also challenges States as they endeavour to honour their commitments under the Convention on the Rights of the Child (CRC), the EU Charter of Fundamental Rights, and EU directives and regulations.

On a very practical level, the issue of unaccompanied and separated children in Europe poses a complex problem requiring government agencies to find new ways of working together in innovative constellations and with new partners. This document aims to assist in these efforts by focusing on how States can operationalize the best interests principle set forth in Article 3.1 in the CRC, which states that "The best interests of the child shall be a primary consideration in all actions affecting children."

1 Eurostat data quoted in European Commission, *Commission Staff Working Document on the implementation of the Action Plan on Unaccompanied Minors.* Accompanying the document: *Report from the Commission to the Council and the European Parliament Mid-term report on the implementation of the Action Plan on Unaccompanied Minors COM*(2012) 554 final, 28 September 2012, http://goo.gl/GC5Zy2

2 Eurostat statistics for 2012 and 2013 are available at: http://goo.gl/W5bgmY

3 European Agency for Fundamental Rights (FRA), *Separated, asylum-seeking children in European Union Member States,* December 2011, http://www.unhcr.org/refworld/docid/4e539f1c2.html. See also the European Union: European Commission, *Communication from the Commission to the European Parliament and the Council. Action Plan on Unaccompanied Minors (2010 - 2014),* 6 May 2010, COM(2010) 213/3, http://www.unhcr.org/refworld/docid/4bfe89602.html

4 See Art. 20 of the UN General Assembly, *Convention on the Rights of the Child,* 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, http://www.unhcr.org/refworld/docid/3ae6b38f0.html

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1.2 Understanding child mobility

The specific vulnerabilities and protection needs of children migrating on their own have been explored in research. A study by UNICEF, the International Organization for Migration (IOM) and the International Labour Organization (ILO) together with a number of NGO partners[5] explored the dynamics of mobility among children and youths in West Africa, adding to the understanding of the expanding phenomenon. Such dynamics were also explored in relation to children leaving Central America and Mexico in a 2014 UNHCR study.[6] A UNHCR-led transnational study documented the movements of children along a major transit route in the EU, Greece, Italy and France, and suggested addressing protection gaps through outreach in the areas of reception, counselling and referral.[7] Several UNICEF studies have highlighted the situation of child victims of trafficking in Europe,[8] among which *Child Trafficking in the Nordic Countries: Rethinking strategies and national responses*[9] discusses specific policy recommendations concerning measures to respect the best interests of the child, including the need to formalize these measures by using a best interests determination (BID). A study carried out by the EU's Fundamental Rights Agency (FRA)

5 PLAN, WARO, ENDA, Jeunesse Action, AMWCY, ILO, Terre des hommes Foundation, IOM, Aide à l'Enfance–Suède, UNICEF WCARO, *Which Protection for Children Involved in Mobility in West Africa? Our positions and recommendations, Project of Joint Regional Study on the Mobility of Children and Youths in West Africa,* June 2011, http://goo.gl/Y1fk7q

6 UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the need for International Protection,* March 2014, http://www.refworld.org/docid/532180c24.html

7 UNHCR, *Protecting children on the move,* July 2012. http://www.refworld.org/docid/522852c34.html

8 Summarized in UNICEF, *Child Trafficking in Europe. A Broad Vision to Put Children First.* October 2007, http://www.unicef-irc.org/publications/pdf/ct_in_europe_full.pdf

9 UNICEF, Innocenti Research Centre, *Child Trafficking in the Nordic Countries: Rethinking strategies and national responses,* December 2011, http://www.unicef-irc.org/publications/pdf/nordic_countries.pdf

highlighted the specific protection issues for these unaccompanied and separated children.[10] Further, a joint OHCHR-UNICEF study on judicial implementation of Article 3 of the CRC highlighted jurisprudence on the best interests principle as applied to issues concerning migrant children.[11] Two studies commissioned by UNHCR in 2010,[12] which considered the situation of Afghan children arriving in Europe, highlighted the need for instituting best interests determination (BID) procedures in industrialized countries. These studies also recognized that the 2008 UNHCR Guidelines on Determining the Best Interests of the Child[13] and the UNHCR Field Handbook for the Implementation of UNHCR BID Guidelines[14] were drafted for situations where UNHCR and its partners were leading the protection response and are not applicable without substantial adaptation in industrialized States, which generally have more developed child protection and asylum and immigration systems in place.

1.3 Operationalizing the best interests principle

In recent years, significant efforts have sought to embed the best interests principle in policy and legislation. The process has been largely driven by the incorporation of the CRC at the national level but also through regional policies such as the European Commission's Action Plan (2010-2014) on Unaccompanied Minors.[15]

In this Action Plan, the Commission recognized the need for a common EU approach to protecting these children, emphasizing a durable solution. This may take the form of return and reintegration in the country of origin, granting of international protection status or other legal status allowing children to successfully integrate in the country of residence or a third country solution. The appropriate solution, however, can only be determined by assessing what would be in the best interests of the individual child.

UNICEF and UNHCR wish to support States in identifying the optimal means to fulfil their responsibilities to protect the rights and best interests of unaccompanied and separated children in Europe. Children who find themselves without parental protection are dependent on States to uphold their rights. Finding ways in which this may be achieved is becoming increasingly complex, while no less urgent.

10 FRA, *Separated, asylum-seeking children in European Union Member States: comparative report,* December 2010, http://www.refworld.org/docid/4ecf71aeb.html

11 UNICEF, *Judicial Implementation of Article 3 of the Convention on the Rights of the Child in Europe: The case of migrant children including unaccompanied children,* June 2012, http://www.refworld.org/docid/513ae842.html

12 UNHCR, *Trees only move in the wind: a study of unaccompanied Afghan children in Europe,* June 2010, PDES, http://www.unhcr.org/refworld/docid/4c21ae2a2.html. UNHCR, *Voices of Afghan Children – A Study on Asylum-seeking Children in Sweden,* June 2010, http://www.refworld.org/docid/4c19ec7f2.html

13 UNHCR, *UNHCR Guidelines on Determining the Best Interests of the Child,* May 2008, http://www.unhcr.org/refworld/docid/48480c342.html

14 UNHCR, *Field Handbook for the Implementation of UNHCR BID Guidelines,* November 2011, http://www.refworld.org/docid/4e4a57d02.html

15 European Commission, *Communication from the Commission to the European Parliament and the Council. Action Plan on Unaccompanied Minors* (2010 - 2014), 6 May 2010, COM(2010) 213/3, http://www.unhcr.org/refworld/docid/4bfe89602.html

UNHCR's mandate, which is laid down in its Statute,[16] is to provide international protection and find durable solutions[17] to the plight of refugees. Given the significant proportion of children among forcibly displaced populations and the fact that they face unique protection risks, responding to their specific needs is a key priority. UNHCR's commitment to the protection of forcibly displaced children was reaffirmed in *A Framework for the Protection of Children,* published in June 2012.[18] The Framework places the Convention on the Rights of the Child at the heart of UNHCR's protection mandate and builds on UNHCR's policy and existing guidelines on the protection of children and relevant Executive Committee Conclusions.[19]

UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the CRC and strives to establish children's rights as legal obligations, ensuring ethical principles and international standards of behaviour towards children. UNICEF is committed to ensuring special protection for the most disadvantaged children. Advocating for child rights is a core function of both UNICEF as an international organization and UNICEF National Committees in industrialized countries. As articulated in the UNICEF Child Protection Strategy,[20] "UNICEF will promote child protection through advocacy in both developed and developing countries through research and evidence, existing partnerships and new opportunities."

16 UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees,* 14 December 1950, A/RES/428(V), http://goo.gl/9ma5cX, ("UNHCR Statute").

17 See Art. 1 of the Statute of the Office of the United Nations High Commissioner for Refugees, adopted by General Assembly Resolution 428 (V) 14 December 1950, A/RES/428(V). The Statute explicitly mandates the High Commissioner to provide protection also by "assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities" (Art. 8 (c)) and prompts States to cooperate in the promotion of assimilation of refugees, especially by facilitating their naturalization (Art. 2 (e)). In relation to resettlement to a third country, see Art. 9 of the UNHCR Statute; see also Art. 2 (f) on travel and other documentation for enabling resettlement; Art. 2 (g) and 8 (e) on transfer of refugees' assets to third countries. UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees,* 14 December 1950, A/RES/428(V), http://www.refworld.org/docid/3ae6b3628.html

18 UNHCR, *A Framework for the Protection of Children,* June 2012, http://www.unhcr.org/refworld/docid/4fe875682.html

19 These include *UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum,* February 1997, http://www.refworld.org/docid/3ae6b3360.html, *UNHCR Guidelines on Determining the Best Interests of the Child,* May 2008, http://www.refworld.org/docid/48480c342.html, UNHCR, *UNHCR Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A) 2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees,* December 2009, HCR/GIP/09/08 http://www.refworld.org/docid/4b2f4f6d2.html, UNHCR, *Field Handbook for the Implementation of the UNHCR BID Guidelines,* November 2011, http://www.refworld.org/docid/4e4a57d02.html and Executive Committee of the High Commissioner's Programme, *Conclusion No. 107 on Children at Risk,* 5 October 2007, No 107(LVIII) – 2007, http://www.refworld.org/docid/471897232.html

20 UNICEF, *Child Protection Strategy,* May 2008, http://www.unicef.org/protection/files/CP_Strategy_English.pdf


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1.4 Objective of this document

This document aims to support States in the EU and EFTA in applying the best interests principle as a primary consideration when dealing with unaccompanied and separated children in their territory. This document recognizes that applying this principle may take a variety of forms and thus does not seek to prescribe any one set of structures or procedures. It does, however, offer suggestions of elements that States may choose to include so as to meet international legal standards and obligations.

Recognizing the important steps taken and the breadth of experience available, the document makes use of examples of practices by EU Member States and a few others. These noteworthy practices represent a snapshot at a specific point in time and have been selected to show possible ways to structure procedures and to inspire ways in which child protection systems may continue to develop as needs and system requirements evolve. At the time of publication several States are in the process of formulating and initiating procedures and structures to implement the best interests principle and it is hoped that this document may inform these endeavours.

This document has been primarily designed for use by policy makers and public and private institutions in the EU and EFTA countries seeking to establish or improve arrangements for identifying unaccompanied and separated children, and according primary consideration to their best interests, including when identifying durable solutions for them. It may also be of interest to other actors in child protection systems such as lawyers, social workers, representatives/guardians, the judiciary and children's ombudspersons. Thus, while the document builds on the legal and policy framework in place regionally, the best interests principle in Article 3 of the CRC applies to any State that has ratified the CRC. Therefore this document may offer inspiration to other countries that are developing or improving their child protection, international protection and immigration systems.

2 LEGAL AND OPERATIONAL FRAMEWORKS

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The rights of the unaccompanied and separated child are enshrined in both international law and regional law and are further operationalized in policies and guidelines in the European context. While a wider legal discussion is beyond the purpose of this document, this section briefly outlines the legal framework for the best interests principle for easy reference and as a reminder of the legal basis on which this documents builds.

2.1 International law

The Convention on the Rights of the Child,[21] which was adopted by the United Nations General Assembly on 20 November 1989, has been ratified by all but three[22] of the countries that are members of the United Nations.

It is the main legal instrument on the protection of children. It embodies four general principles:

- The **best interests** of the child (Article 3)
- **Non-discrimination** (Article 2)
- The **right to life and survival** and **development** (Article 6)
- The **right to be heard** (Article 12)

In addition to these four principles, the CRC provides for a number of fundamental rights which include, among others, the need for protection from abuse, exploitation and neglect, and the importance of the physical and intellectual development of the child. It gives particular attention to the role of the family in providing care to the child, to the special protection needs of children deprived of their family environment and those of asylum-seeking and refugee children.

The Committee on the Rights of the Child issues General Comments in order to provide authoritative guidance to States regarding the interpretation and implementation of the CRC. The most relevant in relation to unaccompanied and separated children are CRC General Comment No. 6 on the Treatment of Unaccompanied and Separated Children outside their Country of Origin,[23] CRC General Comment No. 12 on The Right of the Child to be Heard,[24] CRC General Comment No. 14 on the Best Interests of the Child[25] and CRC General Comment No. 5 on General Measures of Implementation.[26]

21 UN General Assembly, *Convention on the Rights of the Child,* 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, http://www.unhcr.org/refworld/docid/3ae6b38f0.html

22 Somalia, South Sudan and the United States of America.

23 UN Committee on the Rights of the Child, *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin,* 1 September 2005, CRC/GC/2005/6, http://www.refworld.org/docid/42dd174b4.html

24 UN Committee on the Rights of the Child, *CRC General Comment No. 12 (2009): The right of the child to be heard,* 20 July 2009, CRC/C/GC/12, http://www.refworld.org/docid/4ae562c52.html

25 UN Committee on the Rights of the Child, *CRC General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1),* 29 May 2013, CRC /C/GC/14, http://www.refworld.org/docid/51a84b5e4.html

26 UN Committee on the Rights of the Child, *General Comment No. 5 (2003) General Measures of Implementation,* 27 November 2003, CRC/GC/2003/5, http://www.refworld.org/docid/4538834f11.html

2.2 Regional law and policy

The Council of Europe's framework for the protection of human rights consists of various human rights instruments, two of the most relevant being the European Convention on Human Rights (ECHR)[27] and the Council of Europe Convention on Action against Trafficking in Human Beings (Anti-Trafficking Convention).[28]

Article 24 of the Charter of Fundamental Rights of the European Union[29] states that children have the right to such protection and care as is necessary for their well-being and that their best interests must be a primary consideration in all actions relating to them, whether taken by public authorities or private institutions.

In May 2010, in response to the Stockholm Programme,[30] which sets out the EU's priorities for the area of justice, freedom and security, including border control and provision of international protection for vulnerable individuals for the period 2010–2014, the European Commission drew up an Action Plan on Unaccompanied Minors (2010–2014).[31] These documents put forward a common EU-wide approach to the reception of such children and the identification of durable solutions for them. The Action Plan is not binding on EU Member States. However, it specifically notes that EU legislative instruments on asylum, immigration and trafficking in human beings directly or indirectly address the specific situation of unaccompanied children and provide for enforced protection of their rights.[32]

The EU Anti Trafficking Strategy also contains important provisions for advancing the best interests of the child, especially child victims of human trafficking and mandates the FRA to develop a model for guardians and legal representation for child victims of human trafficking.[33]

Several EU directives and regulations relating to third-country nationals, including persons potentially in need of international protection, explicitly refer to the rights of children in general and the best interest principle in particular. These include, in chronological order:

- The Family Reunification Directive[34]
- The Directive on residence permits for victims of human trafficking[35]
- The Returns Directive[36]

27 Council of Europe, *Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by The Protocols Nos. 11 and 14,* 4 November 1950, ETS 5, http://www.unhcr.org/refworld/docid/3ae6b3b04.html

28 Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings,* 16 May 2005, CETS 197, http://www.unhcr.org/refworld/docid/43fded544.html

29 European Union, *Charter of Fundamental Rights of the European Union,* 26 October 2012, 2012/C 326/02, http://www.refworld.org/docid/3ae6b3b70.html

30 European Commission, *Final communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Delivering an area of freedom, security and justice for Europe's citizens, Action Plan Implementing the Stockholm Programme,* 24 April 2010 COM(2010) 171, http://goo.gl/rssDN

31 European Commission, *Communication from the Commission to the European Parliament and the Council. Action Plan on Unaccompanied Minors (2010 - 2014),* 6 May 2010, COM(2010) 213/3, http://www.unhcr.org/refworld/docid/4bfe89602.html

32 At the end of the period of the Action Plan on Unaccompanied Minors 2010-2014, the EC will evaluate the Action Plan. The European Parliament has called for development of strategic guidelines in a resolution of 12 September 2013 on the situation of unaccompanied minors in the EU (2012/2263(INI), http://goo.gl/IUkqmj

33 FRA, *Guardianship for children deprived of parental care – A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking,* http://goo.gl/Ytfu4O

34 The Council of the European Union and the European Parliament, *Directive 2003/86/EC of 22 September 2003 on the right to family reunification,* 3 October 2003, http://goo.gl/8uRUl

35 The Council of the European Union, *Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking inhuman beings or who have been the subject of an action to facilitate illegal immigration who cooperate with the competent authorities,* 6 August 2004, http://goo.gl/m1Dd4z

36 The Council of European Union and the European Parliament, *Directive 2008/115/EC of the European parliament and of the council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals,* 24 December 2008, http://goo.gl/b4mct

- The Anti-Trafficking Directive[37]
- The EU Long Term Residence Directive[38]
- The Schengen Border Code[39]

The EU has adopted five second-phase instruments completing the Common European Asylum System (CEAS), which include:

- The recast Qualification Directive[40]
- The recast Dublin and EURODAC Regulations[41]
- The recast Asylum Procedures Directive[42]
- The recast Reception Conditions Directive[43]

These legal and policy instruments firmly embed the best interest principle and provide important safeguards and standards with which EU Member States will have to comply. The regulations came into effect January 2014. For the directives, the transposition in national law is foreseen by 20 July 2015.

37 The Council of the European Union and the European Parliament, *Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims,* OJ L 101, 15 April 2011, http://goo.gl/qNBHYk

38 The Council of the European Union, *Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection (Text with EEA relevance),* 19 May 2011, http://goo.gl/6w0I7L

39 The Council of the European Union and the European Parliament, *Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council,* 29 June 2013, http://goo.gl/XPjE1b

40 The Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, OJ L 337, December 2011, pp 9-26, http://www.unhcr.org/refworld/docid/4f197df02.html

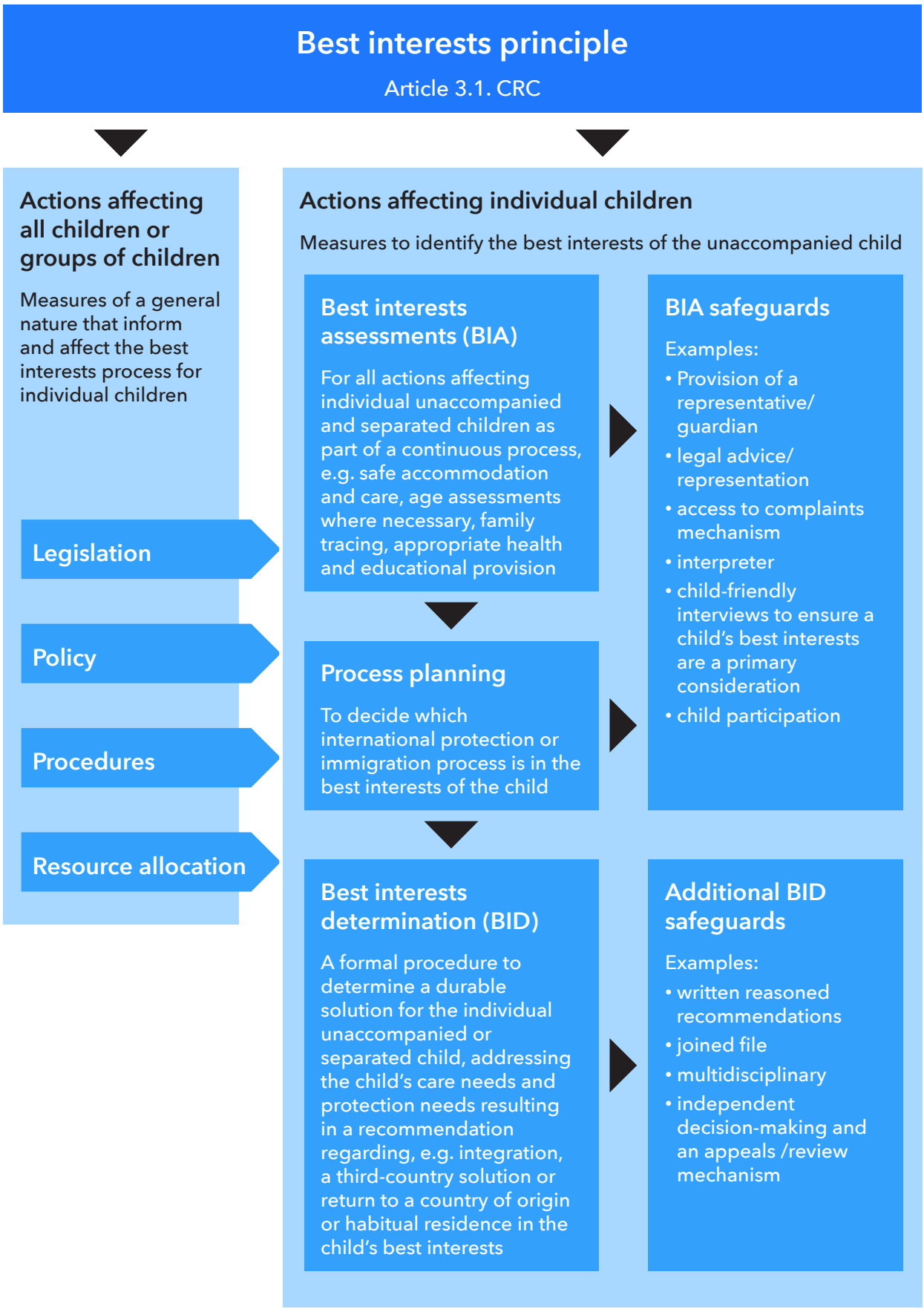
41 The Council of the European Union and the European Parliament, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast),* 29 June 2013, http://goo.gl/XnJ2mV; and The Council of the European Union and the European Parliament, *Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast),* 29 June 2013, http://goo.gl/W0nYKA

42 The Council of the European Union and the European Parliament, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast),* 29 June 2013, L 180/60, http://www.refworld.org/pdfid/51d29b224.pdf

43 The Council of the European Union and the European Parliament, *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast),* 26 June 2013, http://goo.gl/rn9hMT

Figure 1:

From theory to practice: applying the best interests principle



2.3 Additional operational frameworks

This document is also informed by additional operational frameworks, chiefly, guidance developed by UNICEF and UNHCR on the implementation of their respective mandates specifically related to unaccompanied and separated children. Also included are endorsed statements by other organizations or developed joint statements. These include:

- UNHCR Refugee Children: Guidelines on Protection and Care (1994)[44]
- UNHCR ExCom Conclusion No. 107 on Children at Risk[45]
- UNHCR Guidelines on Best Interests Determination (2008)[46]
- UNHCR Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees (2009)[47]
- UNHCR Field Handbook for BID (2011)[48]
- UNHCR *A Framework for the Protection of Children,* 2012[49]
- UNHCR Child Protection Issue Brief: Child-friendly procedures (forthcoming)
- UNICEF Guidelines on the Protection of Victims of Child Trafficking (2006)[50]
- UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe (2006)[51]
- The UNICEF Child Protection Strategy[52]
- UNICEF Age Assessment: A Technical Note (2013)[53]
- Joint UN Commentary on EU Trafficking Directive[54]
- Separated Children in Europe Programme (SCEP) Statement of Good Practice (4th Edition) (endorsed by UNICEF and UNHCR)[55]

44 UNHCR, *Refugee Children: Guidelines on Protection and Care,* Geneva, 1994, http://www.unhcr.org/3b84c6c67.html

45 Executive Committee of the High Commissioner's programme, *Conclusion on Children at Risk,* 5 October 2007, No. 107 (LVIII) http://www.unhcr.org/4717625c2.html

46 UNHCR, *Guidelines on Determining the Best Interests of the Child,* May 2008, http://www.unhcr.org/4566b16b2.pdf

47 UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees,* December 2009 http://www.refworld.org/docid/4b2f4f6d2.html

48 UNHCR, *Field Handbook for the Implementation of the UNHCR BID Guidelines,* November 2011, http://www.refworld.org/docid/4e4a57d02.html

49 UNHCR, *A Framework for the Protection of Children,* June 2012, http://www.unhcr.org/refworld/docid/4fe875682.html

50 UNICEF, *Guidelines on the Protection of Victims of Child Trafficking,* September 2006, http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

51 UNICEF, *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe,* 2006, http://goo.gl/rJCicC

52 UNICEF, *Child Protection Strategy,* May 2008, http://www.unicef.org/protection/files/CP_Strategy_English.pdf

53 UNICEF, *Age Assessment: A Technical Note,* January 2013, http://www.refworld.org/docid/5130659f2.html

54 UNHCR, OHCHR, UNICEF, UNDOC, UN Women and ILO, *Joint UN Commentary on the EU Directive. A Human Rights-Based Approach. Prevent, Combat, Protect: Human Trafficking,* November 2011, http://goo.gl/okpWUB

55 Separated Children in Europe Programme, *SCEP Statement of Good Practice,* March 2010, 4th Revised Edition, http://www.refworld.org/docid/415450694.html

3 DEFINITION OF CONCEPTS

This document refers to the **best interests principle** in the context of the UN Convention on the Rights of the Child (CRC) Article 3.1, which states:

> *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

The best interests principle applies to all children without discrimination, including to unaccompanied and separated children at risk outside their country of origin.[56] It applies whether children are nationals, foreign nationals, EU nationals, third-country nationals or are stateless.

In accordance with CRC Article 1, a **child** means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. A person who is under the age of 18 is thus to be regarded as a child, regardless of their level of maturity, unless the laws applicable to the child states otherwise.

The best interests principle applies to actions affecting children as a group, such as when a State drafts legislation and policies or allocates resources, and to all actions affecting individual children. (See Figure 1, "From theory to practice: applying the best interests principle.")

The Committee on the Rights of the Child defines the best interests of the child in CRC General Comment No. 14[57] as a three-fold concept:

- **A substantive right:** the right of the child to have his or her best interests assessed and taken as primary consideration.

- **A legal principle:** meaning that if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen.

- **A rule of procedure:** whenever a decision is made that will affect a specific child, group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child concerned.

The concepts of **best interests assessment (BIA)** and **best interests determination (BID)** can be understood as part of the same process, which starts in principle as soon as an unaccompanied or separated child is discovered and ends when the child has obtained a durable solution to her or his situation of separation and of displacement from country of origin or place of habitual residence. (See Figure 2, "From arrival to a durable solution: applying the best interests principle.")

56 UN Committee on the Rights of the Child, *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin,* 1 September 2005, CRC/GC/2005/6, http://www.refworld.org/docid/42dd174b4.html; Executive Committee of the High Commissioner's Programme, Conclusion on Children at Risk, 5 October 2007, No. 107 (LVIII) – 2007, http://www.refworld.org/docid/471897232.html

57 UN Committee on the Rights of the Child, *CRC, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration,* 29 May 2013, CRC/C/GC/14, Art. 3, para. 1, para. 6., http://www.refworld.org/docid/51a84b5e4.html

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The **best interests assessment (BIA)** describes a simple, ongoing procedure for making decisions about what immediate actions are in an individual child's best interests, e.g. protection and care interventions. BIAs can take place at various points whenever an action is planned or taken which may affect the child. They involve interviews or consultations with the child, as well as additional information gathering as needed, by professionals with the required expertise, knowledge and skills in child protection and, as appropriate, the weighing of elements of the child's circumstances. This process may be termed differently in different child protection systems, including for example child protection assessment, case assessment, etc. The key characteristics of these are that they are holistic and conducted by staff with relevant professional expertise. The Committee on the Rights of the Child has also noted that Best Interests Assessments should, ideally, "consider that the capacities of the child will evolve" and "…consider measures that can be revised or adjusted accordingly, instead of making definitive or irreversible decisions."[58]

The **best interests determination (BID)** describes a more formal procedure for making significant decisions that will have a fundamental impact on a child's future development. As with BIAs, they involve interviews and consultations with the child by qualified professionals, but due to the magnitude of the decision, BIDs require in-depth information accumulated in the course of the best interests process about the child, and involve higher degrees of scrutiny and independence. The assessment of what would be in the child's best interests is thus a prerequisite for making a decision of import with or in relation to the child.

The CRC General Comment No. 14, para. 20 indicates that not every action taken by a State needs to incorporate a full and formal process of assessing and determining the best interests of the child. However, where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures is appropriate. This is understood to imply that the greater the impact a decision will have on the child and the child's future development, the greater the procedural safeguards that need to be put in place when making that decision. There is thus a **progression in the level or number of safeguards** put in place. A BIA would be conducted in decisions of less far-reaching consequences for the child, whereas more important decisions would need to be more formally considered with strict procedural safeguards, amounting to a best interests determination, or BID.

[58] UN Commitee on the Rights of the Child, *General Comment No.14 on the right of the child to have his or her best interests taken as a primary consideration,* 29 May 2013, CRC /C/GC/14, para. 84., http://www.refworld.org/docid/51a84b5e4.html

BOX 1: SAFEGUARDS

The best interests principle is addressed in the CRC General Comment No. 14:

> *"Where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures to consider their best interests is appropriate."*

Following are examples of safeguards that European States may put in place:

Independent representative or guardian: Unaccompanied or separated children are a distinct disadvantage without the protection of their parents and need the support of their own representative who is independent from the entities deciding their protection claim and can assist them in obtaining their rights. The absence of potential conflict of interest ensures that the protection of the child's rights will not be in conflict with any role or institutional mandate the guardian may otherwise have. Studies[59] show that children prize the presence of independent representation and frequently request a more personal relationship with that person.[60]

Child-friendly information: Children need to understand the implications of proceedings, different options available, and what their obligations are. They also need information that enables them to express their views as well as how their views are given weight. For such an understanding to emerge, available information must be imparted in such a manner and under such circumstances that the child is able to have full appreciation of the situation, in accordance with her/his age and maturity level.[61]

Priority processing: This respects the fact that the time factor is more pertinent for children in light of the relatively short trajectory of their development. However, it should not entail accelerating case processing at the expense of respecting the child's rights or need for adequate time to gain trust in the environment, express his/her views and receive proper support and information on the options available.[62]

Legal representation and advice: The child has a right to independent legal advice and representation especially in respect to decisions which have a fundamental impact on his/her future.[63]

Written, reasoned decisions: The written decision on what is deemed in the child's best interest should recount the way in which the best interests assessment/determination was reached, including which factors were given which weight. It will not be sufficient to state that the best interests were assessed and determined. Each factor and how it was considered and the weight that was given to each of them must be accounted for as the basis of the decision.[64]

Interpretation: In order to fully understand and have the opportunity to cooperate, the child needs to have interpretation in her/his mother tongue or a language he/she understands.[65]

Review of decisions: Decisions such as an international protection/immigration decisions may normally be appealed.[66] Should there be a change in circumstance (family has been traced, or the identified durable solution could not be implemented for a long time) the best interests determination (BID) itself may be re-opened for re-examination.

59 FRA, *Separated, asylum-seeking children in European Union Member States: comparative report,* December 2010, http://www.refworld.org/docid/4ecf71aeb.html

60 See recast Asylum Procedures Directive (APD), recast Reception Conditions Directive (RCD), Dublin III, Qualification Directive (QD), Anti Trafficking Directive (ATD).

61 See Dublin III, CRC General Comment No. 14, UNHCR Guidelines on International Protection: Child Asylum Claims.

62 See APD ATD, UNHCR Guidelines on International Protection: Child Asylum Claims.

63 See APD, Dublin III, RCD, ATD, UNHCR Guidelines on International Protection: Child Asylum Claims.

64 See CRC General Comment No. 14.

65 See APD, Dublin III, ATD.

66 See EU Charter of Fundamental Rights, APD and ICCPR.

A **durable solution** in the context of the unaccompanied or separated child is a sustainable solution that ensures that the unaccompanied or separated child is able to develop into adulthood, in an environment which will meet his or her needs and fulfil his or her rights as defined by the CRC and will not put the child at risk of persecution or serious harm. Because the durable solution will have fundamental long-term consequences for the unaccompanied or separated child, it will be subject to a BID. A durable solution also ultimately allows the child to acquire, or to re-acquire, the full protection of a state.[67]

Unaccompanied or separated children are understood in the context of the CRC, EU Asylum Directives as well as the Anti-Trafficking Directive and UNHCR EXCOM Conclusion No. 107[68] and defined in Guidelines on the Policy and Procedures in dealing with Unaccompanied and Separated Children[69] and the Interagency Guiding Principles on Unaccompanied and Separated Children.[70] These consider **unaccompanied children** to be any person under the age of 18 who is outside his or her country of origin or habitual residence and who has been separated from both parents and other relatives and who is not being cared for by an adult who, by law or custom, is responsible for doing so. **Separated children** may be separated from both parents or from their previous legal or customary primary caregiver, but not necessarily from other relatives. This may include children accompanied by other adult family members.

UNHCR's Executive Committee in their Conclusion No. 107 defines children considered to be at **heightened risk** as those children who are affected by risk factors both resulting from the wider protection environment and risks resulting from individual circumstances, taking into account the cumulative effects of being exposed to several risk factors. The Committee considers individual risk factors to include, but not be limited to: being unaccompanied or separated, particularly those in child-headed households as well as those accompanied by abusive or exploitative adults; children who are stateless; adolescents, in particular, girls who are mothers and their children; child victims of trafficking and sexual abuse, including pornography, paedophilia and prostitution; survivors of torture; survivors of violence, in particular sexual and gender-based violence and other forms of abuse and exploitation; children who get married under the age specified in national laws and/or children in forced marriages; children who are or have been associated with armed forces or groups; children in detention; children who suffer from social discrimination; children with mental or physical disabilities; children living with or affected by HIV and AIDS; children suffering from other serious diseases; and children who are out of school.

In this context, a **trafficked child** is understood to be any person under 18 who is recruited, transported, transferred, harboured or received for the purpose of exploitation, either within or outside a country, even if no element of coercion, deception, abuse of authority or any other form of abuse is used.[71]

67 For the definition of durable solutions in the refugee context, please see footnote 17.

68 Executive Committee of the High Commissioner's Programme, *Conclusion on Children at Risk,* 5 October 2007, No. 107 (LVIII), http://www.refworld.org/docid/471897232.html

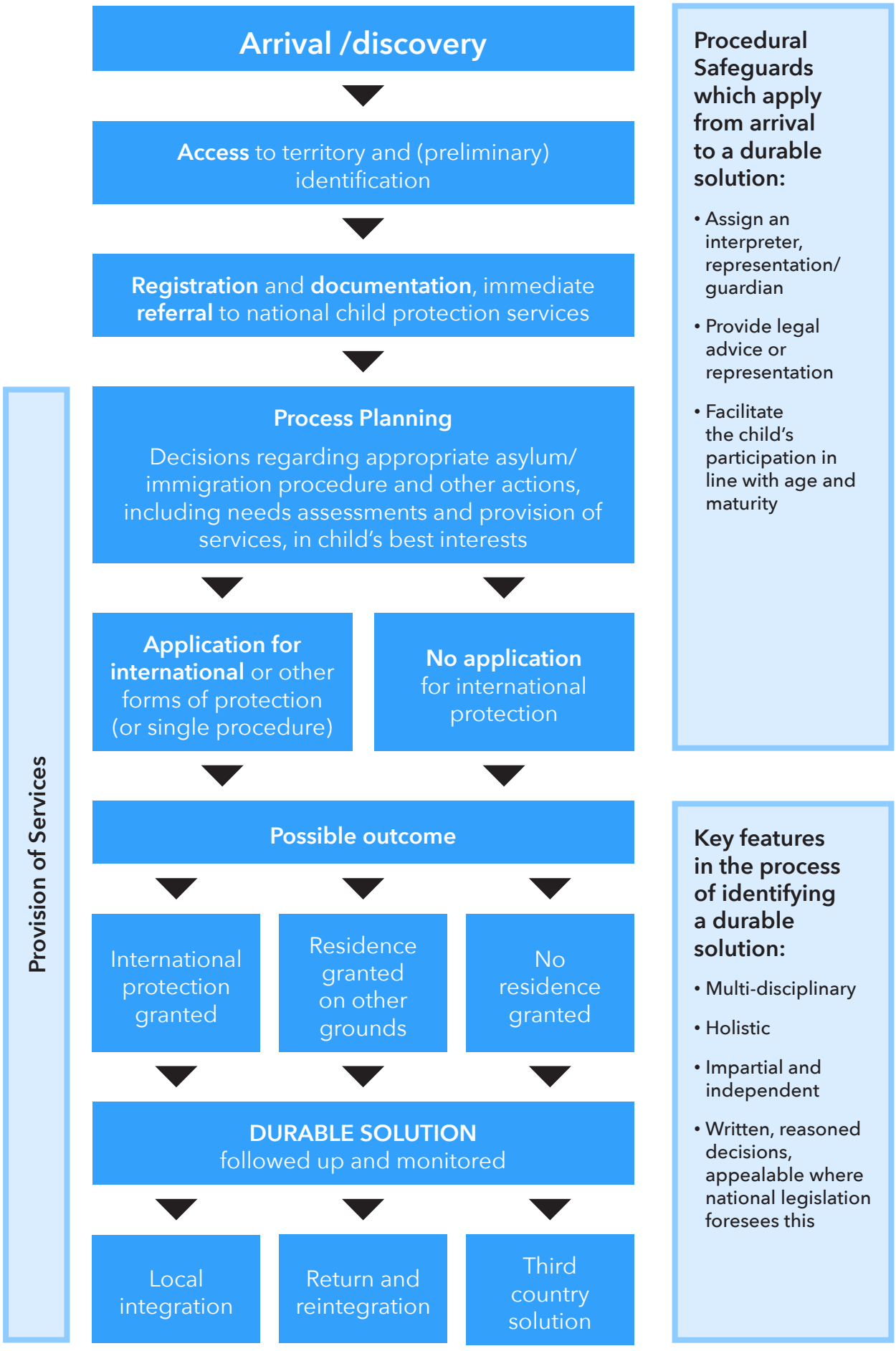
69 UNHCR, *Guidelines on the Policy and Procedures in dealing with Unaccompanied and Separated Children,* February 1997, http://www.unhcr.org/3d4f91cf4.html

70 UNICEF, UNHCR, ICRC, Save the Children, IRC, World Vision International, *Interagency Guiding Principles on Unaccompanied and Separated Children,* January 2004, http://www.refworld.org/pdfid/4113abc14.pdf

71 UNICEF, *Guidelines on the Protection of Victims of Child Trafficking,* September 2006, http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

Figure 2:

From arrival to a durable solution: applying the best interests principle



4 APPLYING THE BEST INTERESTS PRINCIPLE IN EUROPEAN STATES

The following sections address how state authorities can apply the best interests principle in their interactions with unaccompanied or separated children. We present this in a chronological progression, as also represented in Figure 2.

4.1 Arrival and preliminary identification

When a child arrives at the border or is found within a State's territory alone or accompanied by someone who is not the child's caregiver by law or by custom, there will need to be a very rapid assessment of whether the child is at risk. (There are some cases in which children might travel alone through Europe without raising child protection concerns, for example, teenagers with verifiable documentation that they are travelling unaccompanied for holiday purposes or for study purposes.)

At this point, a BIA should be employed. It involves balancing the elements in a specific situation in order to make a decision for a specific child. If a child exhibits indicators of risk factors, the BIA can help authorities decide whether it would be in the best interests of the child to be referred to child protection services for further assessment and assistance. The information collected at this stage would normally be restricted to what is necessary to establish the child's identity, date of birth or age, and if relevant, nationality.[72] Lengthy interviews are normally not called for.

For children who are accompanied by someone other than their caregiver by law or custom, it is important to consider questions regarding the quality of the relationship with the accompanying adult(s). This is in order to be able to address concerns of possible trafficking, but also to establish whether it would be in the child's best interests to stay with the accompanying relative or other adult as child protection services are enlisted.

For government agents in first contact with the child, identifying those children who may be at risk can be fraught with difficulties. Some States through which children transit en route to other destinations point to the tensions they face between providing access to State territory in the best interests of the child and the need to provide effective border control.

The CRC General Comment No. 6 clarifies that States' obligations under the CRC apply within the borders of the State, including with respect to children who come under the State's jurisdiction while attempting to enter the country's territory.[73] Many children may resist registration, be afraid to provide accurate information or be unwilling to self-identify accurately due to fear or ignorance of protection options. They may be under the influence of their smugglers or traffickers, may wish to abide by parental instruction at their departure or are under the influence of communities of asylum-seekers or irregular immigrants.

UNHCR has developed a protection training manual for European border and entry officials in the context of its 10-Point Plan of Action, which was launched in 2006 to help governments identify and protect refugees, including unaccompanied and separated children, in need of international protection within increasingly complex population flows.[74]

The Praesidium project, which started in 2006 as an Italian government initiative and involves UNHCR, IOM, Safe the Children, the Red Cross and the Italian authorities is an example of positive inter-agency cooperation in mixed migration flows. The project was expanded to other seaports of arrival in southern **Italy** in subsequent years.[75]

72 Separated Children in Europe Programme, *SCEP Statement of Good Practice,* March 2010, 4th Revised Edition, p. 20, para. D1, http://www.refworld.org/docid/415450694.html

73 UN Committee on the Rights of the Child, *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin,* 1 September 2005, CRC/GC/2005/6, para 12, http://www.refworld.org/docid/42dd174b4.html

74 UNHCR, *UNHCR Protection Training Manual for European Border and Entry Officials*, http://www.unhcr.org/4d944f229.html

75 UNHCR, *Refugee Protection and Mixed-Migration: The 10-Point Plan in Action,* February 2011, pp. 113-115, http://goo.gl/S9O0Be

BOX 2: DETENTION

Seeking asylum is not an unlawful act, and detaining asylum-seekers for the sole reason of having entered without prior authorization runs counter to international law.

Detention has negative lasting effects. It undermines the human dignity of individuals and can cause unnecessary suffering and has potentially serious consequences for health and well-being. Detention of children is particularly serious due to the devastating effect it may have on their physical, emotional and psychological development. Children should, in principle, not be detained. Concerning detention, CRC Article 37, the Reception Conditions Directive (recast)[76] Article 11 and the Returns Directive[77] Article 17 establish that:

No child is to be deprived of his or her liberty unlawfully or arbitrarily.

Detention should be used on an exceptional basis and only as a measure of last resort and last the shortest appropriate time.

Unaccompanied and separated children shall never be detained in prison accommodation, and should preferably be provided with family-based care, and, when not possible, accommodation in institutions or supervised group care with personnel and facilities which take into account the needs of children their age.

The best interests of the child shall be a primary consideration in the context of the detention of children pending removal.

As per the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention,[78] States are recommended to ensure that:

The national legal and policy framework ensures that children are not detained, except in exceptional circumstances, as a measure of last resort and for the shortest possible period.

Child-sensitive screening and referral services are in place; children are to be referred to relevant child protection institutions to ensure they receive necessary services and assistance.

All efforts are made to allow for the immediate release of children from detention and their placement in other forms of appropriate accommodation.

Alternative reception/care arrangements are available and appropriate.

FRONTEX, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU, has developed a manual and attendant training on interview techniques for (suspected) victims of trafficking that is geared toward the specific needs and sensitivities of children.[79] The FRONTEX advice for border guards when confronted with children where there is doubt regarding exhibited risk factors is to refer to child protection services.[80] Implementation of the procedure to refer to child protection services is further regulated through the Schengen Borders Code,[81] which mentions child-sensitive procedural measures in Article 19, Annex VII (6.) as well as in Article 15 calling for specialized training for border guards on detecting and dealing with unaccompanied children.

An example of how this is implemented is found in **Ireland**, where procedure requires that when an authorized officer, such as an immigration officer, considers they have encountered an unaccompanied or separated child, the Child and Family Agency (CFA) is notified and the child referred immediately. The CFA incorporates the Health Service Executive's (HSE) Social Work Team for Separated Children Seeking Asylum.

76 The Council of the European Union and the European Parliament, *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast),* art. 11, 26 June 2013 http://goo.gl/rn9hMT

77 The Council of the European Union and the European Parliament, *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying country third nationals,* 24 December 2008, http://goo.gl/IWZ4ny

78 UNHCR, *UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers,* September 2012. http://www.refworld.org/docid/503489533b8.html

79 FRONTEX, *Anti-Trafficking Training for Border Guards: Trainers Manual,* September 2012, http://goo.gl/yI8Fzc

80 See, FRONTEX Trainers Manual on pp. 64-65 and pp. 70-75 in particular, which mention suspected child victims of human trafficking and on p. 73 reads that: "when in doubt refer to the second line."

81 The Council of the European Union and the European Parliament, *Regulation (EU) No. 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No. 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No. 1683/95 and (EC) No 539/2001 and Regulations (EC) No. 767/2008 and (EC) No. 810/2009 of the European Parliament and of the Council,* 29 June 2013, http://goo.gl/qBeHav

Identifying and assisting children at risk may be difficult for border officials, but it is critical for children who find themselves unaccompanied or accompanied by an adult who is not their caregiver by law or by custom and thus vulnerable. These children have likely already experienced trauma in the course of their movement across borders and coming in contact with border staff or law enforcement is a critical encounter which may in the best instance reassure the child, but in the worst contribute to further traumatization. Training of border staff and law enforcement in how to interview in a child-friendly manner as well as providing necessary back-up and access to child protection services are ways in which States have improved this critical event for the unaccompanied or separated children who arrive at the border.

In **Sweden**, on-call emergency child protection services are available at the municipality level. This allows for immediate assessment and emergency placement of identified unaccompanied and separated children. The service will also assess the quality of the relationship between a separated child and the adult(s) accompanying him/her, focusing on the safety of the child in assessing the need to provide alternative emergency placement.

4.2 Access to territory and identification

The unaccompanied or separated child who is considered at risk needs first and foremost to be given access to the procedures established for having their best interests assessed.[82] The ability to provide such protection and care is dependent on the prompt referral to and identification of these needs by child protection services and upon granting the child access to the state territory.[83] Such admission to the territory for the purposes of performing the identification and assessment of needs is a requirement as outlined in CRC General Comment No. 6; State obligations under the CRC apply to each child within the State's territory and

82 UN Committee on the Rights of the Child, *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin,* 1 September 2005, CRC/GC/2005/6, para. 12, http://www.refworld.org/docid/42dd174b4.html

83 UN Committee on the Rights of the Child, *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin,* 1 September 2005, CRC/GC/2005/6, para 31 (i), http://www.refworld.org/docid/42dd174b4.html

BOX 3: ACTORS AND STAKEHOLDERS AROUND THE CHILD

The unaccompanied child will be confronted with a large number of stakeholders, which can be confusing and frightening. The child may come in contact with, for example:

- border staff
- law enforcement staff
- social workers
- case manager
- representative or guardian
- service providers (educators, health staff)
- immigration officials
- interpreters
- lawyers
- judges

These individuals will have many different roles with varying implications for the child. In light of this, it is important to ensure that child protection staff have access to the child as soon as possible and are involved throughout the process. This is to ensure that the child may avail him/herself of protection services, but also so that the child's situation may be clarified as soon as possible.

The issues facing an unaccompanied or separated child may fall under the jurisdiction of several authorities. The child may, for example, be considered in need of international protection and at the same time be a victim of trafficking. It may be difficult for the unaccompanied or separated child to understand the roles of the various actors and it may further be difficult for the child to trust adults and persons of authority. The child should ideally have one reference point who will coordinate the process on his/her behalf in order that the child:

- does not have repetitive possibly re-traumatizing interviews (CRC General Comment No. 12, para. 24 , ATD Art. 12 and Art. 15.)
- does not inadvertently harm his/her own case through confusion or mistakenly providing contradictory information

Some States have made efforts to streamline and harmonize the way State authorities meet and interact with an unaccompanied or separated child. One approach could be to develop a unified case file in which appropriate information may be shared between authorities, subject to the appropriate application of protection and confidentiality safeguards. (See Box 11, "Confidentiality and data sharing.")

BOX 4: RESPECTING THE BEST INTEREST OF THE CHILD IN LARGE SCALE MIXED MIGRATORY FLOWS

The number of unaccompanied and separated children arriving in mixed migratory flows to Europe is on the rise. The best interests principle should be applied in all actions affecting these children.

Recognising that it may not be possible due to time constraints to carry out some actions on arrival, e.g. conducting age assessments or appointing a guardian,[84] in order to respect the best interests of the child priority would need to be given to:

- Conducting profiling/screening of persons arriving so that unaccompanied and separated children can be promptly identified applying a presumption of minority until the outcome of any age assessment procedure.
- Separating those who are seemingly under age from adults who are unrelated to them to reduce the risk of (onward) human trafficking and or other possible forms of abuse.
- Ensuring referral to a temporary shelter facility to provide basic medical and other care and assistance.[85]
- Providing basic information and counselling in a child-friendly way and in a language the child can understand on the asylum procedure and/ or where relevant trafficking procedures for victims of as well as other options including voluntary return.
- Registering basic bio data of the child and of family members or relatives who have been left behind or who may be in another EU Member State with whom the child wishes to be reunited.
- Ensuring referral to tracing services where needed.
- Ensuring referral to mainstream child protection services as well as specialist services including psycho-social counselling as may be required.
- Ensuring access to education as soon as reasonably possible.

This could be done by first line reception staff and preferably a team of experts or by persons who ordinarily have "first contact" with irregular arrivals (e.g. border or immigration officials, NGOs with relevant expertise, or international agencies).[86] Contact and coordination with and referrals to child protection services are of utmost importance in situations of large-scale arrivals.

to all children subject to its jurisdiction, including with respect to those children who come under the State's jurisdiction while attempting to enter the country's territory.

Children who have been in the country for a period of time, but have never been formally recognized as having access to territory would require such an access regularized along with referral to child protection services.

Distinguishing between the various protection needs of children is difficult. Traffickers in human beings are developing ever more ingenious ways to instruct their victims, sometimes utilizing asylum procedures to increase the likelihood of a victim being afforded access to a territory, making the task for border guards increasingly challenging. However, from the child's point of view, getting access to safety is the first concern, and the specifics of protection may be determined once that is achieved. Additionally, border guards or first points of contact play an important role in building trust with the unaccompanied or separated child. (See Box 5, "Establishing Trust.")

The Separated Children in Europe Programme (SCEP) calls for enhanced capacity for State officials to detect and respond to possible situations of child trafficking in a proactive and rapid fashion.[87] Among groups of children considered to be at special risk of trafficking are children on the move who do not register in the country of arrival often because they are waiting for an opportunity to move on to another destination country. They thereby remain outside any child protection system.[88] Others include children at risk of or affected by harmful traditional practices, children deprived of parental care or at risk of abandonment, children lacking birth registration, stateless children, children with disabilities, including mental disabilities, and children in conflict with the law.

84 See CRC General Comment No. 6, para. 33, p. 13.

85 See General Comment No. 6, p. 14 on interim care in large-scale emergencies.

86 UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action,* February 2011, http://www.refworld.org/docid/4d9430ea2.html

87 Save the Children and Separated Children in Europe Programme, *Position Paper on Preventing and Responding to Trafficking of Children in Europe,* December 2007, http://goo.gl/OWG5sr

88 UNHCR, *Protecting children on the move,* July 2012, http://www.refworld.org/docid/522852c34.html

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Trafficked children are often forced to commit illegal activities either as a direct result of the purpose for which they are exploited (e.g. when a child is involved in commercial sexual activity such as prostitution) or as a consequence of the trafficking process (e.g. irregular border crossing). The EU Anti-Trafficking Directive instructs Member States to take the necessary measures to ensure that competent national authorities are entitled to not prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities they have been compelled to commit as a direct consequence of being trafficked.[89] Most EU Member States have adopted provisions for ensuring that trafficked persons forced to commit other crimes as part of their being trafficked shall not be prosecuted, while in some States these provisions are limited to certain types of crimes, such as prostitution or immigration offences.[90] Trafficked children will often be under exceptionally strong influence of their traffickers. In this situation, the extraordinary task of the authorities is to see past the misplaced trust of the child and focus on indicators that the child may be at risk. The dilemmas facing government officials involved in the screening is apparent, as procedures to identify child victims of trafficking are difficult to implement and require dedicated training of all officials potentially involved, such as border guards.[91]

A child exhibiting risk factors will need immediate and exceptional protection especially from her/his traffickers. This reflects the need to ensure the child who is identified as currently a victim or at risk of becoming a victim of trafficking receives the protection needed. At the same time, it should be noted that States are obliged to not detain unaccompanied or separated children merely because they entered the State in an irregular manner or have no permission to remain.[92] This also applies to unaccompanied and separated children who are not victims of human trafficking. Protective measures include securing accommodation along the principles developed by ECPAT International, a global network of organizations working together to end child prostitution, child pornography and the trafficking of children for sexual purposes.[93] These circumstances entail careful safeguarding of the unaccompanied or separated child's rights, including the freedom of movement, while addressing the risk of human trafficking facing the child.

89 The Council of the European Union and the European Parliament, *Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims* and *replacing Council Framework Decision 2002/629/JHA,* Art. 8, 15 April 2011, http://goo.gl/3UbjJE

90 International Centre for Migration Policy Development, *Legislation and the Situation Concerning Trafficking in Human Beings for the Purpose of Sexual Exploitation in EU Member States,* 2009, p. 63, http://goo.gl/Xgr18w; FRA, *Child Trafficking in the European Union: Challenges, Perspectives and Good Practices,* July 2009, p. 69, http://www.refworld.org/docid/4a549ba35758.html

91 See FRONTEX Anti-Trafficking Training Manual.

92 See CRC, Art. 37, Reception Conditions Directive (recast) Art. 11.2, Returns Directive Art. 17.1.

93 See ECPAT, *On the Safe Side: Principles for the safe accommodation of child victims of trafficking,* 2011, http://www.ecpat.org.uk/sites/default/files/on_the_safe_side.pdf

BOX 5: ESTABLISHING TRUST

A careful, considered and empathetic approach to an unaccompanied or separated child builds trust and brings the child's information and viewpoints to bear in the process. It is fundamental in ensuring the procedural safeguard to guarantee that the child's best interests are respected.

- Establishing a trusting relationship with a child allows the child first and foremost to have a sense of psychological comfort, supporting their mental well-being and their need for care and emotional protection.
- Children need adequate time and solid reasons why they should trust the adult in front of them. Unaccompanied or separated children have many reasons to be fearful. The last person the child trusted may have turned out to be their smuggler or trafficker. Such fear is likely to affect their ability to understand and trust information made available to them.
- The mistrustful child may not be able to accept or receive the protection of which he or she is in need and may, for example, try to travel on without seeking the protection available.
- Offering information to the child to rectify any misinformation available from other influences (migrant communities, family, smugglers, traffickers, other unaccompanied or separated children) requires an early investment in establishing a trusting relationship.
- Moving past a child's fears of persons of authority and their intentions requires a conscious strategy of discreet approach, avoiding situations or interactions where children feel under pressure. Collection of information may be completed through several short interviews and more informal discussions.
- In working to re-establish contact with family, a trusting relationship is a precondition to avoid unexpected consequences, such as family warning the children not to trust staff and asking to avoid further contact. A social worker and cultural mediator can help ensure that phone calls between the child and the child's family help build consensus and agreement.

4.3 Registration and documentation

Having obtained access to the state territory, the unaccompanied or separated child will now have the opportunity to explain her/his specific circumstances. The CRC General Comment No. 6 calls for initial interviews to be conducted in an age-appropriate and gender-sensitive manner in a language the child understands by professionally qualified persons to collect bio-data, and a social history to ascertain the identity of the child. Some States have recognized the specific vulnerabilities and psychological distress of unaccompanied children in interviewing and investigation processes. This is reflected in the policies and practices put in place, for example, in the **Netherlands, Norway and the UK,** where a screening interview of a child at risk is scheduled to allow for a recovery period before they progress through the immigration or asylum system.

In recognition of the increased protection needs of unaccompanied and separated children, many States have put in place safeguards for unaccompanied and separated children as soon as they are discovered.

In **Norway**, a guardian and a case manager are identified and are present at the initial registration of a newly arrived unaccompanied or separated child by immigration police.

This recognition that the process of assessing and determining the best interests of the child may be initiated at the very first encounter with the child puts in place important mechanisms not just for the safeguarding of the child's rights (see Box 1, "Safeguards"), but also for the gathering of information from the child about her/his situation (see Box 10, "Information gathering"). The sooner the child's situation is understood, the sooner the child may receive the appropriate and adequate protection. In some cases, early profiling can help to identify the most vulnerable unaccompanied children.[94]

States have or are in the process of investing in the early establishment of trust. In **Sweden**, the full engagement of guardians is sought and

94 European Commission, *Communication from the Commission to the European Parliament and the Council EU Action Plan on Unaccompanied Minors (2010-2014)*, 6 May 2010 COM(2010) 213/3, http://goo.gl/RlgNgl

ensured through immediate appointment. In **the Netherlands**, NIDOS, a guardianship institution, is mandated with providing professional guardians as soon as an unaccompanied or separated child is identified. The role of this guardian is emphasized in government policy, giving weight to considering the procedural protection of the child as well as encouraging the establishment of trust with the child. The European Network of Guardianship Institutions (ENGI),[95] provides support to develop the capacities of guardians to give adequate support, including the establishment of trusting relationships with children in their care.

The UK Home Office's "Every Child Matters" Statutory Guidance on making arrangements to safeguard and promote the welfare of children describes referral and hearing requirements for the safeguarding of children's procedural as well as substantial rights. A Home Office pro-forma is used to facilitate information exchange between the Home Office and the local authority responsible for caring for the child. This information is used to assess and determine her/his best interests, the child is informed about the exchange of information and her/his views are to be obtained. This is meant to ensure that relevant information is collected in order to make a best interests assessment, but also to inform the child about the first steps of a longer process in a way that the child can understand.

In **Belgium**, the early assignment of a guardian allows the child to be assisted by an advisor, who will speak on her/his behalf throughout the child's contact with authorities beginning with registration.

Regardless of the structure of the registration process, certain elements would allow for more comprehensive assessments already at the registration stage, including:

- The presence of the child's representative/ guardian
- Child-friendly environment and interview techniques
- Language interpretation

In the course of registration and documentation, information about the specific circumstances of the child's separation from her/his family may become available. In some cases, the separation may be recent and of such a nature that action

95 Nidos, *Towards a European Network of Guardianship Institutions*, http://goo.gl/1NLjK


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BOX 6: CHILD PARTICIPATION

The child is the main source of information about her/his situation. The degree to which the child is heard and indeed listened to, will not only ensure a more well-rounded and sustainable decision with respect to the child, but will also potentially empower the child in taking ownership of her/his future development into adulthood.

The CRC framework establishes the child's right to be heard and to being part of the decision making, the child's views are to be given weight in line with the child's age and maturity.

Assessing the child's maturity requires very specific skills, such as those of a psychologist, which may be less readily available. Yet without expertise in child psychology and the cultural context, the assessment of a child's level of maturity may be inadequate and hamper the child's appropriate access to participation. (See Box 8, "Age assessment.")

A prerequisite for a child's effective participation in any decision affecting her/him is support in the form of child-friendly information and procedures, counselling on options, interpretation services and the support of a guardian and, where relevant, a legal representative (See box 1, "Safeguards").

BOX 7: FAMILY TRACING

The unaccompanied or separated child may not have lost contact with her/his family and may be in a position to communicate with family members. Sometimes, a child may be under instruction (by family members or smugglers) to resist family tracing or may have other reasons for being averse to restoring contact. Providing counselling and engaging with the child may help in understanding the child's background, protection needs and motivations for leaving – and in turn, the influences behind and the dynamics involved in the child's resistance to family tracing.

Such an understanding would in turn be instrumental in providing the child with relevant support to adequately establish the child's best interests, and would support the child in providing his or her input. To this end, a transparent process includes steps to ensure the child is:

- Informed in a child-friendly manner and in a language he or she understands about the purpose of tracing, namely a first step in restoring family links.
- Listened to and heard.[96]

The purpose of the process is to inform the child about his/her options, counsel the child and perhaps initiating contact with the family, specifically when there are no indications that restoring contact or tracing family would endanger either the child or the child's family members or pose other risks (for example, linked to the child's international protection needs).

Gaining the trust of the child may be a long and sometimes difficult process, but it is critical to a full understanding of the circumstances surrounding the child's separation and to supporting the child in reestablishing contact with her/his family. Attempts to gain children's cooperation through such methods as confiscating cell phones are counterproductive, often further aggravating situations of vulnerability, and should be avoided. Such methods may affect the child's attitude, making the child reluctant to disclose information in the future, such as during an asylum interview, possibly leading to rejection of the claim on credibility grounds.

When family tracing is assessed to be in the child's best interests, yet the child refuses to agree to it, a representative or guardian could give consent to tracing. However, this needs to go hand in hand with careful communication between the child and representative in order not to jeopardize the relationship of trust between them.

may be needed immediately to ensure prompt reunification. It may then be necessary to assess if it is in the child's best interests to initiate family tracing immediately. However, this will be subject to a specific best interests assessment, in which the child's safety is considered in relation to family unity. (See Box 7, "Family tracing.")

Children may feel under obligation to family members or they may be under the influence of their smugglers, traffickers, peers or the community not to disclose information regarding their identity or their family's location. The child may be fearful and confused as to whom to trust. The project, "Protecting children on the move," carried out in Greece, Italy and France (UNHCR 2010) found that it is essential that the child perceives and regards the source providing information as legitimate and trustworthy. Children need an opportunity to receive independent advice with which they feel comfortable and which they can trust. Authorities should seek to develop this trust at the outset, and they should provide children with information about their options in a child-friendly language and format. It is of the utmost importance that children understand that they have rights and that there are people assigned especially to help them in their contact with government authorities. (See Box 1, "Safeguards.")

An example of child-friendly information about the rights of the unaccompanied child in asylum procedures, written by and for children, is the booklet "Seeking Asylum in **Ireland**: A Guide for Children and Young People," by the Irish Refugee Council.

[96] See Dublin III, Art. 6.3.c., RCD, Art. 23.2, CRC, Art. 12, ATD, Art. 14.1.

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4.4 Referral to State child protection services

Identified unaccompanied or separated children need immediate referral to child protection services in order to meet their needs relating to care, safety, education and health. It is also critical to planning the rest of the process.[97]

Decisions about care and protection will be informed by a best interests assessment (which can be subject to revision as new information becomes available). The plan of action to be put in place will be based on information gathered during registration and documentation. Additional and more detailed information on the family situation, health status, specific vulnerabilities, gender identity, and ethnic and religious background may be needed to assess the best interests of the child in relation to mental and physical health needs, accommodation and care, educational and recreational needs. The child may also be directed to specialist services, such as psychosocial and specialist educational services, which will assess the child's individual circumstances and specific protection needs.

The Committee on the Rights of the Child has called for minimizing the number of interviews in CRC General Comment No. 12, para. 24 in order to reduce the risk of re-traumatization. While multiple interviews may be needed to gain a full picture of the child's needs – and to allow the child to expand upon her/his situation – a holistic approach to the process avoids unnecessary duplication.[98] A joint vision or plan for the child enhances the efficiency and effectiveness of protection throughout the child's displacement experience. This is why it is fundamentally important for the authorities assisting an unaccompanied or separated child to fully collaborate with each other in creating and implementing a plan for the child. (See Box 9, "Applying a holistic approach.")

97 The European Parliament, *Report on the situation of unaccompanied minors in the EU* (2012/2263(INI), August 2013, http://goo.gl/IUkqmj

98 See ATD, Art. 12 and Art. 15.

BOX 8: AGE ASSESSMENT

In some instances doubt may be raised about an individual's age. It is important to recognize that the absence of official documentation is not necessarily an indication that a child is withholding information about his or her stated age. In some cases, an individual may find it very difficult to be specific about his or her chronological age and no method can determine age with 100% accuracy.

States normally rely primarily on child-sensitive interviewing and professional assessments of the child's age, taking into account the ethnic and cultural background of the child. Methods currently available and their implications are compiled in the EASO Age Assessment Practice in Europe.[99]

It is worth noting that in the FRA report, *Separated, asylum-seeking children in the European Union Member States,* the children being interviewed were often distressed about the possibility of being perceived as "liars".[100]

CRC General Comment No. 6, para. 31 (i) calls for any additional age assessment measures to be objective and fair, child and gender-sensitive and to avoid any risk of violating the individual's physical integrity, giving due respect to his or her human dignity.

The Separated Children in Europe Programme's Statement of Good Practice endorsed by UNHCR and UNICEF recommends that:

- In cases of doubt, a person claiming to be under the age of 18 should provisionally be treated as such.
- Age assessment procedures are only to be undertaken as a measure of last resort when there are grounds for serious doubts and where other approaches have failed to establish the individual's age.
- Informed consent is obtained.
- The procedure is multidisciplinary and draws on relevant expertise.
- Examinations should never be forced or culturally inappropriate and must respect the individual's dignity at all times.
- The least invasive option is followed and balances physical, developmental, psychological, environmental and cultural factors.
- Assessments are gender appropriate.
- Assessments are overseen by an independent guardian who is present if requested to attend by the individual concerned.
- The procedure, the outcome and consequence are explained to the individual in a language they understand.
- There is a procedure to appeal against the decision as well as the necessary support to do so.

UNHCR Guidelines on Unaccompanied and Separated Children Seeking Asylum (1997) in para. 5.11 states that the guiding principle should be whether an individual demonstrates an immaturity and vulnerability that may require more sensitive treatment.

Further guidance can be found in UNICEF Age Assessment: A Technical Note and UNHCR Guidelines on International Protection: Child Asylum Claims (2009), and the SCEP Position Paper on Age Assessment in the Context of Separated Children in Europe.[101] Of note are also Article 13.2 of the Anti-trafficking Directive which departs from a presumption of minority in case age is uncertain and there are reasons to believe the person is a child and Article 25.5 of the Asylum Procedures Directive which contains some of the listed safeguards.

99 EASO, *Age Assessment Practice in Europe,* 2014 , http://www.refworld.org/pdfid/532191894.pdf

100 FRA, *Separated, asylum-seeking children in European Union Member States,* December 2010, http://goo.gl/bz4u1Y

101 Separated Children in Europe Programme (SCEP), *Position Paper on Age Assessment in the Context of Separated Children in Europe,* May 2012, http://www.refworld.org/docid/4ff535f52.html

In **Ireland**, when an unaccompanied or separated child is referred to the Child and Family Agency (CFA), a child protection needs assessment is conducted by a professionally qualified social worker. The outcome of this assessment informs the child's individualized, statutory care plan. The care plan is overseen by a social worker who is allocated immediately following the intake assessment and who is designated to ensure management and implementation of the care plan.

In **Germany**, an unaccompanied child will be taken into emergency care in foster care or at an appropriate care facility where a thorough care planning procedure will be initiated.

In **Malta**, authorities make use of a multidisciplinary panel process to identify a care plan for unaccompanied children.

In **Belgium**, unaccompanied or separated children, irrespective of their status, will be placed in an observation and orientation centre (OOC). This allows the Guardianship Service to identify unaccompanied or separated children and transfer certain categories of them to more specialized reception centres to allow for better care of their specific needs (e.g. pregnant children, young children, children with psychological problems, potential victims of human trafficking).[102]

In **Norway**, transit centre staff use a mapping tool inspired by the Council of Europe LIFE Projects[103] in order to support each child in gradually revealing and documenting details of their lives before coming to Norway with a view to establishing a plan of action for the child. The staff is tasked with ensuring that the mapping process is complete before the child leaves the transit centre. While their goal is to get as close to the reality as possible, they also offer the child support as he or she goes through often painful memories.

In the **UK**, the government has issued Statutory guidance for local authorities on the tailored care of unaccompanied asylum seeking and trafficked children based on their particular circumstances and needs.[104] The guidance sets out the steps local authorities should take to plan for the provision of support for looked after children who are unaccompanied asylum seeking children and child victims of trafficking.

BOX 9: APPLYING A HOLISTIC APPROACH

In considering the best interests of the child, all relevant factors pertaining to the specific situation of the child must be carefully weighed. (See Box 12,"Non-exhaustive list of best interest elements" and Box 13, "Weighing best interest elements.") This means that:

- Information relating to all factors must be collected and taken into account when considering the child's best interests.
- Since the factors cover all aspects of the child's situation, information should be made available to different actors who come into contact with the child.

Ensuring a holistic approach to the child's best interests entails:

- Ensuring that all information is collected and made available while respecting the principles of data protection.
- Allowing for the various actors, each with their expertise on child rights issues, to contribute their views on the weight and importance of the factors.

Organizing the holistic approach may take the form of multidisciplinary teams, ad hoc working groups, task forces or established panels. To this end, efforts to institute panels to work specifically with the child to determine his or her best interests are welcome developments. Such panels would further ensure the forging of a joint approach for each individual child as the child protection system works with immigration and asylum systems to come to a durable solution.

102 European Migration Network, *Unaccompanied minors in Belgium. Reception, Return and Integration Arrangements,* July 2009, http://goo.gl/dQ9CuS

103 The Council of Europe, *Life projects for Unaccompanied Migrant Minors. A Handbook for front-line Professionals,* October 2010, http://goo.gl/CD4gDO

104 UK Department of Education, *Care of unaccompanied and trafficked children: Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children,* July 2014, http://goo.gl/SVthki

While not directly related to the asylum/migration context, an example of a holistic approach is the Barnahus (Children's House) pilot projects in **Iceland** and **Sweden**, specifically targeting (suspected) victims of sexual abuse. The Swedish Barnahus brings together the social services, police, prosecutor, forensic experts, pediatric medicine and pediatric psychiatry services, which work together, primarily in the initial stages of the preliminary police investigation and the investigation of the social services. As a rule, social services have a coordinating role, with one or more social workers stationed on the premises. At joint meetings, the representatives of the different professions consult each other, plan and allocate tasks. Once preliminary investigation begins, interviews with the child are carried out in the Barnahus, where professionals who need to hear the child's story may listen to the interview by video link in an adjacent room. This ensures that a trained professional is responsible for the interview (often a psychologist) and avoids repetitive interviewing by different actors, which may cause further trauma. Interviews may also be video-recorded for use in court proceedings. The ambition is that all professions work in a child-centered way, carrying out the investigation and for providing crisis support in the Barnahus.[105]

These practices exemplify one of the central prerequisites of applying the best interests principle, as also recommended by the CRC General Comment No. 14, namely, comprehensive and coordinated action in relation to the child. Relevant professionals are involved in the planning, and the child is heard, regardless of who guides the process of coordination.

[105] Save the Children, *Submission to the Consultation on the European Commission's Communication on the Rights of the Child* (2011-2014), August 2010, para 6., http://goo.gl/FphpJG

4.5 Process planning

The unaccompanied or separated child needs action to be taken on a number of protection issues. Process planning is the act of deciding which asylum or immigration procedures and which protection services are in the best interests of the child. Decisions should be based on BIAs.

Knowledge about the child's identity and past experience should inform the pathway to follow and be the basis of an extended care plan. For example, is there family to be traced? Is the child at risk of trafficking? Are there health concerns, including trauma?

When planning a child's future, officials and caregivers should ensure that decisions are not taken in isolation from each other, but in coordination and with a joint vision for the child. With this in mind, it is important that as much information about the child is made available early in the process to enable effective counselling on the child's options. Such a process includes exploring the desirability of restoring family contact.

In a noteworthy practice in **Germany**, unaccompanied and separated children are accommodated in special reception centres for three months. During this time the child's health, educational and protection needs are checked in a "clearing procedure" in cooperation with the guardian and the youth welfare office.[106] The protection needs assessment includes whether a child should lodge an asylum application or pursue other options, such as family reunification in a third country or in the country of origin, or filing an application for a residence permit for humanitarian reasons with the local aliens authority. The need to train people involved in this process has been recognized and is being offered by the Federal Association for Unaccompanied Minor Refugees (B–UMF).[107]

The child is often the main and most relevant source of information. However, the child may be influenced by the experiences he or she has gone through while on the move, quite aside from the specific vulnerabilities associated with being a child. The child's age, level of maturity and education will affect the ability of the child to cooperate as will the child's sense of security and trust. Qualified professionals are best placed to take into consideration the specific needs and vulnerabilities of the child, particularly those who may be suffering from trauma, and will be best placed to ensure that interviews are child-friendly, protecting children from possible unintended harm, while at the same time acquiring the necessary information.

Additional information about the child may serve to illuminate her/his circumstances more fully, especially in cases where the child is unable or unwilling to provide full information due to fear for his or his family's safety or ignorance of the protection available to him or her.

Often, the information necessary for deciding which care arrangements to put in place are also relevant for deciding which pathway or procedure to initiate for the child. (See Box 10, "Information gathering.")

Ensuring that the information is valid, accurate and efficiently gathered requires the full participation of the child. This involves ensuring the child's right to be heard through counselling and support and providing the child with information on the options available. It also involves ensuring the child's views are given due weight. (See Box 6, "Child participation.")

106 The clearing phase ("Clearingverfahren") is not laid down in the German law, but has proven to be a successful practice and is therefore being increasingly implemented in the 16 German Federal States. Several clearing centres have been opened under the Youth Welfare Act and in some federal states, guidelines have been developed by the responsible ministries, youth welfare offices or NGOs, where such a clearing phase is an inherent part of the reception concept, e.g. in North Rhine Westphalia, the Family Ministry and Ministry of the Interior published a guidance in cooperation with various stakeholders: Ministerium für Familie, Kinder Jugend, Kultur und Sport des Landes Nordrhein-Westfalen *Handreichung zum Umgang mit unbegleiteten minderjährigen Flüchtlingen in Nordrhein-Westfalen,* 2013, http://goo.gl/aQ6m9, which on p. 15, Chapter 5.8, describes the clearing procedure within the framework of immediate child care.

107 See, *Bundesfachverband Unbegleitete Minderjährige Flüchtlinge,* www.b-umf.de

BOX 10: INFORMATION GATHERING

Generally, the unaccompanied or separated child will provide the required information if the child has it and is convinced that he or she can trust the person will use the information in his or her best interest. However, the unaccompanied or separated child may not be able to provide adequate information, either because of age, trauma or the time lapse since the child left home or was exposed to the experiences that prompted his or her flight or that occurred in transit.

In order to analyze how to respect the unaccompanied or separated child's rights, the following elements should be actively explored:

- The views of the child (in line with age and maturity)
- Identity
- Family history, the view of the child's family where contact has been established or restored
- Information about experiences during journey and reasons for departure
- Care, protection and safety, and in this regard, the child's history, needs and options
- Situations of vulnerability, those that are current and might be developing
- Education history and needs
- Health history and needs

In addition to providing the child with an adequate opportunity to offer her or his information, it may be necessary to seek information from wider sources. This should happen with support from the child's guardian, foster-carer and social workers.

Since children have specific protection needs, information pertaining to their rights must be specific to their status as children and to their gender. Hence greater expertise is needed in elucidating their situation. Sources of information may include:

- Child's asylum/immigration decision
- Expert reports (psychological, medical, educational reports regarding the child)
- Family tracing results
- Home/family study reports (including information on family/care givers' willingness and ability to protect, care for and enable the child to enjoy her/his rights under the CRC in the environment in which they live)
- Integration report (if long-term foster care, adoption or, for older children semi-independent or group living arrangements is considered) in the country of arrival
- Child-specific and gender-specific country-of-origin information

The information gathering and sharing should respect the national data protection laws and regulations. (See Box 11, "Confidentiality and data sharing.")

In order to prevent the child from undergoing multiple interviews (with possibility of re-traumatization) information should be shared between relevant authorities subject to confidentiality principles and data protection norms. (See Box 11, "Confidentiality and data sharing.")

In recognition of the need to exchange information but ensure appropriate data protection and confidentiality, the **UK** Home Office and the Association of Directors of Children's Services (ADCS) Asylum Task Force which represents the Local Authorities' Children's Service (the child protection service) have jointly developed a protocol for good practice in sharing information in regards to age assessment.[108]

In **Finland**, social workers are allowed to attend interviews or give written statements on the child's psychosocial needs and to render an opinion on how the child's best interests would ideally be met. This effort at making the decision-making process truly multidisciplinary suggests further institutionalizing the use of experts in the process of a BID, putting in place important safeguards as the child's situation is assessed.

[108] ADCS Asylum Task Force, *Age Assessment Information Sharing for Unaccompanied Asylum Seeking Children: explanation and guidance,* July 2013, http://www.adcs.org.uk/goodpractice/ageassessment.html

Process planning for unaccompanied or separated children involves a range of actors, including representatives/guardians and other experts as appropriate, such as legal representatives. Factors that may come into play include the child's safety, opportunities to maintain or restore family unity, and opportunities to develop into adulthood as well as the relevance of the asylum/immigration process. Time may also play a role: the longer children are separated from their family and culture, the harder reunification may become and the larger the possible effect on the child's mental and physical well-being.

A recent study of asylum-seeking unaccompanied children in Belgium found that half of the children showed signs of post-traumatic stress disorder (PTSD), and, importantly, that the PTSD seemed to worsen rather than recede over time.[109] The time factor would thus seem to be of urgent concern given that extending the time for processing appears to introduce stressors while worsening pre-existing vulnerabilities. These are important findings for legal representatives, representatives/guardians and others who advise children on their immigration pathways. They point to a need to balance efficient processing with a child's need for rest and preparation time, giving careful consideration to each individual case.

A child who has already made a claim for international protection will require assistance in processing that claim. If no claim has been filed and there are indications that the child is in need of international protection, the child may decide in consultation with his or her representative/guardian and legal adviser to apply for it. However, if the child's presence does not raise questions of international protection, the child may be advised that it is in his or her best interests to refrain from entering into such procedures. Either way, the decision to seek international protection should rest with the child and his or her guardian and legal adviser, in accordance with the child's age and maturity.[110]

[109] De Standard, *Stay in Belgium Causes Stress with Young Refugees,* 20 December 2013, quoting research of Marianne Vervliet, *The trajectories of unaccompanied refugee minors: Aspirations, agency and psychosocial well-being,* 2013, https://biblio.ugent.be/publication/4337248

[110] UN Committee on the Rights of the Child, *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin,* 1 September 2005, CRC/GC/2005/6, CRC General Comment para. 32, http://www.refworld.org/docid/42dd174b4.html

BOX 11: CONFIDENTIALITY AND DATA SHARING

States often find that:

- Data sharing between public authorities and service providers, public and private, can help tackle the multifaceted issues of unaccompanied children, contributing to a joint approach.
- There are principled concerns of protecting privacy, including the potential loss of control over information on the part of the individual and the perception that the right to privacy is at the heart of the concept of liberty, raising concerns about potential loss of autonomy and the psychological benefits of privacy.

This poses the dilemma that:

- The need to gather and share information concerning individual unaccompanied or separated children may touch upon confidentiality issues and data protection requirements, making it legally challenging to transfer information between agencies.
- Because child protection systems and immigration systems operate on parallel tracks, information sharing is all the more complicated.
- Important information pertaining to the best interests of an unaccompanied or separated child may become insulated from the relevant decision makers.

States therefore may consider:

- Further developing, within the limits of data protection legislation, protocols for the specific sharing of information related to all aspects of the best interests determination process.
- Taking due precautions for the safeguarding of sensitive information, such as:
  - analyzing carefully the institutions, which share the data
  - delineating the functions of the public bodies sharing data
  - protecting access to the data
  - strictly managing data-processing and
  - informing the child and her/his representative/guardian about the type of information shared and the purpose of sharing the data, giving the child an opportunity to provide her/his views.


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Additional process-planning factors include the child's age and the available legal options. The child should be advised to go through procedures that are most likely to respect his or her best interests. For a child nearing 18, this would likely mean embarking on a process that would be finalized while he or she still has minority status. The aim is to respect the child's right to safely develop into adulthood, whether through family reunification, application for international protection or other immigration procedures. (See Box 16, "Turning 18.") Waiting until the child turns 18 to embark on asylum/immigration procedures would generally not be in the best interests of the child, who as an adult, would no longer have access to the services and guidance he or she may still in fact need. It should be noted that although process planning does not constitute the more formal BID, the process of weighing the best interests factors should be reasoned and documented.

Many States recognize that development into adulthood is a process that doesn't happen overnight, but continues well beyond the date of reaching the age of 18. In **Norway**, for example, in a procedure akin to the one foreseen under the Council of Europe's LIFE Project,[111] reception centre staff work with unaccompanied or separated children to chart a long-term development course. The plan reaches beyond the milestone of turning 18, well into adulthood, and reflects the reality that decisions taken for a child will have consequences for the lifetime of the individual. This kind of planning requires that realistic implementation options are envisioned with the child, taking full account of the possible durable solution outcomes.

Since deciding on the relevant immigration pathway may have far reaching consequences for the child's future development, enhanced procedural safeguards are critical. (See Box 1, "Safeguards.") In **Belgium**, a guardian, lawyer and interpreter are automatically assigned to all identified unaccompanied and separated children and are on hand during process planning, affording them enhanced procedural safeguards. In general, it is recommended that legal advice be provided not only for asylum/immigration procedures, but also earlier during process planning, as decision making at this stage will have considerable import for the child's future.

[111] The LIFE Project recommendations were adopted by the Council of Europe's Committee of Ministers in July 2007 following the regional conference, "Migration of unaccompanied minors: acting in the best interests of the child," Torremolinos, Malaga, Spain, 27-28 October 2005. See Council of Europe, Committee of Ministers, *Recommendation CM/Rec /2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors,* 12 July 2007, https://wcd.coe.int/ViewDoc.jsp?id=1164769

4.6 Applying the best interests principle in asylum and immigration procedures

The decision to enter into immigration procedures, whether through lodging an application for international protection or other procedures, has considerable consequences for the child and his or her development opportunities. At this stage, the best interests principle would indicate that a high level of procedural safeguards be put in place. As a minimum, a child would need legal advice, support from an independent representative or guardian, interpretation and the possibility to be heard and that her/his views are given due weight in line with his or her age and maturity. (See Box 1, "Safeguards.")

Children who lodge an application for international protection should receive priority processing, over adult cases reflecting the importance of the time factor for children. This does not mean that such cases should be expedited, i.e. processed with shorter timelines. Adequate time is still needed to allow the child to rest and recuperate, to build trust with his or her representative/guardian, and to allow for proper process planning or to give the child the chance to be properly heard.

While the definition of a refugee contained in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol applies to individuals irrespective of age, the UN Committee on the Rights of the Child has noted that the refugee definition must be interpreted in an age-sensitive and gender-sensitive manner. Additional factors include rights specific to children, child-specific forms of persecution, a child's stage of development, knowledge and/or memory of conditions in the country of origin and vulnerability. All of these are relevant to an age-sensitive and gender-sensitive interpretation of the criteria for granting refugee status or subsidiary protection, according to UNHCR's guidelines for child asylum claims.[112]

According to the same guidelines, when assessing whether the child has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, the harm involved must be considered from the child's perspective. The child's age, gender and sexual orientation, and economic and social characteristics may influence the type of persecution the child may be subjected, exacerbating the child's fear and increasing the risk of harm. Thus it is necessary to analyze up-to-date information on circumstances in the country of origin and to apply this knowledge in assessing the child's specific application for international protection.

How States ensure that a child's best interest is given primary consideration throughout the asylum/immigration procedure can vary depending on State practice and procedure. Where procedures for in-depth assessments are in place within the child protection system, authorities may consider making this information available in the asylum/immigration process, subject to relevant data protection principles. This is the case in **Germany** where the federal states' specialized centres conduct thorough assessments (see box 11, "Confidentiality and data sharing") for unaccompanied children over the first two or three months after first encounter.

In the **UK**, different government agencies work together to discharge their respective statutory duties to "safeguard and promote the welfare of children" in carrying out their work. In order to ensure that all agencies are working together in a coordinated manner, the government has issued statutory guidance to direct this work.[113]

States still have a number of options they can take when grounds are not found for granting a child refugee status or subsidiary protection, or when return is not possible and there are nevertheless protection concerns.

112 UNHCR, *Guidelines on International protection: Child Asylum Claims,* December 2009, http://www.refworld.org/docid/4b2f4f6d2.html

113 UK Home Office, *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children,* March 2013, http://goo.gl/yJ82Lr

BOX 12: NON-EXHAUSTIVE LIST OF BI ELEMENTS

As previously noted, CRC General Comment No. 14 views the specific, factual circumstances of the child as the point of departure for assessing the best interests of the child. Following are some of the elements to take into account when assessing and determining a child's best interests:

Child's identity:

- Age
- Gender
- Sexual orientation
- National origin
- Religion and beliefs
- Cultural identity (including time spent outside of country of origin)
- Personality
- Current needs and evolving capacities (including level of education)

Parent or (current) caregiver's views

Child's views:

- On options available
- Wishes and views in relation to his/her identity and options available

Preservation of the family environment, maintaining or restoring relationships:

- Significant relationships (and where the people are located)
- Quality and duration of child's close relationships (parents, siblings, other family members, other adults, children in the (cultural) community)
- Effect of separation from significant relationship (and where)
- Capacity of parents, care-givers, close relationships
- Possibilities of family reunification (upon tracing, verification, assessment)
- Preference for care within family environment in order to ensure the full and harmonious development of a child's personality

Care, protection and safety of the child:

- Safety from harm
- Well-being in a broad sense (basic material, physical, educational, emotional needs, needs for affection and safety)
- Possibility of future risk and harm and other consequences of the decision for the child's safety

Situation of vulnerability:

- Individual physical or emotional needs
- Specific protection needs, including for victims of trafficking and trauma
- Need for continuity of feelings of security and stability

Child's right to health:

- Actions required to provide for his/her health condition, including mental health

Access to education:

- Educational needs and opportunities for development

In **Sweden**, when there are exceptional circumstances to consider during the asylum examination process or subsequent decision, the Swedish Migration Board carries out child impact analysis. This tool is of particular value when there are exceptionally distressing circumstances. It considers whether procedural safeguards were observed and whether child-specific protection grounds have been properly considered and assessed. It also considers the child's individual circumstances in relation to his or her health and psychosocial development and the family situation and balances these with the prospect of return to the child's country of origin or integration in Sweden. The child's views are also considered, and caseworkers must also consider information from other actors around the child (e.g. the guardian, social services) or explain if this was not done. Caseworkers can annotate their findings for each question in a remarks box. This notation is currently not mandatory but if made so, would improve the quality of the findings and meet the recommendation in CRC General Comment No. 14, para. 97 (f) on legal reasoning.

In the **UK**, where a child who has not been granted international protection cannot be returned to his or her country of origin due to "inadequate reception arrangements", the child is granted a discretionary form of leave.[114] Home Office operational policy makes clear that, when deciding the duration of the discretionary leave, the decision maker must give the best interests of the child primary consideration.

Many States have introduced a single decision-making procedure regarding whether to recognize an applicant as refugee, grant subsidiary protection, or humanitarian leave to remain under national law. A single procedure would generally be beneficial also for children given the fact that time is an especially pertinent factor from the perspective of the child's development.

A decision to grant a humanitarian or temporary residence permit in cases where international protection is not granted presents a dilemma especially for children nearing the age of majority (see Box 16, "Turning 18"). In many cases, decisions like this might be made in the course of a single process. But given its far-reaching consequences for the child's development into adulthood, it

114 UK Visas and Immigration, *Guidance. Granting Discretionary Leave to Asylum Seekers: Process,* June 2013, p. 9 para. 4.4, http://goo.gl/KRQfmj

BOX 13: WEIGHING BEST INTERESTS ELEMENTS

The purpose of assessing and determining the best interests of a child is to ensure the full and effective enjoyment of the rights recognized in the CRC and to ensure the holistic development of the child.

The determination that leads to a durable solution can rarely be reached by reference to a single factor. In assessing and determining a solution that is in a child's best interests, it is fundamental to focus on the individual child. Specifically, CRC General Comment No. 6 and CRC General Comment No. 14 require that within the specific factual context of the child, it is necessary to:

- Determine the relevant elements (see Box 12, "Non-exhaustive list of best interest elements").
- Give them concrete content and assign a weight to each in relation to one another.

The assessment involves evaluating and balancing all the elements necessary to make a decision in a specific situation for a specific individual child. In ranking the different elements, there may be competing concerns to consider:

- The possibility of an option exposing a child to harm would usually outweigh other factors, rendering that option not in the individual child's best interests.
- The child's right to be brought up by her/his parents is a fundamental principle. Except where there are issues of safety, a child's best interests can generally best be met with her/his family.
- The CRC emphasizes the need to ensure the survival and development of the child, including physical, mental, spiritual, moral and social development. These are generally best met by remaining in or maintaining close contacts with the family and the child's social and cultural network.

Assigning weight to socio-economic factors in the country of origin may prove challenging yet is nevertheless necessary. In considering scenarios for the child's development, weight should be assigned to such factors as educational opportunities, health and vulnerability issues and the continuity and stability of the child's present situation.

would be better to base the decision on a BID, which provides a reasoned weighing of all factors. (See Box 12, "Non-exhaustive list of best interest elements.")

In **Finland**, a continuous residence permit on compassionate grounds may be granted an international protection applicant if rejecting the application is clearly unreasonable considering the applicant's health, established ties to Finland or other individual, humanitarian reasons. Unaccompanied and separated children are considered a target group for this status. In carrying out such a process, it is recommended that all factors, including family unity, continuity in care, ethnic identity and cultural factors, be weighed and documented in a written decision. In **Norway**, such a written decision is issued to the child's lawyer to be shared with the child's guardian and the child.

It is important for States to note that all aspects, including the BID, may be challenged, that legal advice should be provided, and that, should new information become available, there would be a venue to reopen the case. According to the recast Asylum Procedures Directive Art. 40, para. 2, subsequent applications are admissible in case of "new elements or findings".

BOX 14: BALANCING THE BEST INTERESTS OF THE CHILD WITH OTHER INTERESTS

The best interests of the child, once assessed and determined, might conflict with the interests or rights of other children, parents or the public. As per CRC General Comment No. 14, para. 39 and para. 40, if harmonization is not possible, authorities and decision makers will have to analyze 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.

This is due to the special situation of the child, characterized by:

- Dependency
- Maturity
- Specific legal status
- Voicelessness

Viewing the best interest of the child as "primary" requires a consciousness about the place that children's interests must occupy in all actions and a willingness to give priority to those interests in all circumstances, but especially when an action has an undeniable impact on the children concerned.

Furthermore, CRC General Comment No. 6, para. 86 states that "Non-rights based arguments such as those relating to general migration control, cannot override best interests considerations."

4.7 Identifying a durable solution

Once a child has gone through immigration or asylum procedures and has received a final decision, the child will have clarity on his or her legal status in the country and can continue planning for the future. It should be noted that not all unaccompanied or separated children in Europe, for example EU nationals, will go through asylum/immigration procedures.

The BID may generally be described in national asylum or immigration procedures, in which case it would also be indicated how and when a BID is embedded in these procedures. While there is no definite indication of the specific moment in the course of the asylum or immigration process when a BID should take place, the main principle would be that a determination takes place whenever a decision is to be taken which will have major impact on the child's future – and that it is done on the basis of the BIAs that have been made. Also, if there are several fundamentally impacting actions/decisions taken in relation to the child, a progression in the level of procedural safeguards will take place, reflecting the severity of impact on the child's future, culminating in the full-fledged BID. Thus, while **BIAs** would normally be conducted so as to inform the immigration/asylum decision a **BID** would generally be looked at **after** the asylum/immigration procedure with the outcome of that procedure informing the scope of the durable solution on the table, but not overturning the asylum/immigration decision as such.


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A BID following an asylum/immigration decision identifies the most suitable durable solution to the displacement among those options available in light of the applicable legal framework and furthermore addresses the issue of being unaccompanied or separated.

Should an identified durable solution not be possible to implement, or should new information become available, the BID or, depending on the nature of the new information available, the asylum/immigration decision may be re-opened in line with applicable law.

A **durable solution** will be long-term and sustainable. It will ensure that the unaccompanied or separated child is able to develop into adulthood in an environment which will meet his or her needs as well as fulfil her/his rights as defined by the Convention on the Rights of the Child and will not put the child at risk of persecution or harm. In accordance with the Best Interests principle, since the durable solution will have a fundamental impact on the child's long-term development into adulthood it would need to be informed by a BID, which upholds the strictest procedural safeguards. (See Box 1, "Safeguards.")

In carrying out the BID, it is worthwhile to keep the aim of the determination firmly in focus. The BID strives, from the very outset, to examine the circumstances of the individual child in order to understand what solution would be in the best interests of that child.

Some States have put mechanisms in place to undertake the BID within the purview of the asylum/migration authority. For others, especially where the unaccompanied or separated children would not be subject to international protection procedures, such as EU nationals, the BID falls within the purview of authorities elsewhere in the child protection or judicial system. The institutions or representatives determining the best interests of the child when identifying a durable solution would ideally be independent and impartial, staffed by people with necessary experience in child protection and no potential conflicts of interest with the protection of the child's rights.

It is recommended that structures be further developed to comply with these features. For example, based on the findings of an inquiry into the human rights of unaccompanied migrant children and young people in the **UK**, the parliamentary Joint Committee on Human Rights (JCHR) recommended that the government evaluate the case for the establishment of an independent, formal BID process. The Committee recommended that the evaluation analyse the potential benefits of such a new and formal process against the alternative of seeking to make improvements to the existing model. Whatever the model, the system should bring the best interests of unaccompanied migrant children to the fore.[115]

When best interests are a primary consideration, durable solutions for unaccompanied and separated children can include a number of measures, depending also on the legal options available in the State. The BID, considering the elements outlined in CRC General Comment No. 14, will also consider a range of options for the child in order to address both their protection needs and future care arrangements. Durable solutions may be considered and implemented for example through family reunification or reunification with a relative or former caregiver in the home country or a third country, through appropriate alternative care arrangements. A last resort is adoption, in cases where there are no family members, family cannot be traced or where reunification is assessed not to be in the child's best interests.

In the process of identifying and implementing a durable solution for each unaccompanied or separated child, it is critical to establish measures to ensure respect for the child's right to be heard. (See Box 6, "Child participation."). In **Italy**, when the child has consented to and requested voluntary repatriation, planning is done with the child and the child's family with the involvement of child social services and IOM. In **Norway**, a "mapping process" initiated at the reception centre, feeds into the planning process during implementation of a durable solution.

[115] House of Lords, House of Commons Joint Committee on Human Rights, *Human Rights of Unaccompanied Migrant Children and Young People in the UK,* First Report of Session 2013-14, May 2013, para. 33, http://goo.gl/Oe0rdx

Regardless of the immigration status of an unaccompanied or separated child, continuous efforts at tracing of family, whether immediate or extended, is of utmost importance to determine whether reunification would be in the child's best interests. Should the family be traced to a third country, the option of family reunification in the third country may be sought or explored. In a situation where the parents have been traced, but are in a situation or location where they are not legally resident, reunification is less straightforward. However, should it be determined to be in the best interests of the child, reunification in the host country or in a third country may need to be sought with a view to upholding the best interests principle. This would depend on the specific situation and the legal status of the child and the family members abroad. If the child has refugee status under EU law the child would be eligible to apply for family reunification with nuclear family members (e.g. parents) in the country of asylum. Where the family (e.g. parents) is traced in a third country, reunification in this third country may be explored by means of a BID involving relevant actors in the third country in the process. The recast Dublin Regulation specifically indicates safeguards to be accorded unaccompanied or separated children, stating that the best interests of the child shall be a primary consideration and requiring Member States to cooperate closely and in assessing the best interests of children to take particular account of family reunification, the unaccompanied or separated child's well-being and social development, safety and security.[116] Depending on the child's and the parents' status, the durable solution may be pursued either in the country where the parents are or the country where the child is and may have a legal right to stay. The crucial factor would here be the sustainability of the solution for the child and which country and status can best realize this.

In order to assess whether family reunification is in the best interests of the child, information about the family situation including a possible home study would be relevant. The home study includes a detailed report of the situation of the family including a description of conditions that may affect reunification, including housing, the economic situation of the family, health conditions of family members, willingness to re-unite with the child, ability to take care of the child, relationships between family members and any issues such as substance abuse which may be pertinent.

Obtaining this information may be challenging in some countries of origin, however. (See also Box 10, "Information Gathering."). In addition to conducting tracing through their representations in the countries of origin, or through the International Committee of the Red Cross (ICRC), States such as **Italy, Finland, Austria and Belgium** have employed partnerships with the International Organisation for Migration (IOM), International Social Services (ISS) and their country of origin partners in organizing family tracing, home studies, reintegration planning and monitoring in countries of origin. While several States engage ISS on a case-by-case basis to conduct family tracing and home studies in countries of origin, **Finland** has a formal agreement with the General Secretariat of ISS regarding tracing families or legal guardians of unaccompanied or separated children. Under the agreement tracing is not pursued if it becomes apparent that the child or the family may be exposed to danger. The decision to discontinue tracing is taken under guidance from ISS, but also from the child and his or her representative/guardian.

For situations where it would be in the child's best interests to return to the country of origin or habitual residence, UNHCR and UNICEF have developed, in recognition of protection concerns specifically in connection with returns, guidelines for minimum safeguards for the return of unaccompanied and separated children. The UNICEF Guidelines for the Protection of Child Victims of Trafficking[117] and the UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe[118] address children who are victims of trafficking, while the UNHCR publication, *Special measures applying to the return of unaccompanied and separated children to Afghanistan,* describes the minimum safeguards for returns to

116 The European Council and the European Parliament, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast),* http://goo.gl/XnJ2mV

117 UNICEF, *Guidelines for the Protection of Child Victims of Trafficking,* 26 June 2013, http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

118 UNICEF, *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe,* 2006, http://www.refworld.org/docid/49997af7d.html

BOX 15: MINIMUM SAFEGUARDS IN CASES OF RETURN

UNICEF's reference guide for child victims of trafficking in Europe describes minimum safeguards for the return of unaccompanied and separated children who are victims of trafficking. UNHCR's special measures for the return of unaccompanied and separated children to Afghanistan may be extrapolated to other situations. Both documents recommend that:

- A decision is made in a formal procedure containing all necessary safeguards; that it assesses all solutions ensuring that the child's best interests are a primary consideration; that the child is fully informed, counselled and supported.
- Genuine efforts are made to trace family prior to return and an individual assessment as to whether the family is willing and able to receive the child is made.
- Where tracing is unsuccessful, return to a child-care institution is considered as a last resort and only when in the best interests of the individual child concerned.
- Reception and care arrangements should as a minimum include:
  - Receiving the child at the airport, immediate access to appropriate accommodation, support for basic needs, access to education and health care.
  - Appointment of a care-giver/guardian with appropriate training and qualifications, including in child-protection, formally assigned responsibility for the child.
  - Individual plan for the child's sustainable reintegration drawn up in collaboration with the child and his/her guardian.
  - Adequate and ongoing post-return evaluation.
- Individual risk and security assessments are carried out by professionals:
  - The security assessment focuses primarily on possible threats to the child or her/his relatives from traffickers and their associates. As such it considers security threats that are specific to a child who has been trafficked and those affecting any children returning to the child's country of origin. For this purpose, the relevant social service or child welfare authority in the country in which a trafficked child is located should collect information from law enforcement officials or an intelligence agency involved in law enforcement in the child's country of origin, or from an international police organization.
- Risk assessment explores the circumstances of the home and community to which the child is likely to return, in order to assess whether it is in the child's best interests to return there. Initiated by the same social service or child welfare authority wherever the child is located, it requires information from an agency in the child's country of origin, which is familiar with the child's family or the home of the person who is going to take responsibility of the child (or the institution which is going to do so) and the surrounding community.

Afghanistan,[119] which may be extrapolated to other situations. (See Box 15, "Minimum safeguards in cases of return."). A comparative study and a checklist for developing good practice has been developed at the request of the EU Commission,[120] which may inform EU Member States in implementing the Return Directive while respecting children's rights.

In **Italy**, where return is only considered when it is voluntary, structured measures to support the child's reintegration in the country of origin are sought by providing funding and monitoring. The monitoring period, which has a minimum of six months, may vary according to the need of the reintegration plan, which may involve the child returning to school, accessing the job market or medical support as necessary. The preparation process is initiated only upon the child's request. Family tracing and family assessment is carried out by IOM based on an agreement with the Ministry of Labour and Social Policies upon the child's

119 UNHCR, *Special measures applying to the return of unaccompanied and separated children to Afghanistan,* August 2010, http://www.refworld.org/docid/4c91dbb22.html

120 The European Council on Refugees and Exiles, *Comparative Study on Practices in the Field of Return of Minors,* December 2011, HOME/2009/RFXX/PR/1002, http://www.refworld.org/docid/4f17ebed2.html

request and with the child's informed consent and that of the family. The reintegration project is designed in close collaboration with the child, his or her family, IOM and the social services and is approved by the Ministry of Labour.

Post-return monitoring is carried out by local NGOs in Uganda for unaccompanied or separated children returning from **Norway** and in the Democratic Republic of Congo for unaccompanied or separated children returning from **Belgium**. This includes, in some instances, post-return support for families.

In a situation where family reunification is being contemplated or where alternative care arrangements or return to relatives is under consideration, it is also highly relevant to assess the functioning of child protection systems in the country of origin or the country where such care arrangements are being considered.[121]

When considering return, the **Swedish** Migration Board conducts fact finding, compiling child-specific country of origin information on such issues as child protection systems and their capacity for, among others, monitoring of returned children, education and health services before assessing the viability of return as the durable solution for an unaccompanied or separated child. The information gathered through such fact-finding is made available on line for the use of Swedish-speaking authorities.[122]

Return will not be possible without exacerbating the child's vulnerability in cases in which: the family has not been traced and there is no adequate child protection system in place; there are no adequate child-sensitive reception facilities and representatives/guardians on hand to assist in the immediate arrival and possibly further reintegration; and the child does not join family or relatives or lacks support structures.

Being allowed to remain under humanitarian or other forms of protection until reaching majority does not in itself constitute a solution for the unaccompanied or separated child. Particularly troubling is the practice of allowing children to remain until they reach majority and then returning them. Unless individually tailored reintegration plans are in place, drawn up together with the child, the child's successful development into adulthood may be jeopardized. Efforts to ease the transition into adulthood through support for young adults are encouraged by the CoE, a welcome step towards addressing the precarious situation of these vulnerable youths. (See Box 16 "Turning 18.")

In **Hungary**, in recognition that vulnerability does not end at the moment the age of legal majority is reached, children who have been granted refugee status or subsidiary protection and are unaccompanied or separated, are entitled to after-care support until the age of 24, along the same lines as national children.

In **France**, children who have received social support for three years before the age of 18 may apply for citizenship under the guardianship of the state while they are still below 18, until they reach majority. For those children who have reached a level of maturity where they may enter into an apprenticeship, there is an option of entering into a contract (*contrat jeune majeur*) with the state, allowing them to remain in France until they have completed their education and are ready to become self-sufficient.

In **Italy**, when an unaccompanied child turns 18, the law foresees the possibility of obtaining a residence permit for studies, access to the job market or work, where a child has stayed legally under one form or another for three years prior to turning 18 and has followed a social or civil integration plan for at least two years, or has been entrusted to a guardian or to foster care and has obtained the positive opinion of the Ministry of Labour and Social Solidarity.

121 See also the leaflet on the project Monitoring Mechanism for Returned Minors, HIT Foundation, Nidos and Mercado http://goo.gl/Uckoc6

122 See LIFOS, *Migrationsverket räts- och landsinformationssystem,* http://lifos.migrationsverket.se

BOX 16: TURNING 18

For unaccompanied or separated children, reaching majority at the age of 18 may mean that as undocumented adult migrants they lose a range of rights and protection available to them as children. The additional rights and protection accorded them as children are often lost from one day to another.

The range of problems encountered by unaccompanied or separated children during their transition to adulthood includes:

- Loss of social, economic and educational rights
- Loss of the right to accommodation in special homes for young people or foster care arrangements
- Loss of official representative/guardian
- Risk of detention
- Risk of deportation to countries they may no longer remember, where they may no longer have any contacts
- Lack of information about their rights as adults
- Lack of access to justice or redress for violations of rights

Given the uncertainties of current age assessment methods, erroneous age determination may play an aggravating role.

The CoE developed together with UNHCR a report to draw attention to these problems asking States and the authorities concerned to take measures to ensure this transition is successful, irrespective of whether the transitioning unaccompanied migrant children are refugees or asylum-seekers.[123] The CoE adopted a resolution unanimously in the light of this report, calling upon member States to:

- Take account of specific situation of unaccompanied or separated migrant children who reach majority
- Establish a transition category, taking policy measures on:
  - welfare assistance and education
  - access to information
  - extension of housing assistance until solutions are found
  - access to health care
- Train social workers in this specific transition category. Learning from I Matter campaign launched by SOS villages on deinstitutionalizing youth leaving care arrangements,[124] additional useful practices include:
  - Linking young adults with other young adults in similar situations providing useful mutual support
  - Providing voluntary support persons as another means to provide support to young adults outside of the formal system

123 UNHCR, *Unaccompanied and Separated Asylum-seeking and Refugee Children Turning Eighteen: What to Celebrate?* March 2014, http://www.refworld.org/docid/53281a864.html

124 SOS Children's Villages International, *Ageing Out of Care: From Care to Adulthood in European and Central Asian Societies.* I Matter Campaign, December 2010, http://www.york.ac.uk/inst/spru/pubs/pdf/ageing.pdf

4.8 Monitoring

In implementing systems and procedures to apply the best interests principle, States are bound by the CRC General Comment No. 5 (2003) General Implementation Measures, including Article 12 on the active role of the child in promoting, protecting and monitoring his or her rights. In order for children to benefit from these nationally mandated practices, they must be uniformly applied. States face the challenge of implementing appropriate practices across their territory, at a level of quality verified by monitoring, so that an unaccompanied or separated child may experience the same level of support across regions and administrative units.

Local variations in the protection accorded unaccompanied and separated children potentially put such children in precarious situations depending on the locality in which they find themselves. National monitoring and support for local authorities in implementing their responsibilities would be additional safeguards for children and would ideally be part of a consolidated protection system.

Such independent monitoring of the application of the best interests principle would apply throughout the national systems relating to child protection and, in the case of the unaccompanied or separated child arriving from outside to an EU Member State, immigration and asylum procedures.

5 CONCLUSION

As the Convention of the Rights of the Child states, an unaccompanied or separated child, no matter the child's circumstances or immigration status, is first and foremost a child, and should be treated as such. As a child who is temporarily or permanently deprived of a supportive family environment, he or she is entitled to special protection and assistance. This is critical for children crossing borders who are unaccompanied or separated from their families and consequently in a situation of high vulnerability and risk.

The best interests of the child must be, as established by the CRC, a primary consideration in all decisions affecting unaccompanied and separated children from the moment they arrive or are identified until a durable solution is found. Yet providing the necessary protection and care can be challenging for States. Best practice suggests that these children need to have their needs and situation assessed holistically, and this can put pressure on systems that are usually designed to deal with a subset of issues in the life of an individual child. In the case of unaccompanied and separated children, solutions with the most positive impact on the child in question need to be identified and acted upon in a holistic way.

Many actions taken by States affect children, but not every decision taken by a State requires full and formal processes of determining the best interests of the child. The basic principle as set down by the Committee on the Rights of the Child establishes that **the greater the impact of a decision on the child, the greater level of safeguards need to be put in place.**

In moving towards further developing existing structures and procedures – or establishing new ones – to ensure that the best interests principle is applied to unaccompanied and separated children in Europe, UNICEF and UNHCR have taken note of the experience of States and their partners. UNHCR and UNICEF recommend that States seek to embed this principle in such structures and procedures by:

- Ensuring a holistic approach is taken to establish a child's best interests, considering all the characteristics of the child and his/her circumstances and needs.
- Making efforts to ensure that the processes are child-friendly, including through the provision of child-friendly information.
- Giving children the opportunity to be heard, in accordance with his or her age and level of maturity.
- Seeking all relevant information about the child with the child and from relevant sources as early in the process as appropriate, for the early understanding of the child and his or her circumstances.
- Actively seeking the early establishment of trust.
- Seeking a joint vision for the child across the many actors, which the unaccompanied or separated child encounters.
- Considering actions in the short- medium- and long term, which enable the child to develop into adulthood in an environment which will meet his or her needs as well as fulfil his or her rights, and will not put the child at risk of persecution or serious harm.

UNHCR and UNICEF welcome the efforts made by a number of European States to apply the best interests principle, many of which have been described above. It is hoped that this document makes a positive contribution to helping States and other actors in their ongoing endeavours to develop their national child protection, asylum and immigration systems to ensure that unaccompanied and separated children are treated, first and foremost, as children. We look forward to continuing to work together to realize a vision in which children's best interests are everyone's primary consideration, and in which children who are temporarily or permanently deprived of a supportive family environment receive the special protection and assistance to which they are entitled.

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