Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**215**
Land:	Diverse Emner
Kilde:	EASO
Titel:	Practical guide on the best interests of the child in asylum procedure
Udgivet:	20. februar 2019
Optaget på baggrundsmaterialet:	11. marts 2019

European Asylum Support Office

EASO Practical guide on the best interests of the child in asylum procedures

EASO Practical Guides Series

2019

SUPPORT IS OUR MISSION

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Print	ISBN 978-92-9476-413-3	doi:10.2847/376442	BZ-03-18-415-EN-C
PDF	ISBN 978-92-9476-446-1	doi:10.2847/084111	BZ-03-18-415-EN-N

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Contents

List of abbreviations

APD (recast)	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)
Anti-trafficking directive	Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
AT	Austria
BE	Belgium
BG	Bulgaria
BIA	best interests assessment
BIC	best interests of the child
BID	best interests determination
CEAS	Common European Asylum System
CH	Switzerland
CP	child protection
CRC	United Nations Convention on the Rights of the Child (1989)
CRC Committee	United Nations Committee on the Rights of the Child
CY	Cyprus
DE	Germany
DK	Denmark
Dublin III Regulation	Dublin III 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)
EASO	European Asylum Support Office
EE	Estonia
EL	Greece
ES	Spain
EU	European Union
EU+ States	European Union Member States plus Norway, Switzerland, Iceland and Liechtenstein
FGM/C	female genital mutilation/cutting
FI	Finland
FR	France
FRA	European Union Agency for Fundamental Rights
HU	Hungary
IE	Ireland
IT	Italy
IPSN	tool for identification of persons with special needs
LT	Lithuania
LV	Latvia
MS	Member State(s) of the European Union

NL	Netherlands
NO	Norway
PL	Poland
RCD (recast)	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)
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
THB	Trafficking in human beings
QD (recast)	Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on 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)
UNHCR	United Nations High Commissioner for Refugees

Introduction

This document is a printed version of the electronic document, EASO, *Practical guide on the best interests of the child in asylum procedures*, available at www.easo.europa.eu

Why was this practical guide created?

The legal instruments forming the Common European Asylum System (CEAS) affirm the obligation for European Union Member States plus CH, NO, Iceland and Liechtenstein (EU+ States) to assess and give primary consideration to the best interests of the child (BIC) in all actions concerning children ([1]). The *Practical guide on the best interests of the child in asylum procedures* (practical guide) has been developed to support EU+ States to comply with their obligations related to the BIC.

A **child's best interests** must be assessed and taken into account as a primary consideration ([2]) in all actions or decisions that concern him or her ([3]). However, at present, most EU+ States do not have an established process for implementing this legal obligation within asylum systems. In a communication to the European Parliament and the Council of 12 April 2017, the EU Commission called upon EU agencies to further develop guidance and tools on the best interests of the child. The validated findings of the European Asylum Support Office (EASO) mapping on international protection procedures for children, have confirmed the need for guidance as to how to practically implement giving primary consideration to the best interests of the child.

The aim of this practical guide is to help to identify and highlight the key milestones and flashpoints for the implementation of the best interests of the child. This is done in order to support EU+ States in applying the best interests principle and enhancing the guarantees within asylum procedures for children. EU+ States should establish child-friendly asylum processes that ensure the protection of the child throughout the procedure in line with EU and international law.

What is in the practical guide?

The practical guide aims to provide guidance and support to the competent national authorities on the required guarantees and safeguards which will ensure that the child's best interests are given primary consideration when making decisions affecting the child in the asylum procedures. It is divided into five sections including an overview of the terminology; 1. the background and elements of the best interests of the child; 2. the relevant guarantees; 3. guidance on how to assess the best interests in practice; and 4. vulnerability and risk indicators. At the end, the practical guide presents a comprehensive checklist, designed to ensure that all key steps are completed by the responsible authorities and appropriately taken into account when assessing the child's best interests. The guide is complemented with a set of annexes; a compilation of policy and guidance documents relevant to the topic and an overview of the legal framework including international, European and EU legal instruments.

What is the scope of this practical guide?

The practical guide's scope is limited to how to give primary consideration to the best interests of the child in the asylum procedures ([4]), and addresses only children (with families and unaccompanied) who have

([1]) It is to be noted that EU asylum *acquis* uses the term 'minor', which is equivalent to the term 'child'. Both refer to a person under 18 years old. See also Terminology.

([2]) Article 24, EU Charter of Fundamental Rights; See also Communication from the Commission to the European Parliament and the Council on the protection of children in migration, 12 April 2017, COM(2017) 211 final, p. 14 (Protection of children in migration).

([3]) CRC Committee 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; For UNHCR guidance on best interests see UNHCR, *Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014; UNHCR and International Rescue Committee, *Field Handbook for the Implementation of UNHCR BID Guidelines,* 2011.

([4]) Some MS conduct BIA at the reception stage separately from international protection procedures.

applied or expressed their will to apply ([5]) for international protection. In situations where procedural pathways other than applying for international protection may be in the child's best interests, appropriate solutions should be recommended by the relevant Child Protection (CP) authorities, a panel composed of the guardian, migration authorities, and public prosecutors according to national law and/or practice. Assessing the best interests of the child for the purpose of reception (within the meaning of the RCD (recast)) or for other procedural pathways does not fall within the scope of this practical guide.

This practical guide focuses on the asylum procedures. The child should be able to make a free and informed decision to apply for international protection. The parents/guardian/representative and/or CP actors can continuously assess if it is in the best interests of the child to pursue the application. Ensuring the BIC is respected requires cooperation among all relevant actors with competence in continuously assessing the best interests of the child. Child protection and assessing the BIC go beyond the asylum procedure, hence the need for continuous collaboration with the CP authorities and other actors in a holistic way, such as the reception authority, guardian/representative and legal advisors.

The practical guide intends to support operationalising the implementation of the best interests principle in the asylum procedures, in line with EU *acquis* and other relevant international legislation ([6]). It has been developed with the understanding that in different EU+ States there are different practices and actors involved in the best interests of the child and it is up to the national authorities to ensure that all relevant protection guarantees and safeguards have been put in place during the asylum procedures.

How was this practical guide developed?

This practical guide has been developed by EASO with the support of a group of experts from BE, DK, FI, IE, NO and RO as well as the European Commission, European Union Agency for Fundamental Rights (FRA), United Nations High Commissioner for Refugees (UNHCR) and United Nations Children's Fund (Unicef). Furthermore, the European Commission and EU+ States, and international organisations have been consulted. It is the product of combined experience, reflecting the shared objective to achieve high-quality international protection procedures. The practical guide furthermore takes into account the best practices identified in the context of the EASO support to the relocation scheme ([7]) in EL and IT when conducting best interests assessments (BIA) of children eligible for relocation.

How to use this guide?

The practical guide provides generic guidance and can be used as a benchmark or source of inspiration to update and/or improve specific standard operating procedures developed for children at national level.

The best interests checklist proposed in the guide will support and ensure the ongoing information gathering and assessment process. It will enable the assessor to verify if the relevant information and safeguards have been provided with due consideration of data protection/security.

The practical guide can be used in conjunction with relevant EU, international and national legislation, respecting a child-rights approach ([8]). In addition, various existing policy and guidance documents on the BIC have been developed and were used when elaborating the present document's guidance on implementing this principle. Further reference material is available in the Policy and Guidance Documents (Annex III) of this guide.

([5]) This is without prejudice to arrangements in some MS allowing children to make an application on their own or through their parents or representatives (Article 7(3) APD (recast)) and includes the making, the registration of the making and the lodging of the application for international protection given their different implications (Article 6 APD (recast)).

([6]) Amongst others, relevant provisions set forth in Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ 2011 L 101 (Anti-Trafficking Directive).

([7]) Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece.

([8]) See Policy and Guidance documents (Annex II) and the Legal Framework (Annex III).

How does this practical guide relate to other EASO support tools?

EASO's mission is to support EU+ States in the implementation of the CEAS through, inter alia, common training, common quality standards and common country of origin information. As with all EASO support tools, this practical guide is based on the common standards of the CEAS. The guidance should be seen as complementary to the other available EASO tools, particularly the *Practical guide on age assessment*, the *Practical guide on family tracing* and the training module *Interviewing children*.

Terminology

Age assessment

Age assessment is the process by which the authorities seek to estimate the chronological age, or range of age, of a person in order to establish whether an individual is a child or an adult ([9]).

Best interests interview(s)

Best interests interviews refer to interviews with the child, the child's guardian or any other person responsible for the care and protection of the child. Some Member States might conduct more than one dedicated interview with a child. These interviews are conducted for the purpose of assessing the child's best interests on an ongoing basis. They may be separate or part of the personal interview or any other interview (family tracing interview/vulnerability assessment interview, etc.). Conducting such interviews should be informed by the fact that assessing an individual child's best interests is a continuous process and not a one-off exercise. Taking the best interests of the child as a primary consideration is integral to all decisions and proceedings, including interviews. It can be updated and reviewed.

Best interests assessment and determination ([10])

As the Convention on the Rights of the Child Committee (CRC Committee) authoritatively interprets BIA:

> is a unique activity that should be undertaken in each individual case […] consists in evaluating and balancing all the elements necessary to make a decision in the specific situation for a specific individual child or group of children.
>
> […] The 'best-interests determination' describes the formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment ([11]).

Child/minor

In EU legislation, the terms 'child' and 'minor' are used to refer to any person below 18 years of age. It is to be noted that the EU asylum *acquis* uses the term 'minor', which is equivalent to 'child' as used in this guide given that its subject matter, notably 'best interests of the child', is a principle of public international law stemming from the UN Convention on the Rights of the Child (CRC).

Children-at-risk

Refers to any child who may be facing a particular risk, regardless of the family composition/situation; the child may be unaccompanied, separated or accompanied by their parents. Risks the child may face could include, but are not limited to, physical and mental harm, sexual and gender-based violence and other forms of abuse or exploitation, forced and early marriage, female genital mutilation/cutting (FGM/C), mental health issues, risk of self-harm/suicide, etc.

Children-at-risk includes child victims of THB or at risk of it, survivors of serious forms of psychological, physical or sexual and gender-based violence, including FGM/C, forced and early marriage, and other forms of abuse or exploitation, child heads of households, stateless children, adolescent mothers, children who have been part of armed groups, children suffering from serious illnesses, children with mental health issues, etc.

([9]) EASO, *Practical guide on age assessment,* 2018; EMN Glossary definition of age assessment available at https://ec.europa.eu/home-affairs/content/age-assessment_en; For more information on BIC and age assessment see also CRC Committee, General Comment No 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, section V.A, para. 31(i).

([10]) BID is outside the scope of this practical guide.

([11]) CRC Committee, 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.

Child victims of trafficking (or at risk of being trafficked)

Refers to any child for whom there is a reasonable-grounds indication for believing that they might have been trafficked even when exploitation has not occurred yet ([12]). Child victims or potential victims of trafficking are entitled to assistance and support taking into account their special circumstances ([13]).

Dublin III Regulation and Dublin implementing regulation procedural guarantees

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) ([14]). The Dublin III Regulation refers to procedural guarantees such as the appointment of a representative and their access to all relevant documents, amongst others ([15]).

Family

The term family should be interpreted in a broad sense to include biological, adoptive or foster parents, siblings or where applicable, the members of the extended family or community ([16]).

Family tracing

The search for family members (including relatives or former caregivers of unaccompanied children) with the purpose of the restoration of family links and family reunification when this is in the best interests of the child ([17]).

Guardian/representative ([18])

The use of the terms guardian, representative and legal representative is inconsistent or varying in the international/EU framework. Throughout the practical guide, the terms 'guardian/representative' will be used together.

A **guardian** is an independent person who safeguards a child's best interests and general well-being, and to this effect complements the limited legal capacity of the child. The guardian acts as a statutory representative of the child in all proceedings in the same way that a parent represents his or her child ([19]).

([12]) Trafficking in human beings (THB) remains a highly profitable form of serious and organised crime, explicitly prohibited in the EU Charter of Fundamental Rights, specifically Article 5, as well as Articles 79 and 83 of the Treaty on the Functioning of the European Union. Article 2 anti-trafficking directive provides the definition of the offence of THB, including with specific reference to child victims. Article 11(2) anti-trafficking directive. Child trafficking for sexual exploitation, with victims being predominantly girls, and forced criminality is reported to be on the increase. The migration crisis has been exploited by trafficking networks to target the most vulnerable, in particular children, and there are general concerns of an increasing risk of trafficking for sexual exploitation. See Report from the Commission to the European Parliament and the Council on the progress made in the fight against THB, 19 May 2016, COM(2016) 267 final (Progress report); Europol, *Situation Report: Trafficking in human beings in the EU*, 765175, February 2016 (Situation Report).

([13]) See Articles 13-16 anti-trafficking directive; For an overview of the EU rights of the victims of THB see European Commission, *The EU rights of victims of trafficking in human beings*, 2013.

([14]) Dublin III Regulation.

([15]) Article 6(2) Dublin III Regulation.

([16]) CRC Committee, General Comment No 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, recital 19 QD (recast).

([17]) CRC Committee, General Comment No 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6; Article 6(4) Dublin III Regulation and provisions of Article 24(3) RCD (recast) and QD (recast); See also EASO, *Practical Guide on Family Tracing*, 2016.

([18]) For further guidance on terminology see FRA, *Handbook on Guardianship for children deprived of parental care*, June 2014, pp. 14-15.

([19]) CRC Committee, General Comment No 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6; UN General Assembly, Guidelines for the Alternative Care of Children: resolution/adopted by the General Assembly, 24 February 2010, A/RES/64/142; FRA, *Handbook on Guardianship for children deprived of parental care*, June 2014 systems provides guidance on how to establish and run national guardianship systems, and it points to the main tasks that a guardian should carry out. The notion of guardian in UN documents is broader than that in EU *acquis*.

A **representative** is defined as 'a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied [child] in [international protection] procedures … with a view to ensuring the best interests of the child and exercising legal capacity for the [child] where necessary.[…]' ([20]).

The role of the representative differs from that of the **legal representative**, who is a legal adviser or qualified lawyer/legal professional 'who provides legal assistance, speaks on behalf of the child and legally represents him or her in written statements and in person before asylum or other legal proceedings as provided in national law' ([21]).

Procedural safeguards and guarantees

Procedural guarantees are specific support measures put in place in order to create the conditions that are necessary for persons with special needs to have effective access to procedures and present the elements needed to substantiate their application for international protection. They enable applicants with special needs to benefit from their rights and comply with their obligations under the asylum procedures directive (APD (recast)) ([22]).

In the Dublin III Regulation, 'procedural safeguards' refer to the provisions related to the appeal. CRC General Comment No 14 lists both guarantees as defined above, as well as procedural safeguards such as the right to be heard and the right to appeal.

Relative

The child's adult aunt, uncle or grandparent present in the territory of a Member State, regardless of whether the child was born in or out of wedlock or adopted as defined under national law ([23]). If formally appointed by a relevant authority, in this guide they are also referred to as **caretaker** ([24]).

Separated child

A child who has been separated from all 'adults responsible for him/her whether by law or by the practice of the Member State concerned' but not necessarily from other relatives. These may, therefore, include a child accompanied by other adult family members or relatives ([25]). The term is not featured in the current EU asylum *acquis*. In EU asylum *acquis*, separated children fall under the unaccompanied children category.

Unaccompanied child

A child who arrives on the territory of the Member State unaccompanied by an adult responsible for them whether by law or by the practice of the Member State concerned, and for as long as they are not effectively taken into the care of such a person/adult; it includes a child who is left unaccompanied after they have entered the territory of the Member State ([26]).

([20]) Article 2(n) APD (recast) and Article 2(j) RCD (recast).

([21]) FRA, *Handbook on Guardianship for children deprived of parental care*, June 2014.

([22]) Recital 29 and Article 2(d) APD (recast).

([23]) Article 2(h) Dublin III Regulation.

([24]) Without prejudice to Member States considering 'caretaking' a task of an institution, a shelter administrator and other actors beyond relatives. In some Member States, a caretaker is a person/institution in charge of the daily care of the child, i.e. accommodation, food, taking to school, etc.

([25]) CRC Committee, General comment No 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, section III, para. 8.

([26]) Article 2(e) RCD (recast); Article 2(m) APD (recast); Article 2(l) QD (recast); Article 2(j) Dublin III Regulation; Article 2(f) family reunification directive; CRC Committee, General comment No 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, section III, para. 7; See also UNHCR and Unicef, *Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe,* 2014, p. 22.

1. Background and elements of the best interests of the child

The best interests of the child are **a right, a principle and a rule of procedure** firmly embedded in international (Article 3 CRC) ([27]) and European law, including the Charter of Fundamental Rights of the EU ([28]) (Article 24), and, given more prominence in recast proposals ([29]) under the CEAS. Article 24 Charter of Fundamental Rights of the EU states that 'In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration' and Article 3 CRC states that 'In all actions concerning children … the best interests of the child shall be a primary consideration'. The obligation to ensure the best interests of the child as a primary consideration has been reiterated in EU asylum *acquis* ([30]).

Giving primary consideration to the BIC is a continuous process that requires assessment before any important administrative decision is made. The BIC processes should start before the asylum procedure and continue after it.
While the child is in the asylum procedure, assessing the BIC remains an obligation of Child Protection (CP) and asylum authorities as well as other actors.

- CP actors will be carrying out a best interest assessment (BIA) for multiple purposes (reception, education, custody, etc.);
- At the same time, the asylum authorities are also responsible for giving primary consideration to the BIC at all stages of the asylum procedure.

These assessments should feed each other, so that all processes may benefit from the necessary synergies and avoid overlaps.

([27]) The CRC is available at https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf

([28]) The Charter of Fundamental Rights of the European Union is available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN

([29]) European Commission, 'Your rights in the EU' available online at http://ec.europa.eu/justice/fundamental-rights/files/rights_child/ceas_provision_on_children_table_updated.pdf

([30]) See Policy and Guidance Documents (Annex III).

Findings of the EASO mapping on asylum procedures for children

According to the EASO 2017 validated mapping findings, the assessment of the BIC may take place at different moments, in some cases before starting the asylum procedure (**IE** and **SK** ([31])), or at one specific stage of the procedure, for example the child has applied for international protection as in **BG** and **EL** (when the prosecutor is duly informed ([32])). In **PL**, the assessment is carried out when making a decision on international protection.

However, most respondents stated that the assessment might take place at all stages of the asylum procedure. This is the case in **16 EU+ States (AT, BE, CH, CY, DE, DK, EE, ES, FI, FR** ([33])**, IT, LV, NO, SE, SI and SK)**. More particularly, in **ES** and **FI**, the assessment of the BIC takes also place at the reception centres.

1.1 A child-rights approach

This practical guide emphasises that national authorities are bound by a child-rights and rights-based approach to the BIC. General Comment No 14 (2013) of the CRC Committee on the right of the child to have his or her best interests taken as a primary consideration provides authoritative interpretation and guidance for states parties on how to implement it. This includes procedural safeguards to guarantee their implementation ([34]). A child-rights approach as opposed to a state-centred approach:

> […] furthers the realisation of the rights of all children as set out in the Convention by developing the capacity of duty bearers to meet their obligations to respect, protect and fulfil rights (Art. 4) and the capacity of rights holders to claim their rights, guided at all times by the rights to non-discrimination (Art. 2), consideration of the best interests of the child (Art. 3, para. 1), life, survival and development (Art. 6), and respect for the views of the child (Art. 12). […] This child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religious and cultural systems ([35]).

In order to give primary consideration to the best interests of the child, holistic and child-centred processes must be implemented on an ongoing basis. They must take into account the child's individual and specific circumstances and needs, in all actions and decisions affecting the child, whether for the short-, medium- or long-term.

> 5. The full application of the concept of the child's best interests requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity ([36]).

Giving primary consideration to the BIC should be part of an individual process undertaken for all children who have expressed their intent to apply for international protection, and applies to all international protection-related decisions and procedures.

Identifying the special procedural needs of children is also an obligation under the APD (recast) as well as conducting vulnerability assessments — as per the reception conditions directive (RCD recast) ([37]). This entails engaging all actors such as CP actors or service providers.

([31]) It starts from the moment the child is found/identified.

([32]) Otherwise, it takes place during the interview.

([33]) In FR, the BIC assessment starts as soon as an unaccompanied child is detected, it does not depend on the existence/stages of the asylum procedure. BIC is assessed at the same time as age assessment and later by the determining authority.

([34]) CRC Committee, 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, section V.

([35]) UN Committee on Economic, Social and Cultural Rights, General Comment No 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, para. 59.

([36]) CRC Committee, 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, section I.A, paras. 4 and 5.

([37]) See also Article 23(4) RCD (recast) — Rehabilitation services and support.

Ongoing BIAs should take into account the fact that the capacities ([38]) or special needs of the child will evolve over time and measures taken can be revised or adjusted accordingly, as opposed to making definitive or irreversible decisions.

1.2 Unpacking the concept of 'primary consideration'

In the words of the CRC Committee, the principle of the child's best interests is 'aimed at ensuring both the full and effective enjoyment of all the rights recognised in the Convention and the holistic development of the child' ([39]). Giving primary consideration to the BIC in each of the relevant decisions means starting with an assessment of the specific circumstances of each individual child ([40]), identifying and evaluating the relevant elements for that particular child, elaborating on them, and assigning a weight to each one in relation to the others ([41]).

The BIC is **a primary** consideration that may need to be balanced with the interests of others, including the state. The weight to be attached to the BIC will be part of the decision-maker's analysis. It will have high priority and not just be one of several considerations ([42]). It should be kept in mind that in other contexts, by comparison, the BIC must be **the paramount** consideration meaning that the BIC is to be the determining factor when taking a decision.

> Examples of decisions affecting the child in the asylum procedures can be, inter alia: deciding to conduct a separate personal interview with the child without the presence of parents; deciding whether it is in the child's best interests to be heard, in which location, when and how long the interview should take; choosing the interpreter/case officer/registration officer dealing with the child; deciding to conduct age assessment or begin family tracing for the child; deciding whether to separate the child's application from that of the parent's application, etc.

The 2017 Joint General Comment of the CRC Committee and the Committee on Migrant Workers (CMW) on the implementation of General principles in the context of international migration (Comment No 22 CRC Committee and No 3 CMW) (43) also indicates concrete situations where a formal assessment/determination is needed (44).

This extends further to all aspects of assessing the child's application and substantive protection-related aspects of the BIC. Examples of such aspects are child-specific persecution, presence of family in country of origin or other countries, internal flight alternative for a child (if at all applicable), safe third country (if at all applicable), safeguards, and differentiated legal thresholds relevant to the situation of children, i.e. the burden of proof, the benefit of the doubt, etc.

([38]) CRC Committee, 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, para. 84.

([39]) CRC Committee, 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, section I.A, paras. 4 and 5.

([40]) CRC Committee, 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, Section V, paras. 46 and 48-51.

([41]) CRC Committee, 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, Section V.2, para. 80; For more information, consult the EASO, *Asylum Procedures for Children Report,* 2017.

([42]) CRC Committee, 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, Section IV.A.4, paras. 36-40.

([43]) This general comment builds on the 2012 Paper and Report produced by the CRC Committee general discussion in Geneva in September 2012, and the other documents mentioned in Section A, para. 5 of the CRC Committee and CMW, Joint general comment No 3 (2017) of the [CMW] and No 22 (2017) of the [CRC Committee] on the general principles regarding the human rights of children in the context of international migration, 16 November 2017.

([44]) The Joint General Comment No 3 of the [CMW] and No 22 of the [CRC Committee] states that 'the best interests of the child are taken fully into consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases, including in granting or refusing applications on entry to or residence in a country, decisions regarding migration enforcement, restrictions on access to social rights by children and/or their parents or legal guardians, decisions regarding family unity and child custody, where the best interests of the child shall be a primary consideration and thus have high priority. In particular, the best interests of the child should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning the entry, residence or return of a child, placement or care of a child, the detention or expulsion of a parent associated with his or her own migration status.'

[45] Guaranteed by the guardian.

[46] Regulations to ensure the application of BIC will be extended by the next amendment of the Hungarian Act on Asylum.

Findings of the EASO mapping on asylum procedures for children

11 responding States (**BE, BG, CH, CY, DK, EE, IE, ES** ([45])**, FR, LV and SE**) have a formal process in place to assess the BIC regarding the asylum procedure.

The BIC is a primary consideration within the asylum procedure in **AT, DE, EL, PL, FI, IT, NO** and **SK**, although these countries confirmed there is no formal process for assessing the BIC.

Similarly, in **FI, HU** ([46])**, LT, NL, PL, RO** and **SI** there is not a formal process of assessing the BIC but some safeguards are in place. In the **NL**, if the need to assess the BIC arise, NIDOS and the Council for Child Protection will be involved. In **PL**, the BIC is assessed in a frame of assessment of needs for international protection. In **SI**, the BIC is to be considered a primary concern at all phases of the asylum procedure and by all authorities and personnel involved

Multidisciplinary and objective nature

The assessment of a child's best interests must be a multidisciplinary exercise ([47]) involving relevant actors and undertaken by specialists and experts who have been vetted and who have received the relevant training to work with children ([48]).

The best interests of the child are objective in nature, i.e. they cannot rely on subjective attitudes, views and opinions. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention ([49]). This means that the BIC should never justify a deprivation of a right according to the CRC.

It is considered good practice to ensure that any recommendation or assessment made regarding the child's best interests is further reviewed and approved, using the **four-eye principle** where at least two officers look at the case.

1.3 Best interests processes

When asylum authorities are the first to be in contact with the individual child, or they are in charge of many different procedural/legal pathways, they could be called upon to initiate the BIC processes. In those cases, and especially where they embed BIC-related questions and procedural guarantees in the personal interview, they should involve all relevant actors and not deprive the child of opportunities to be heard on the issue of their BIC separately.

Examples of practice

In **FI** and **SE**, the determining authorities combine competencies in the fields of asylum, immigration, THB and reception and thus conduct BIA and at times BID including outside the scope of the international protection procedures.

1.4 The child's best interests and the right to be heard ([50])

The child's views should be heard and taken into account according to their age and maturity. Any decision-making process which takes the BIC as a primary consideration must include respect for the child's right

([47]) Recommendations for the use of a multidisciplinary team can also be found in CRC Committee, 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.

([48]) Separated Children in Europe Programme*, Statement of Good Practice*, 2009, p. 6.

([49]) CRC Committee, 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.

([50]) See also UN Committee on Economic, Social and Cultural Rights, General Comment No 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999.

to express their views freely. Member States have to put mechanisms in place to solicit the views of the child capable of forming their own views, i.e. to make it possible for the child to express their wish to be heard. When the child decides they want to be heard, they can decide how, whether that be directly or through a representative (guardian/parent). If the child has expressed their views, directly or indirectly, due weight must be given to said views in accordance to age and maturity.

The child should also be informed as to how the information given/provided is used. Hearing the child also means involving the child. Again, this requires providing the information in a child-sensitive manner, thereby helping the child make sense of the situation they are in (i.e. asylum procedure). The responsible officials must ensure that hearing the child is done in a non-harmful way.

1.5 Balancing the elements of the best interests of the child

Any best interests process must give due consideration to the child's family situation; the situation in their country of origin; particular vulnerabilities; safety and the risks they are exposed to; protection needs; level of integration in the host country; and mental and physical health, education and socioeconomic conditions. This analysis can be conducted by social workers employed by the asylum authority or by other actors and made available to the asylum authority. It must be set within the context of the child's gender; sexual orientation or gender identity; national, ethnic or social origin; religion; disability; migration or residence status; citizenship status; age; economic status; political or other opinion ([51]); cultural and linguistic background or other status.

Assessors have to balance different rights of the child ([52]). The documentation on the best interests should include a detailed description of the child's circumstances, including all the safeguards and findings, and an analysis describing the balancing of the elements, the options considered for the child, which option is in the child's best interests and why.

In the following list, the references from the General Comment No 14 ([53]), the CRC and EU asylum *acquis* have also been included ([54]):

- family reunification possibilities (Article 10 CRC, Article 23(2) RCD(recast);
- the child's life, survival and development (Article 6 CRC); well-being;
- the child's identity (Article 8 CRC) and background;
- situation of vulnerability; potential victim of trafficking (Articles 32 and 39 CRC, Article 23(2) RCD (recast), Article 6(3)(c) Dublin III Regulation); other special needs (Articles 20 and 22 CRC, Article 22 RCD (recast);
- the child's right to education (Article 28 CRC);
- the child's right to health (Article 24 CRC);
- family unity (Article 9 CRC, Article 8(2) Dublin III Regulation and Article 25 qualification directive), preservation of the family environment and maintaining relations;
- hearing the child's views (Article 12 CRC);
- protection and safety of the child (Article 19 CRC);
- principle of non-discrimination (Article 2 CRC);
- care and guidance in line with the child's evolving capacities (Article 5 CRC).

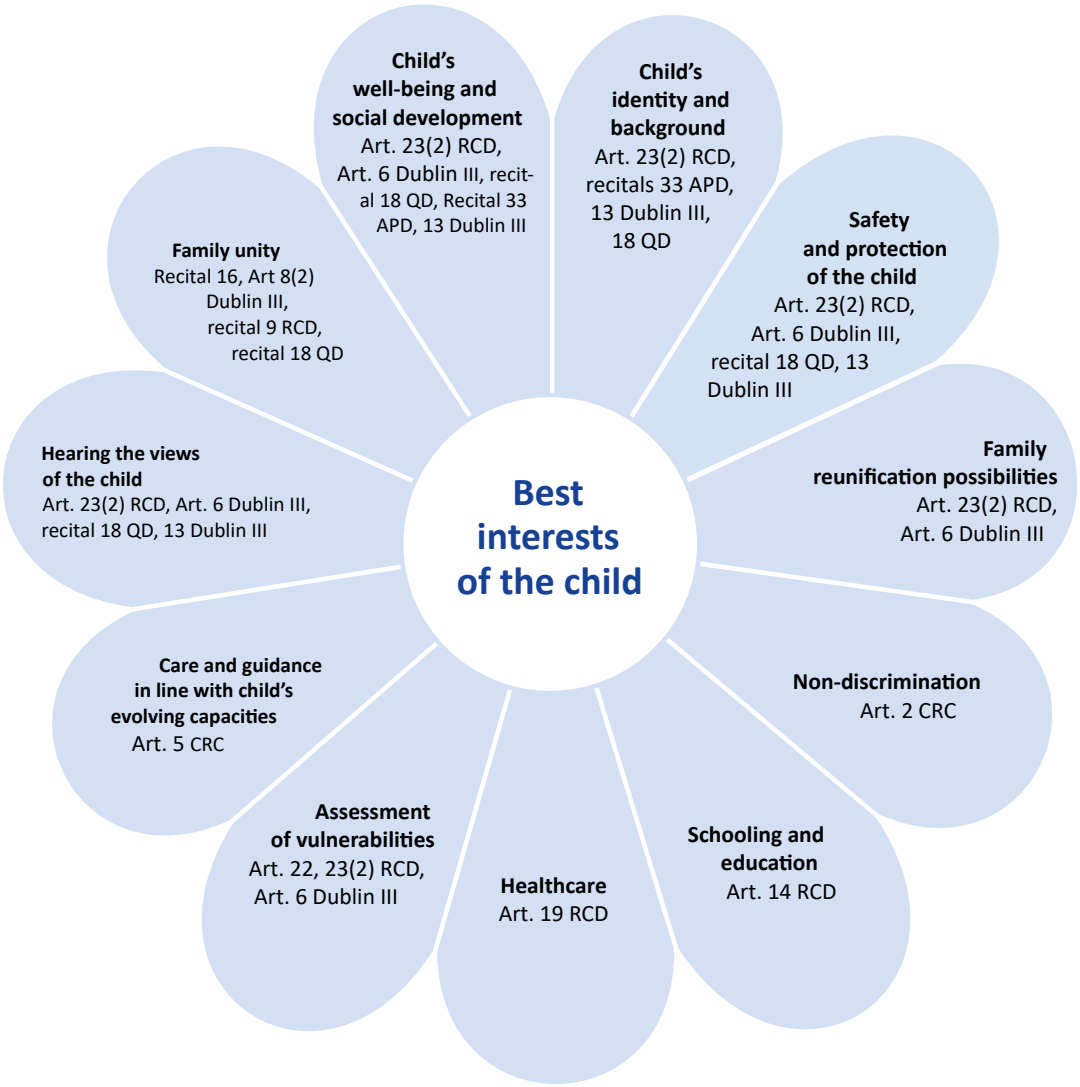
([51]) CRC Committee and CMW, Joint general comment No 3 (2017) of the [CMW] and No 22 (2017) of the [CRC Committee] on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, section I, para. 3.

([52]) 'There is no hierarchy of rights in the Convention; all the rights provided for therein are in the "child's best interests".' CRC Committee, 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.

([53]) The key elements to be taken into account when assessing the child's best interests are listed in Section V of the CRC Committee, 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, section V.A, para. 48.

([54]) For further elaboration on this see FRA, Fundamental Rights Report, 2018, pp. 184-186.

These are reflected in EU *acquis*, and in the chart below showing some of the key elements (non-exhaustive) of the best interests of the child, indicating the legal instruments as reference. Further guidance, relevant policy and guidance documents can be found in Annex I and the International and European legal framework in Annex II ([55]).



([55]) All legal references in the visual above refer to the recast EU legal instruments.

2. Procedural safeguards

The legal framework requires the establishment of a number of safeguards to ensure that the best interests of the child are given due weight as a primary consideration. Many of these safeguards are applicable generally for all asylum-seeking children. What is highlighted here is exactly how they serve the implementation of the BIC. For example, access to a guardian is a general safeguard for all unaccompanied asylum-seeking children. At the same time, involving the guardian in the BIC process or including an assessment carried out by the guardian is part of the safeguards that ensure that BIC are given primary consideration.

These specific procedural guarantees and safeguards must always be ensured and applied as part of the asylum procedure for children. Procedural guarantees are obligations for the authorities and rights for the children. At all times, while giving primary consideration to the child's best interests, the responsible officers should also continuously verify that the necessary procedural safeguards are in place. The responsible officers should ensure that the rights of that individual child are protected.

It is clear that several actors from different authorities intervene in relation to a child's application for international protection. All of them are responsible — in their field of competence — for taking the BIC as a primary consideration. The responsible officer can belong to any of these actors/authorities. However, social workers/CP case managers are the ones responsible for CP case management.

The safeguards highlighted in the present guide refer to any interview conducted with the child, including the personal interview in the context of the asylum procedure.

Examples of practice

In **CY**, upon submission of the application for international protection, the child is provided with a separate form for the identification of vulnerable persons. The assessment of the BIC is carried out by the Social Welfare Services on an ongoing basis until the child turns 18 years old.

In **LV**, the BIC is assessed throughout the entire asylum procedure through observation and communication with the child that is conducted on different occasions.

In **NO**, the Norwegian Directorate of Immigration assessment of BIC requires that the child is given the opportunity to express their views on matters which pertain to them.

Safety

Throughout the asylum procedures, children have to be protected from all forms of violence, abuse, neglect and exploitation. Asylum officials have to take into consideration and be alert to possible indicators of vulnerabilities and risks, in order to ensure the safety of the child throughout the asylum procedures (see Vulnerabilities and risks indicators section).

Information on the well-being of the child, and any protection or safety concerns should be collected. Collecting such information and giving due weight to it can contribute to ensuring the protection of the child, for example from falling in the hands or contact with persons who have abused, harmed or trafficked the child. The responsible officer should be careful as to the source of this information and how much weight can be placed on it, given that much will depend on the individual circumstances of the case.

Qualified staff

Asylum officials engaging with children should be **qualified, experienced in working with children** and **appropriately trained**. Decisions on a child's application for international protection must be taken by a competent authority fully versed also in all legal instruments relating to children's rights, trafficking and other relevant protection matters.

The officials dealing directly with the child should be trained on the use of **child-friendly interview techniques** ([56]). EU+ States should appoint trained and qualified specialised staff to deal with children's cases and provide continuous capacity building to their staff. The interpreters should also be trained on and familiar with interpreting for children.

Applying for international protection

The child should be assisted with making an informed decision to apply for international protection. Applying for asylum is a fundamental right of every child and its exercise is not subject to a prior assessment on the side of the authorities. The child's views on applying for international protection should be obtained. The latter should be taken into consideration as per the age and maturity of the child.

After the application has already been lodged, the child/representative might consequently decide to withdraw the application where there are other legal avenues that serve the individual child's best interests better and the application or the possible consequences of being recognised as a refugee might not be in the individual child's best interests at that point of time.

When the child understands that their views are taken into consideration, they may be more willing to cooperate, which is further beneficial for the procedure.

Registration

Safeguards for children should be applied as of the moment the child is identified. Many of the safeguards specific to the asylum procedure can already be applied at the making of the application, from which moment the child is considered an applicant. During the registration of the lodging, details including the biodata of the child, family links and contacts, and the current contact details of the child and the family should be collected.

The Eurodac regulation obliges Member States to fingerprint applicants for international protection above 14 years of age ([57]). Age assessments should not be carried out systematically for this purpose ([58]). On the contrary, to accept the age of the child, the benefit of the doubt should be broadly applied. An age assessment should only be conducted if there are serious doubts concerning whether the person is a child or not.

Prioritisation/adapting the duration of the procedure

The asylum procedures for children should be treated with high priority. Children's applications must be identified and it should be ensured that those with protection concerns are not kept waiting for long periods of time or put on hold ([59]). What is of importance when it comes to processing a child's application is to adapt the duration of the procedure: it may be in their best interests to have their application prioritised. In other cases, it would be in their best interests to benefit from a rest and recovery period before the examination of the application continues instead. The time a child's application is pending in the asylum procedure should be minimised.

([56]) The EASO Training module 'Interviewing Children' is an interactive module for asylum case officers, aimed at enhancing their knowledge and skills in interviewing children, taking into consideration the age and maturity of the child, cultural variances and effects of trauma and/or distress. More information about the EASO Training Curriculum and the module is available at https://www.easo.europa.eu/training-quality/training

([57]) 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) [2013] OJ L 180/1. **It should be noted that the current proposal to revise the Eurodac regulation foresees lowering the age to the age of 6.**

([58]) For more details, see EASO, *Practical Guide on age assessment*, 2018.

([59]) Separated Children in Europe Programme, *Statement of Good Practice*, 2009, p. 34.

Exemption from border/accelerated/fast-track procedures

The child should be exempted from border, accelerated and fast-track procedures when the adequate support required by children cannot be secured in the context of such procedures ([60]). A rest and recovery period should be granted when the needs of the child so require. EU+ States should further have mechanisms in place to respond to emergency situations that may require the transfer of a child/children to a safer environment.

Provision of legal representation

Where the child needs to have a guardian/representative appointed, the lodging of the application for international protection should not take place before the appointment of a guardian/representative, who should also assist with the lodging of the application.

An independent and qualified guardian/representative should be appointed as soon as possible as part of the guarantees for unaccompanied and separated children. The guardian should possess a number of qualities, i.e. expertise with respect to young people, and sufficient capacity along with expertise in child-specific protection needs, to mention a few. It is important that the child have support ([61]) throughout the asylum procedure, from the appointed guardian/representative as well as access to legal assistance and counselling.

It is key to ensure the continuity of the designation of guardians/representatives and set a maximum number of children that they can represent at one time.

Examples of practice

In **BE**, the court decides whether an accompanying adult can be nominated as the child's civil guardian once the procedures to obtain permission to stay in Belgium have ended. During the asylum procedure, an accompanying adult cannot be nominated as the child's guardian.

In **IE**, it is considered to be in the best interests of any unaccompanied child in the State to be allocated to a social worker (who acts *in loco parentis* as the child's guardian) immediately.

The guardian/representative should be fully informed of the procedures and provide consent where in line with the best interests of the child. They should be present in any interview conducted with the child, as the guardian's presence is part of the guarantees of the child's rights being respected during the interview. However, in the cases of children with parents or separated children, where the caretaker is a relative, the best interests of the child could require not to have them present during the interview (see also 4.6 Relationship with caretaker/guardian).

Provision of legal advice

APD (recast) states that the Member States shall appoint a representative as soon as possible ([62]). APD (recast) also foresees provision of free legal and procedural information on request of the applicant at first instance. The child should be provided with access to **legal advice and counselling**. It is good practice to ensure that the child has access to legal aid services free of charge at all stages of the asylum procedure.

The child's legal advisor should also be given the opportunity to attend any interview of the child. Overall, the child should be accompanied in the interviews, unless the child prefers otherwise and it is possible to accommodate such a request. Given the significant safeguarding roles performed by the legal advisor and/or representative, it should be decided whose presence would be in the best interests of the child.

([60]) See Article 24(3) APD (recast).

([61]) In some Member States, this could include only legal and mental/moral support. Depending on the Member State, the role of the representative is not to give social support (i.e. difference with the caretaker role) but to be a legal representative.

([62]) Article 25(1)(a) APD (recast).

Provision of information and interpretation

Safeguards should be in place to ensure that the child can participate, fully understands and has been informed about the asylum process and its consequences in a **child-friendly, gender sensitive and age appropriate manner**, and in **a language that the child can understand**, in order to allow the child to express views, wishes and opinions, ask questions and to make an informed decision to participate in the process.

The child should be provided with timely information, **interpretation** and materials explaining the asylum procedures and should be able to review the information throughout the process. Where possible, the interpreter should be experienced in interpreting for children. Appropriate guidance should be provided to the child at all stages of any vulnerability assessments, in line with their age and maturity. The child should not be left without **appropriate guidance**, which is to be provided by the guardian/representative and other relevant actors, i.e. personnel responsible for daily care arrangements.

Hearing the child's views and child participation

The child has a right to express their views and opinions, either personally or via a guardian/representative. The child must be interviewed/heard as part of assessing the BIC, if feasible and recommendable in their individual circumstances (i.e. children with disabilities, children unable to communicate). The child's best interests should be taken into account when deciding whether and how to interview the child during the asylum procedure. The safeguards highlighted in the present guide refer to any interview conducted with the child, also to the personal interview in the context of international protection.

Hearing and giving due weight to the views of the child

a. Any interviews should always be conducted in a safe, confidential, comfortable and child-friendly environment at appropriate locations that help to build trust with the child.
b. The length of any interview, avoiding repeat interviews, and the possibility of omitting interviews, when in line with the BIC and circumstances of each child, should be considered.
c. The child should feel at ease. The competent officer and interpreter should be as informal as possible.
d. Information should be given in a straightforward and clear way. Understanding needs to be checked.
e. If possible, the child could be asked whether they desire that the official and the interpreter be male or female. Depending on the background of the child, e.g. a boy who is a survivor of sexual abuse by a man, it might be that they choose someone from the opposite sex.
f. Expert interviewers should be sought to use alternative interview methods and provide counselling where needed i.e. trauma, Post-Traumatic Stress Disorder.
g. The officials and interpreters are bound by confidentiality, the concept and rules of which should also be explained to the child.
h. The child and guardian should be informed of the purpose of any interview and who will have access to the interview transcript.

Any interviews with the child should always be conducted in a safe, confidential, comfortable and child-friendly environment at appropriate location(s) that help to build trust with the child.

The length of any interview, avoiding repeat interviews, and the possibility of omitting interviews with the child when in line with the best interests and circumstances of each child, should be considered (i.e. where not practicable due to the type of disability, etc.). They may not need to have a personal interview for international protection if their parents' account sufficiently covers their application. As mentioned, the child should not be subjected to multiple interviews unnecessarily as this may distress them and impede the assessment of the child's best interests due to inevitable inconsistencies in a child's story. Avoiding many separate interviews related to special procedural, reception and other needs is advisable.

The child should feel at ease. It is good practice to do preparatory visits to the location where the interview for international protection will take place, explain the process to the child or show a video of the interview room, as these can help to put the child at ease and ensure effective participation. The responsible officer and interpreter should be as informal as possible. Information should be given in a straightforward and clear way. Understanding needs to be checked, as some children might not dare to ask questions due to age, cultural background or psychological state.

If possible, the child should be asked whether they have a preference as to the gender of the official and the interpreter. Depending on the background of the child, it might be that they choose someone from the opposite sex, e.g. a boy who is a survivor of sexual abuse by a man may wish to have a female official and interpreter present. In case the child might have experienced/be experiencing trauma, they may not be willing to express any feelings or opinions. Expert interviewers should be sought to use alternative interview methods and provide counselling.

The interviewer should record the interview in full, particularly as the needs of the child may evolve so it is important to see clearly why certain decisions/recommendations were reached. The child's best interests should be given primary consideration in a comprehensive manner in all interviews, and in findings and recommendations whenever a decision affecting the child is taken. The officials and interpreters are bound by confidentiality, the concept and rules of which should also be explained to the child. The child and guardian/representative should be informed of the purpose of any interview and who will have access to the interview transcript.

The child's **views and wishes should be taken into account** according to age and maturity ([63]).

Examples of practice

In **NO**, interviews with children from the age of seven or younger if they are able to form their own views, can take place when they are accompanied by their parents.

In **DK**, the child's best interests assessment is normally an integral part of the personal (international protection) interview. An individual best interests interview should be conducted for the purposes of the Dublin III Regulation and for decisions regarding whether a child should be considered accompanied or not.

In **SE**, the emphasis is on the fact that a young accompanied child has the same rights to, if they choose to do so, express their views and own opinions as an unaccompanied or older child.

The child's right to be heard should not be restricted to an interview only. The responsible staff should be attentive to the child's views, needs and opinions also outside the interview.

Establishment of the facts

Where possible, the responsible officer should actively seek to obtain information from relevant sources for the purpose of assessing the child's best interests in the asylum procedure appropriately. With due consideration to data protection and confidentiality, and where this is in line with the safety and protection of the child, those knowledgeable of the child's situation, such as persons of trust, guardian/representative, current caretaker, social workers at the reception centre, teacher, etc. should be contacted. Those working with children must, at the same time, be aware that children are entitled to privacy and to maintain a confidential relationship with their guardian, legal representative and any other advocate.

If actors knowledgeable about the child's situation are asked to share information with asylum authorities for the purpose of deciding on the asylum application, they have to be guided by the BIC as these are different processes with different objectives.

The responsible officer should ensure that all relevant information on the child is available to the authorities in charge of deciding on the best interests of the child in a specific situation. All relevant elements should be

([63]) Learning from experiences in the justice sector, see FRA's report on child-friendly justice: http://fra.europa.eu/en/project/2012/children-and-justice/publications

appropriately analysed before making a recommendation or decision. It is important to take into account any cultural and family background relevant to best interests without making assumptions on the child's situation. The child and/or guardian should always be given opportunity to provide further details.

Documenting the best interests of the child

When any asylum official starts working on a child's case, a number of issues that will remain relevant throughout the entire asylum procedure and beyond should be documented. All elements of the BIC process should be analysed and evidenced for a consistent continuous assessment. All relevant issues should be documented, for example, in the general case management system, relevant databases, paper reports in the file, or using electronic templates and checklists.

This should include information on the child's family situation; relationship with the current caretaker, guardian/representative, or foster family. For unaccompanied and separated children, it should include the reasons for separation from family, location of family members, siblings or relatives; considerations of getting in contact with the family; and any possible information on Dublin where relevant. It should clearly indicate how the recommendation has been reached where initiating restoring contacts with the family is considered safe for the child and the family, and in the child's best interests.

The information used, as well as the findings and recommendations should be documented and reported, in accordance with data protection regulations ([64]), for the purpose of referral and implementation of the recommendations. It should be noted, that the responsible official should assess if there should be exceptions made as to the parents' right to see documents or particular information concerning their child, depending on the age of the child and the matter, i.e. violence, abuse or other risks issues.
When it comes to applicable safeguards and guarantees, it is important to highlight the linkages between the APD (recast) and the RCD (recast). One aspect of assessing BIC in a holistic manner is that, when conducting it at an early stage, information and evidence on possible issues of both procedural and reception needs will be collected and documented.

Respecting family unity

During the asylum procedures, it should be ensured that the concept of family unity is respected, unless concerns for the child's well-being or safety would indicate otherwise. The child should be given the possibility to provide additional information on their case, for example any new contact with family members or relatives or the imminent arrival of family members or relatives in another EU+ State ([65]). This information should be assessed appropriately. In the cases of separated children, (family) links must be verified and assessed, in order to identify potential risks.

As far as possible, siblings shall be kept together, taking into account the best interests of the child concerned and, in particular, their age and degree of maturity. Changes of residence of unaccompanied children shall be limited to a minimum.

Assessment of the child's application

When assessing the substance of the international protection application, due attention needs to be given to the heightened risk factors to which children are exposed, and child-specific forms of persecution or serious harm ([66]) (for example, underage recruitment in armed forces, child trafficking, child prostitution and/or infringements of specific rights of the child, harmful traditional practices).

([64]) In full respect of privacy rights and data protection standards and with strict enforcement of appropriate rules on collection, use and retention of, and access to, data.

([65]) See family tracing requirements under Article 24(3) RCD (recast).

([66]) 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, 22 December 2009, HCR/GIP/09/08.

When the possibility of internal protection (QD (recast) Recital 25 and 27, Article 8) is considered, the best interests of the child should directly be part of the investigation.

It is important to take into consideration that children's time perception differs from that of adults in terms of past experiences and possible lack of clarity in their telling. This can have a strong impact on assessing the need for international protection.

In the examination of the protection needs of an unaccompanied or separated child, it may be necessary to give more weight to certain objective factors when examining the well-founded fear of persecution based and/or the real risk of serious harm. The benefit of doubt should be applied in the examination of the international protection needs of unaccompanied and separated children ([67]).

Recommendations on the best interests of the child

The competent authorities must take into account the information gathered during interviews that have been conducted with the child and the accompanying adults and/or family members, and all the relevant information in the child's file.

Giving primary consideration to the BIC in any written recommendation should be **explained** and should be **motivated**. Any recommendation should indicate clearly how it has been reached. There should be clear standard operating procedures on how the recommendations are implemented and by whom, including provisions for the evaluation of the implementation of these recommendations whereby any changes necessary can then be incorporated into the BIC process. At the national level, different actors will be involved in implementing various recommendations.

The child should be informed of the recommendation on the BIC by the CP authority, separately from the decision on their international protection application. The child should further be provided with an explanation of what this recommendation means in practice. It should be possible to review or revise recommendations with regard to children.

Remedy

The child and the guardian/representative should receive adequate explanation of any **decisions** affecting the child, including the outcome and an **explanation of the** underlying **reasons.**

This will allow for the meaningful exercise of the child's right to a remedy. This right should be exercised vis-à-vis **this clear legal reasoning.**

Equitable access to justice should be further ensured by allowing the child and/or representative effective access to child-friendly remedial proceedings.

([64]) For more information on child-friendly judicial proceedings see FRA, *Child-friendly justice – Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States,* 2017.

Safeguards not in place

When some of the abovementioned safeguards are not in place, the examination of the application for international protection might have to be put on hold. This should be weighed depending on the nature of the missing safeguard. This should not result in purposeful and unnecessary delay of processing. When the safeguard is within the asylum authority's responsibility, the responsible officer should refer the case internally. When another authority or designated party is responsible for ensuring the safeguard, the asylum authority will coordinate with that party to ensure the missing safeguard is put in place. That referral should be documented accordingly. There should be a clear allocation of roles/responsibilities.

([67]) Separated Children in Europe Programme, Statement of Good Practice, 2009, p. 36.

3. Implementing the best interests of the child in practice

3.1 Cooperation with child protection services

Cooperation with CP services is imperative all throughout the procedure. The CP authorities need to inform the asylum authorities if a child is in a harmful situation and vice versa. Generally, in EU+ States, asylum authorities do not have automatic access to the best interests assessment conducted by CP authorities. For reasons of confidentiality and strict data regulations, CP and asylum authorities might not share data or information. In some cases, national asylum offices might not even be aware if CP authorities are involved in a child's case and vice versa.

There is a need to ensure that the international protection systems communicate with and are linked to the national CP systems/referral mechanisms. Coordinated protocols and standard operating procedures should be designed with the involvement of CP governmental and non-governmental actors, institutions and service providers to make this link more effective. For asylum-seeking children, the involvement of CP services in referral mechanisms is currently limited and should be reinforced and ensured. All relevant stakeholders at central and local level should at least meet at regular intervals in case there is no information sharing system in place. In individual cases, it should be clear which authority is responsible for appointing a guardian/caretaker, delivering guidance, the well-being and the legal status of the child, as there may be protection gaps due to different authorities believing others are responsible for certain aspects of the child's case.

It is recommended that in order to ensure the implementation of the safeguards mentioned in Section 2, the asylum authority should coordinate and cooperate with CP authorities/guardians/other relevant institutions. The purpose is to guarantee that the information required is shared and available, and used for the benefit of each individual child. This should be done in due respect of data protection/confidentiality. The child should consent to the information being shared.

Ensuring access to other rights

The relevant authorities (reception authorities, line ministries, CP actors) in each EU+ State should further ensure that the child has access to **schooling and education** according to Article 14 RCD (also Article 28 CRC), access to **healthcare** according to Article 19 RCD (also Article 24 CRC) and proper **accommodation**.

3.2 Putting procedural safeguards in place

Note that EU+ States have different order of steps. The table below does not suggest a sequence but rather a method. It describes how to check if the applicable guarantees and safeguards for the purpose of the best interests of the child are implemented and what the responsible officials should do to put the safeguards in place. The use of the checklist should start at an early stage in the asylum procedure.

Different actors could work jointly on the checklist as a living document to be filled in by the respective authorities whose responsibility it is to carry our certain activities. For example, 'The child has access to legal assistance' — can be confirmed by the child's legal representative and information can be included regarding legal counselling meetings that the legal representative has had with the child.

Procedural guarantees and safeguards	Related actions by the asylum authority
The child's safety has been ensured throughout the process	Check and confirm that the child is not facing any medical emergencies and/or serious threats to their safety and physical integrity during the asylum procedure/at the place of residence including any form of violence, neglect and exploitation.
The child has access to child-friendly procedures conducted by qualified and trained professionals	Check and confirm that only qualified and appropriately trained officers are involved in interviewing and dealing with the child's case.
Prioritised examination has been applied	Look at the timeline for the child's case and the file, and ensure that it has been duly prioritised, the child has been exempted from border and accelerated procedures where relevant and appropriate rest and recovery periods have been given.
The child has access to qualified, independent guardian/ representative	Check when a guardian/representative was appointed to the child and if they have been involved at all stages of the process concerning the child, including presence during interview. As good practice, a system to supervise the guardian/representative's work should be in place.
The child has access to legal assistance/advice	Check and confirm that the child has had and continues to have timely access to legal advice and counselling. The timing of this is important, i.e. early legal advice, presence during interview as well as advice at the appeals stage.
The child has access to interpretation throughout the process	Check and confirm that the child has access to interpretation in a language that they understand. The interpreter should be trained on interpreting for children and use child-friendly language. If the interpreter is not specifically trained in working with children, ensure that there is an adequate preparatory session so that the interpreter understands the type of language that will be used, the type of questions, the need to use simple language. The child has the possibility to complain about problems relating to the quality or the neutrality of the interpretation and translation. Problems with interpretation are registered and monitored. Check and confirm how communication was assured pre-interview and if the interview arrangements are adequate.
The child understands and has been adequately informed in a timely manner of the asylum process in an age-appropriate way and in a language the child can understand	Check and confirm that the child has received child-friendly information on the asylum processes, and that the information has been presented in a manner appropriate to their gender and cultural background. The child's understanding has been checked. It has been checked if the way of explaining was deemed suitable and child-friendly. The child is given the opportunity to ask questions. The child has been asked to explain what they have understood and to confirm, correct or complete the information as necessary.
The child's views have been heard and they have been weighted in accordance with age and maturity	Check and confirm that any interview with the child has included questions about how the child feels and what the child thinks about their situation. The child's maturity and the support they may have or need to express their views should be explored and documented. The views/wishes of the child to remain in the country, move to another country, etc. and the reasons for those views/wishes should be heard.
The child's special needs and vulnerabilities have been identified and addressed	Check and confirm that an assessment of the special needs has been conducted and relevant questions have been asked during any interview with the child to identify and address any potential special needs, vulnerabilities or risks, including abuse. For example, this assessment could include questions about the child's experiences back home, during travel or in the reception facility, health aspects, the relationship with their accompanying family and/or caretaker, among others.

Procedural guarantees and safeguards	Related actions by the asylum authority
For separated children: family link with the caretaker has been confirmed (if applicable)	Check and confirm that the family link has been verified and confirmed through documentation and/or relevant questions during an interview or other applicable methods in line with the BIC, and the findings have been documented. There may be cases where it is in a separated child's best interests not to be entrusted to a related adult. In such cases, ensure that the child is not entrusted to a related adult when it is not in their best interests.
Application for international protection is being assessed in line with BIC	Take into account the impact that age and potentially trauma and/or psychological conditions have on the memory and capacity to give complete and coherent information and thus on the credibility assessment during the examination.
INFORMATION TO BE COLLECTED AND DOCUMENTED ([65])	
Personal data and relevant information has been collected	Ensure that the child's personal details have been collected, including questions on identity and health, in a child-friendly and non-intrusive manner. Note that strict privacy regulations apply. Document the education level of the child and interest to continue education ([66]). Document any additional information that may assist in assessing the best interests of the child.
For accompanied children: family information has been collected	Check and confirm that the location of family members and relatives and family history have been asked for and collected.
For unaccompanied and separated children: last contact with family members known, contact details and reasons for separation from family recorded	Check and confirm that last contact with family members known, contact details and reasons for separation from family have been collected and recorded. Check and confirm that details of how the child became separated have been asked for and recorded, also including any plans of family members to travel to Europe and their intended destination(s). Family members might already reside in another EU country.
Family tracing has been initiated as soon as possible where appropriate	Check and confirm that it has been assessed whether family tracing is in the child's best interests and safe for the child and the family members concerned, and if so, check and confirm that family tracing has been initiated by the authority responsible for family tracing.
Consider restoration of contact with family and/or family reunification	Confirm or assess whether following the family tracing, restoration of contact or/and family reunification is in the child's best interests.
Age assessment has been conducted safely for the child and only where necessary	If age assessment has been recommended, check and confirm whether the age assessment is in the child's best interests and formally motivated. It should be clearly indicated why it is required and which methodology is in the child's best interests in respect of health and dignity. This will depend on the particular situation of the child, and be related to the identified special needs of the child and/or the specific procedural requirements ([67]). If age assessment has already been conducted, check and confirm that it was/is being done in a multidisciplinary manner and in the least intrusive manner possible, and that the best interests of the child have been considered throughout. Any details collected during an age assessment should be included in the file and considered accordingly.
Information on the child's social network has been collected	In view of ensuring the child's safety, check if data on the child's connections, including social networks and links to society in the country of asylum, have been collected.

([69]) Specify what should be in a paper/electronic file prior to personal interview.

([70]) To be shared with caretaker/guardian/representative for treatment or schooling purposes.

([71]) For further information see EASO, Practical guide on age assessment, 2018.

Procedural guarantees and safeguards	Related actions by the asylum authority
Expert input (reports, etc.) has been collected	Ensure that expert reports have been included as required (medical reports, vulnerability reports, police reports, etc.). Check and confirm that, if available, due consideration was/is given to proof of trauma and/or psychological conditions, i.e. Post-Traumatic Stress Disorder.
Specific concerns (i.e. abuse, THB) have been identified and documented	Ensure that concerns identified (including abuse, trauma, violence, special needs/vulnerability, medical problems, etc.) have been collected, documented and communicated with other responsible national authorities protecting the rights of the child. This includes concerns or indications that the child is at high risk of or a victim of THB, that the child has a history of abuse, neglect or violence, and any known location of the perpetrators. Include health concerns requiring special medical care, psychosocial or mental healthcare.
Outcome has been documented, motivated and delivered	Ensure that the child is provided with a written, reasoned asylum decision (explaining, inter alia, how the best interests of the child were taken as a primary consideration), explained orally in an age-appropriate manner and in a language the child can understand.

3.3 The individual circumstances of the child

The situation of the child should be assessed individually, taking into account the specific circumstances of the child concerned. Such circumstances include (non-exhaustively) factors such as the child's cultural background and experiences, age and maturity, gender, gender identity and/or sexual orientation, level of education, and any possible vulnerability, including physical and psychological health issues and trauma, among others ([72]). Any existing report regarding the child, such as medical reports, vulnerability assessments, or any other documents available at any point during the process should be documented and given due weight.

3.4 Potential heightened risks and vulnerabilities

It is important to explore and assess potential risks, including hidden risks that the child may face. These risks should be recorded, indicating the specific concerns that have been identified. Examples include situations where the child:

- has faced or is likely facing abuse or violence;
- is a victim of THB;
- has any special needs — medical or psychological — or other vulnerabilities;
- is not fit to travel;
- is planning to abscond or is a flight risk;
- any other concerns raised by the child, or by any other person, or noted/documented during the interviews or in the expert reports.

These risks should be clearly detailed and a plan to address the concerns with both short- and long-term solutions should be included and followed up by CP authorities. Should any vulnerabilities or risks for the child be identified, the guardian/representative must be informed and/or consulted.

When risks or vulnerabilities have been identified, it needs to be assessed whether the child is in need of special procedural guarantees and if they should be referred for support and/or further assessment within the asylum authority, or to another service provider or authority, such as the reception or CP authority, to ensure the child's **safety and well-being**. Such referral may be for professional consultation

([72]) Refer to the best interests elements for consideration outlined in CRC Committee, 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, p. 13-onwards.

or legal counselling. An example is the referral of child victims of trafficking to appropriate national referral mechanisms, ensuring the communication of international protection and anti-trafficking systems.

In terms of special needs, a referral for assistance should take place as required, for example for medical or psychological care and support or material assistance, i.e. for children with disabilities. No conclusions regarding the health diagnosis of the child or accompanying applicants should be included, unless a medical report is attached.

Further expert (medical, legal) assessment may be required to ensure the implementation of special procedural guarantees throughout the asylum procedures. For example, expert assessment of violence/abuse could support the provision of special assistance to deal with trauma caused by it. This could include requesting help from medical or other experts. The consent of the child and/or of the guardian/representative may also be required for that. Any action taken should ensure that it would be in the child's best interests to take it and that the asylum procedure is not unnecessarily prolonged.

3.5 Different procedural pathways

The best interests of the child should be assessed when different procedures are to be applied to a child's case. Coordination with other relevant authorities should be established.

Dublin Regulation

The Dublin III Regulation provides for safeguards for unaccompanied children when considering whether a transfer to another Member State would be in the child's best interests. The best interests assessment for the Dublin III Regulation should include all relevant elements of the child's best interests, the weight attributed to each element being dependent on its relation to the others. In Article 6(3) Dublin III Regulation specifies — though not forming an exhaustive list — that the following elements should be taken into account: family reunification possibilities, the well-being and social development of the child, safety and security considerations, in particular where the child is at risk of being a victim of THB, as well as the views of the child in accordance with their age and maturity, including the background of the child.

The best interests of the child is a primary consideration for all actions under the Dublin III Regulation.

Accelerated and border procedures

Moreover, the best interests of the child should be a primary consideration when making decisions in line with Article 24(3) second paragraph APD (recast). Asylum authorities shall not apply or cease to apply accelerated or border procedures when adequate support cannot be provided to applicants in need of special procedural guarantees (such as unaccompanied, separated or vulnerable children) within the framework of such procedures.

Moreover, according to Article 25(6)(b) APD (recast), accelerated or border procedures **may only be applied** to unaccompanied children if:

- the applicant comes from a safe country of origin;
- the applicant has introduced a subsequent application (which is not inadmissible);
- the applicant may be considered a danger to national security or public order;
- the 'safe third country' concept applies (border procedure only);
- the applicant presented false documents (border procedure only);
- the applicant, in bad faith, destroyed or disposed of an identity or travel document (border procedure only).

The last two grounds are applicable only in individual cases where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision, provided full opportunity was given to show good cause of action.

In the implementation of the safe country of origin and safe third country concepts, Member States have to take into account the individual/particular circumstances, which includes exempting unaccompanied children from their application where relevant. The concepts of border and accelerated procedures are not meant to serve the best interests of the child. In both border and accelerated procedures, the possibilities to obtain adequate information and counselling, and time to prepare the child's case are more limited.

Many children are obliged to present false documents or destroy their documents because they fear negative consequences or are forced to do it by smugglers or other adults. If not interpreted in line with the BIC, these former criteria could lead to vulnerable, unaccompanied or separated children being channelled to procedures where their right to information, counselling and time to prepare their case are restricted, potentially causing protection risks.

Other procedural pathways

In situations where other procedural pathways and legal statuses, beyond applying for international protection, may be in the child's best interests, appropriate solutions should be recommended. This should be done in coordination with the relevant authorities and with the involvement of the child's guardian/representative, according to national law and practice. Such solutions may include referral of the child to procedures specific to victims of trafficking or stateless persons, for example, or pursuing more than one legal pathway at the same time.

3.6 Appointing relative/accompanying adult as caretaker/guardian

The **separated child's** caretaker/guardian ([73]) plays an important role in supporting the best interests of the child process. When hearing the views of the child on a specific matter, it is recommended to also hear the views of the accompanying adults, especially where they have been appointed as caretaker/guardian.

An unaccompanied child's independent guardian appointed by the relevant national authority or court should also be given other ways to express their views concerning the best interests of the child.

The relationship of the separated child with the caretaker/guardian itself also needs to be assessed as part of balancing the elements of the best interests. The latter scenario refers mainly to separated children where the accompanying adult is a relative and they can be appointed as caretaker/guardian. An interview with the relative or accompanying adult needs to be conducted to clarify issues related to the guardianship and/or care arrangements. The relationship between the relative or accompanying adult and the child should also be assessed before the appointment of a caretaker/guardian. The relationship between the child and the family members of the caretaker should also be assessed by CP authorities, and the outcome is to be taken into consideration.

Any concerns related to the care arrangements/representation should be examined further before a recommendation on the BIC is formulated. In case of concern about the relationship, it should be considered whether the presence of the caretaker/guardian during the child's personal interview is needed or whether it should be the lawyer who is present instead, for instance. When it comes to the attention of the responsible officer that the child is not cared for appropriately or faces difficulties with the current caretaker, they should flag these issues and report them to the competent authorities, most notably CP authorities.

([73]) A physical person from the child's close surrounding/relative.

4. Vulnerability and risk indicators for children

Children applying for international protection are in a particularly vulnerable situation. It is very important that the responsible officers can identify any indicators of additional vulnerabilities and special needs and are prepared to act upon them. These can be, among others, the child being a victim of THB or at risk of it, or having been subjected to other serious forms of psychological, physical or sexual and gender-based violence, including FGM/C, forced and early marriage, physical and mental harm, and other forms of abuse or exploitation, child heads of households, stateless children, adolescent parents, children who have been part of armed groups, children suffering from serious illnesses, children with mental health issues, etc.

> Factors that put children in a situation of heightened risk can include both risks in the wider protection environment and risks resulting from individual circumstances, taking into account the cumulative effects of being exposed to several risk factors […] ([74]).

When such a risk is identified, the role of the authority processing the application for international protection in referring the child to specialist institutions/organisations for relevant interventions and support is key, especially where not done by the representative/guardian. The asylum authority has the responsibility to identify a child at risk in collaboration with CP authorities but also to secure the involvement of a specialist actor. Separately, the asylum authorities should examine the risk indicators and the experiences of children as elements contributing to the substance of an asylum claim (e.g. child-specific persecution, see above in Assessment of the child's application).

NB: Children who go missing become more vulnerable. The risk of the child disappearing/going missing from their accommodation for any reason, including to attempt to cross into another EU+ State, should be assessed. The risk can be mitigated by properly informing the child of the asylum procedures and the expected timelines, providing the child with clear, understandable and age-appropriate information regularly. Such information can be provided specifically on the consequences and risks of attempted travel to another EU+ State irregularly, whether alone or with the support of criminal networks or smugglers. Prioritising the case is another way of mitigating this risk.

Children accompanied by parents

In asylum procedures, unaccompanied and separated children are readily identifiable as being at risk but children accompanied by their parents can also be at risk. These latter risks tend to be easily downplayed or overlooked. The needs of a child should be addressed, irrespective of whether or not the child is registered as a dependant of their parents. In cases where the interests of the child and the interests of the parent are conflicting, some of the safeguards described earlier, such as access to an independent guardian (in cases of custody issues), legal advice and a legal advisor, become particularly relevant to the accompanied child. The national asylum authority, together with CP actors, would need to assess whether the child should be interviewed in the presence of the legal advisor instead of in the presence of their parents, whether the parents should have access to the child's case file where confidential information is included; and whether the child and the parents should have separate decisions on their applications for international protection. It is of utmost importance that the child's statements are not used against the child when examining their application for international protection, or when examining the case of their parents. The child should be informed and reassured of this during the interview. Caution should also be applied with the child's statements being used against the parents.

([74]) UNHCR, Conclusion on Children at Risk No 107, *A/AC.96/1048*5, October 2007.

Example of practice

DK recommends that the asylum authorities be very careful when using the statements of a child in the parents' case when it will influence their case negatively, especially if they risk putting the child in a situation where the child may be subjected to reprisals on the side of the parents.

However, Danish authorities consider that the child's own statements may be used in the child's own case, depending on the age and maturity of the child, and on the circumstances in which the statements are given.

Overall, the national asylum authority should ensure that whenever dealing with such a case the child is not put in a situation that could cause them harm. Depending on the circumstances, confidential information is not to be provided to the parents without the child's consent. Whenever signs of abuse, neglect and/or exploitation are noted, the responsible officer shall ensure that the relevant authorities are informed accordingly and that the child receives assistance and care.

Separated children

Separated children are vulnerable to various risks that affect their life, survival and development and measures must be taken to protect children from these risks ([75]).

Separated children may face particular risks leading to becoming victims of abuse in the hands of the accompanying adult or other actors. This is the case especially where the adult is unable to effectively provide care for the child or may abuse or neglect the child. It is particularly important to verify the connections and links between the child and the adult to ensure that the relationship is in the child's best interests. Possible implications of situations of trafficking and/or smuggling on the best interests of the child should be carefully assessed. At the same time, not allowing the child to have contact with the accompanying adult, who may be the child's only person of trust in the situation of displacement, may be harmful for the child. For child victims of trafficking, separation from the parents can either be the result of or a risk factor for being trafficked ([76]). This is important in relation to the safety and security considerations when there is a risk of the child being trafficked.

Married children

Child marriage occurs when one or both spouses are under 18 years old. Although this phenomenon may affect both girls and boys, the former may suffer the most negative consequences. A married child might have a much older spouse. In such cases, the girls are generally more vulnerable. Married girls often become pregnant while still adolescents, therefore they risk experiencing dangerous complications in pregnancy and childbirth. Both married girls and boys may be exposed to contracting sexually transmitted diseases, including HIV, and they may experience intimate partner violence.

The CRC Committee recommends setting the minimum age for marriage with and without parental consent to 18 years, for both girls and boys ([77]).

The Council of Europe calls on its Member States to 'fix at or raise to 18 years the minimum statutory age of marriage for women and men' and further urges them to 'refrain from recognising forced marriages and child marriages contracted abroad except where recognition would be in the victims' best interests

([75]) CRC Committee, General comment No 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, paras. 23-24.

([76]) FRA, *Handbook on Guardianship systems for children deprived of parental care in the European Union — with a particular focus on their role in responding to child trafficking*, October 2015.

([77]) CRC Committee, General Comment No 4 (2003) Adolescent Health and Development in the Context of the Convention on the Rights of the Child, 1 July 2003, CRC/GC/2003/4.

with regard to the effects of the marriage, particularly for the purpose of securing rights which they could not claim otherwise' ([78]).

Married children should benefit from rights and special procedural guarantees under the EU asylum *acquis*. According to a mapping conducted by FRA, in all Member States, the minimum age required for marriage coincides with the age of majority and is set at 18 years — with the exception of **Scotland**, where the age of marriage is 16 years, which is also the age of majority. Most national legislation provides for the possibility to marry before reaching the age of majority with the consent of the parents and/or a judicial or administrative body. Only in **DK**, **DE**, **NL** and **SE** (as well as in **PL**, but only with regard to men), no possibility to marry below 18 years exists ([79]). According to the responses to EASO's 2017 questionnaire ([80]), married children are considered unaccompanied in **AT, BE, CH, CY, DE, EL, FI, LT, NL, NO, PL, SK** and **SE**. In **EE, SI** and **ES** this is the case if they are less than 15 or 16 years old respectively.

The asylum *acquis* definition of an unaccompanied child does not explicitly exclude married children ([81]). Therefore, unless the law or practice of the EU+ State concerned recognises the marriage, the married child ought to be considered unaccompanied and benefit from the special procedural guarantees available to unaccompanied children under the APD (recast), or accompanied if the child is accompanied by parents/legal guardian. In **EE** and **ES**, this is the case if they are less than 16 years old and in **SI** if they are less than 15 years old.

In the age category from 15 to 18 years of age, the laws and/or practices of Member States vary as to recognising an adult spouse as being responsible for a minor spouse. In most Member States, child marriages are not allowed/recognised by law/practice. If the minor spouse is traveling only with the adult spouse and is not accompanied by their parents/tutor, the married child should be considered 'unaccompanied'.

When giving primary consideration to the best interests ([82]) of the married child in the asylum procedures, the relationship between the child and the spouse must be carefully considered, including hearing the child on the nature of the marriage, how they wish to proceed, if they wish to stay with the spouse or wish to be separated.

As a child cannot consent to a marriage, whether remaining with an adult spouse is beneficial for the child should be determined by a social worker and/or the CP authorities, considering the child's protection and recapping all elements of the BIC — most notably safety and security considerations — amongst others.

It should be taken into consideration whether the couple has children and if so, the right to family unity, and whether there may be additional protection concerns for those children. The best interests of the married child's own children should also be assessed separately.

Once it is established that it is in the child's best interests, and only in such a case, it may be considered whether the child and the spouse's applications should be included under the same case file.

When a child is also a parent, additional protection measures and safeguards need to be put in place. In particular, the principle of best interests needs to be taken into consideration for both children.

In a situation where the child is separated from their parents/legal guardian, the EU+ State authorities should ensure that the spouse is not appointed as the child's guardian.

Close involvement of the CP and other relevant authorities in the EU+ States is required to ensure the protection of the married child throughout the procedure.

([78]) Council of Europe Parliamentary Assembly, Resolution 1468 (2005) on forced marriages and child marriages, 5 October 2005.

([79]) FRA, *Mapping minimum age requirements with respect to the rights of the child in the EU: Marriage with consent of a public authority and/or public figure*, 2017.

([80]) Presented during the EASO Annual Conference on Children in December 2017.

([81]) Article 2(l) QD (recast).

([82]) For more information about minimum age material on married children and how MS laws regulate it see FRA, *Mapping minimum age requirements with respect to the rights of the child in the EU: Marriage with consent of a public authority and/or public figure*, 2017.

The abovementioned issues may affect reception arrangements and reception/ accommodation standards. However, this remains outside the scope of this practical guide ([83]).

Child victims of trafficking

The authorities have to be alert to potential risks of trafficking of the child. Safety and security should be taken into account when balancing the elements of the BIC and the risk of traffickers appearing as/ pretending to be accompanying adults. Limited identification, inadequate access to information about victims' rights and ineffective referral mechanisms at national and transnational level ([84]), continue to prevent victims of trafficking from accessing the rights to which they are entitled ([85]). It is crucial to ensure that the international protection systems communicate with and are linked to the anti-trafficking systems and national referral mechanisms ([86]). Coordinated protocols and Standard Operating Procedures should be designed with the involvement of different trained actors and institutions to make this link more effective ([87]). For child victims of trafficking, the involvement of CP services in referral mechanisms should be ensured. However, currently it remains limited ([88]).

EASO's tool for identification of persons with special needs (ipsn.easo.europa.eu) includes valuable information on the identification of victims of trafficking.

A THB sub-section is included in the EASO Training Curriculum module on Gender, Sexual Orientation and Gender Identity.

A specific THB module has been developed and launched in 2017. Further information is available at: https://www.easo.europa.eu/training

See also the European Commission, *Guidelines for the identification of victims of trafficking in human beings, Especially for Consular Services and Border Guards*, 2013.

For children who have been identified as victims of THB, the national referral mechanism ([89]) or similar structure/mechanism should apply. The responsible officer (consulting the legal guardian) would need to preserve the file, decide the international protection needs and also refer the child's case to existing specific procedures for victims of trafficking. The asylum officer should be aware of the legal options and whether the child could simultaneously continue in both procedures. This would also depend on national legal frameworks and practice.

Specifically any indication of the child having been trafficked or at risk of this in the future, and any continued contact with trafficking networks or other criminal networks or persons who have abused the child, should be documented. This is irrespective of whether it has occurred in the country of origin or during travel in countries of transit. Follow-up actions should be taken as necessary.

([83]) See EASO, *Guidance on standards and indicators for the reception of children,* September 2016.

([84]) IOM launched an online platform featuring a Transnational Referral Mechanism Model (TRM), an outcome of the EU-funded Transnational Action (TACT) project and developed as a deliverable of the EU Strategy towards the eradication of trafficking in human beings 2012-2016 available at https://ec.europa.eu/anti-trafficking/eu-projects-and-funding/transnational-action_en. As a deliverable of the EU Strategy 2012-2016, a project on a model for transnational referral has been funded by the Commission available at https://ec.europa.eu/anti-trafficking/eu-policy/transnational-referral-mechanism-model-%E2%80%93-trm_en

([85]) Communication from the Commission to the European Parliament and the Council, Reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete actions, 4 December 2017, COM(2017) 728 final (Follow-up Report).

([86]) Commission, Progress report, COM(2016) 267 final; Europol, Situation Report on THB, 765175(2016); Commission, Follow-up Report, COM(2017) 728 final.

([87]) Commission Staff, Accompanying Progress Report, SWD(2016) 159 final.

([88]) Commission, Progress report, COM(2016) 267 final states that an integrated approach to child protection should be based on the standards of the CRC, including the child's best interests, and the strengthening of guardianship systems. FRA, *Handbook on guardianship systems for children deprived of parental care*, 2014 is focused on child victims of trafficking. With particular reference to guardians, FRA Handbook is focused on child victims of THB.

([89]) The national referral mechanism is a victim identification and support process which is designed to make it easier for the agencies involved in trafficking cases to cooperate and allows sharing of information between the police, border police, asylum case officers, other relevant authorities and non-governmental organisations about potential victims and providing support.

Children who are victims of trafficking must not be perceived or treated as criminals. Their protection, assistance and redress must be given due priority. Gender-specific risks, pregnancy, and other vulnerabilities should also be taken into account as part of their protection. The crime of THB has a strong gender dimension, with trafficking for the purpose of sexual exploitation remaining the prevalent form, and victims being predominantly women and girls ([90]).

Other types of vulnerability assessment

Often, a vulnerability assessment will have been conducted to apply special procedural or reception guarantees or channel the child to the most appropriate procedure ([91]). If this is the case, the findings should be incorporated into the analysis and assigned appropriate weight in the process of balancing the elements relevant to the BIC.

A vulnerability or risk indicator may result in a need to either prioritise the child's case or postpone the assessment of the case. Additional attention may be required by specialists in THB, FGM/C or other topics, during the asylum procedures. Follow-up actions and referrals may be required and should be documented. The protection of the child must be ensured, thus the relevant authorities (asylum, reception, CP, police under the duty to advert harm, and any other authorities) should establish coordination mechanisms which allow for sharing of information relevant to the child. The coordination mechanisms should comply with privacy regulations, specify the need for referral and the way to refer the case to the most appropriate authority.

EASO Tool for Identification of Persons with Special Needs (IPSN)

In order to support Member States in the identification and assessment of special needs in terms of procedural and reception guarantees, EASO has developed a web-based interactive tool, publicly accessible in a number of EU languages.

The IPSN Tool is an intuitive practical instrument intended to support the timely and ongoing identification of individual special needs without the requirement of specialised knowledge. It relies on an outline of indicators, linked to different categories of persons with potential special needs.

Once the user has generated the relevant information, they can choose to print or save a report, including a selection of different elements. The report can be further individualised for the particular case at hand before it is saved and/or printed.

The integration of the IPSN Tool in a national mechanism, which is in accordance with the standards in this practical guide, is recommended as good practice.

The tool is available at https://ipsn.easo.europa.eu

([90]) Commission, Follow-up Report, COM(2017) 728 final; Commission, Progress report, COM(2016) 267 final; Relevant studies have been published as deliverables of the EU Strategy towards the eradication of THB 2012-2016: the Study on the Gender dimension of THB, and the Study on High risk groups on the EU anti-trafficking website linked in the overview EU anti-trafficking action 2012-2016 and available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_anti-trafficking_action_2012-2016_at_a_glance.pdf

([91]) E.g. for the purpose of exemption from border or accelerated procedures as per APD. The APD prescribes that special procedures should not be applied to unaccompanied children and other vulnerable persons unless the MS can ensure that they will be provided the additional guarantees required throughout such procedures.

ANNEX I — BEST INTERESTS TEMPLATE ([86])

This template/checklist offers a non-exhaustive and non-hierarchical list of best interests of the child (BIC) elements and related safeguards in international protection. However, utilising a checklist cannot serve to reduce genuine concern over the well-being of the child to a simple one-time check, rather than a continuous process.

This template/checklist should be adjusted to the national procedures and used as evidence in the child's file that primary consideration has been given to the BIC. This is an ongoing process and so the template can be a living document, used by any officer working within the asylum process, documenting how the BIC are continuously taken as a primary consideration.
If any of the safeguards has not been put in place or the necessary information has not been collected, it should be indicated, describing the reasons why it has not been possible to do so. This template/checklist is intended as guidance to help ensure that the key information has been collected and documented, and that the safeguards are in place.

BEST INTERESTS OF THE CHILD TEMPLATE/CHECKLIST			
TEMPLATE/CHECKLIST FOR SAFEGUARDS (as part of the casefile)	**YES**	**NO**	**COMMENTS**
In the casefile: add who has provided input on best interests (e.g. guardian, educator/teacher, foster parent, reception centre psychologist, etc.)			
The child's safety has been ensured throughout the process			
The child's best interests have been assessed by the CP authorities/social workers prior to the asylum procedure. Actors involved in the assessment (drop down list if in an electronic database).			
The examination of the child's application has been/is prioritised or adjusted in length			
The child has been exempted from border and accelerated procedures where relevant			
Appropriate rest and recovery periods have been given to the child			
An independent and qualified guardian/representative has been appointed as early as possible from the beginning and kept involved at all stages, i.e. consulted, has given their views in the process			
The guardian/representative of the child was/is present at any interview with the child			
The child has had legal advice and counsel was/is present at any interview with the child			
Specialised and/or trained interpreter has been made available throughout the process			
The child has been adequately informed in an age appropriate manner and language and understands the asylum procedure. The child's understanding has been checked			

([92]) In her PhD thesis, Elianne Zijlstra describes a model for an unambiguous interpretation of the concept of the best interests of the child. This model connects the rights laid down in Article 3 and Article 6 CRC to each other. The so-called 'Best Interest of the Child (BIC)-model' contains 14 pedagogical environmental conditions which are applicable in both the familial and the societal realm. These conditions are divided between 'Family, current situation' including 'physical wellbeing: 1. Adequate physical care; and 2. Safe direct physical environment' as well as 'Family, care and upbringing' including '3. Affective atmosphere; 4. Supportive; flexible childrearing structure; 5. Adequate examples by parent; 6. Interest'. Secondly, 'Family, future and past' comprises '7. Continuity in upbringing conditions, future perspective'. Thirdly, 'Society, current situation' comprises '8. Safe wider physical environment; 9. Respect; 10. Social network; 11. Education; 12. Contact with peers; 13. Adequate examples in society'. The final element is contained under the fourth main umbrella heading 'Society, future and past' consisting of '14. Stability in life circumstances, future perspective'.E. Zijlstra, '*In the best interest of the child? A study into decision-support tool validating asylum-seeking children's rights from a behavioural scientific perspective*', Groningen: University of Groningen 2012 available at http://www.pharos.nl/documents/doc/in_the_best_interest_of_the_child-e_zijlstra_2012.pdf

BEST INTERESTS OF THE CHILD TEMPLATE/CHECKLIST			
The child's views have been/are heard and taken into account in accordance with age and maturity with respect to any decisions taken throughout the asylum procedure			
The child's views and statements have been considered separately from those of the parents when assessing the BIC			
Views of the guardian (and/or the parents/family members) have been recorded and made available to the authority responsible			
Confidentiality of the process has been respected and explained to the child			
The reasoning/motivation/legal reasoning taking the BIC as primary consideration have been documented			
The child's special needs and vulnerabilities have been identified as early as possible and the child has been referred to the appropriate authorities for relevant assistance and support			
A specialist has been consulted if needed (child psychologist, medical doctor, other experts)			
INFORMATION TO BE COLLECTED AND DOCUMENTED (at interviews)	**YES**	**NO**	**COMMENTS**
Personal data has been collected and registered (nationality, gender, age, ethnicity, education, language, health, family history, fingerprints according to national and EU law)			
Details of possible family (including extended family) present in other Member States, country of origin or other third country has been collected and documented			
Last contact with family members known and their contact details have been recorded and reasons for separation from family (if applicable) have been recorded			
Connections, including social networks, links to the society have been collected by the CP authority/a social worker			
Expert reports have been included as required (medical reports, police reports, etc.)			
Concerns identified (including abuse, trauma, violence, special needs/ vulnerability, medical problems, etc.) have been recorded			
Concerns on the child being at high risk of THB, or indications that the child is a victim of THB have been recorded			
The child and guardian/representative (when relevant) is provided a written, reasoned asylum decision (explaining, inter alia, how the best interests of the child were taken as a primary consideration), also explained orally in an age-appropriate manner and in a language the child can understand			

ANNEX II — Policy and guidance documents

This annex is intended to serve as reference of relevant publications and guidance documents on the implementation of the best interests of the child for asylum practitioners. Although all effort has been made to provide a comprehensive list of publications and policy documents on the topic, the list below should not be considered exhaustive.

Document	Available at
EASO Online Tool for the Identification of Persons with Special Needs (2016)	https://ipsn.easo.europa.eu
EASO Practical Guide on Age Assessment Practice (2018)	https://www.easo.europa.eu/training-quality/vulnerable-groups
EASO Practical Guide on Family Tracing (2016)	https://www.easo.europa.eu/training-quality/vulnerable-groups
FRA Handbook on Guardianship for children deprived of parental care — A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking (2014)	http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship
Ombudsman for Minorities of Finland: The best interests of the child in asylum and refugee procedures in Finland (2010)	http://ec.europa.eu/justice/news/consulting_public/0009/contributions/public_authorities/042_ombudsman_for_minorities_finland_report.pdf
UNHCR and Unicef Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe (2014)	http://www.refworld.org/docid/5423da264.html
UNHCR Guidelines on Determining the Best Interests of the Child (2008)	http://www.unhcr.org/4566b16b2.pdf
Field Handbook for the Implementation of UNHCR BID Guidelines (2011)	http://www.unhcr.org/50f6d27f9.pdf
Handbook and Toolkit on Unaccompanied and Separated Children of the Inter-agency Working Group on Unaccompanied and Separated Children (2017)	https://resourcecentre.savethechildren.net/library/toolkit-unaccompanied-and-separated-children
UNHCR: Considering the Best Interests of a Child within a Family Seeking Asylum (2013)	http://www.refworld.org/pdfid/52c284654.pdf
UNHCR/UNICEF/IRC: The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe, July 2017	http://www.refworld.org/docid/59633afc4.html
UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997)	http://www.unhcr.org/3d4f91cf4.html
UNICEF Working Paper on Age Assessment	https://www.unicef.org/protection/files/Age_Assessment_Note_final_version_(English).pdf
UNHCR Guidelines on International Protection No 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the [1951 GRC] (2009)	http://www.refworld.org/docid/4b2f4f6d2.html
UNICEF Let's Talk — Developing Effective Communication with Child Victims of Abuse and Human Trafficking	https://www.crin.org/en/docs/Lets%20Talk.pdf
Communication addressing THB by the European Commission (2017)	https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/docs/20171204_communication_reporting_on_follow-up_to_the_eu_strategy_towards_the_eradication_of_trafficking_in_human_beings.pdf

ANNEX III — Legal framework

This annex compiles the most relevant provisions on the topic of the BIC foreseen in International and European legal instruments. However, the content should not be considered exhaustive. It also includes references to soft-law instruments pertinent for the purpose of the practical guide. Finally, it includes a blank section to be completed by the users of this guide with the relevant provisions and instruments that have been developed at the national level ([93]).

International legislation

Legal provision		Relevant article
UN Convention on the Rights of the Child of 20 November 1989 (CRC)	Family	Preamble
	Child	Article 1
	Non discrimination	Article 2
	Best interests of the child	Article 3(1), 9(3), 18(1), 20
	Registration, name, nationality and parental care	Article 7
	Preservation of identity and family relations	Article 8
	Right to maintain personal relations and contact	Article 9
	Restoring family links	Articles 10, 22(2)
	Respect for the views of the child: right to be heard	Article 12
	Care and accommodation	Article 20
	Refugee children and family tracing	Article 22
UN Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967	Refugees Unaccompanied children	Letter B(2) of the No 2545 Final Act of the UN Conference of Plenipotentiaries on the status of refugees and stateless persons

([93]) Communication, Protection of children in migration, COM(2017) 211 final: The child's best interests must be assessed and taken into account as the primary consideration in all actions or decisions that concern him or her. It is important that the European Union provides further guidance on this topic, building upon international standards. A robust determination of the child's best interests, in the identification of the most appropriate durable solution for him or her, should entail extra procedural safeguards, given the huge impact this decision has on a child's future.

EU legislation

Legal provision		Relevant article
Treaty on European Union	Rights of the child	Article 3(5)
Charter of Fundamental Rights of the European Union	Right to asylum	Article 18
	Rights of the child	Article 24
Schengen Borders Code (Regulation (EC) 562/2006) Regulation (EU) 2016/399 (codification)	Child-sensitive procedural measures for minors	Article 2019(1)f annex VII, point 6
Reception conditions directive (Directive 2013/33/EU) recast	Minor	Article 2(d)
	Unaccompanied minor	Article 2(e)
	Family members	Article 2(c)
	Representative	Article 2(j)
	Best interests of the child and family unity	Recital (9), Article 12
	Best interests of the child	Recital (22), Articles 2(j), 11(2), 23, 24
	Vulnerable persons	Articles 21, 22
	Documentation	Article 6
	Family tracing	Article 24(3)
Asylum procedures directive (Directive 2013/32/EU) recast	Minor	Article 2(l)
	Unaccompanied minor	Article 2(m)
	Representative	Article 2(n) and Article 25
	Best interests of the child	Recital 33, Articles 2(n), 25(1)(a), 25(6)
	Right to information	Article 25
	Others	Articles 14(1), 24, 25 in its entirety
Qualification directive (Directive 2011/95/EU) recast	Minor	Article 2(k)
	Family members	Article 2(j)
	Unaccompanied minor	Article 2(l)
	Best interests of the child and family unity	Recital (18)
	Best interests of the child	Recital (19), (27), (38), Arts 20.5, 31.4-5
	Right to be heard/right to participation, right to information	Article 22, 31
	Maintaining family unity	Article 23
	Family tracing	Article 31(5)

Legal provision		Relevant article
Dublin Regulation (Regulation (EU) No 604/2013) recast	Minor	Article 2(i)
	Unaccompanied minor	Article 2(j)
	Family members	Article 2(g)
	Relative	Article 2(h)
	Representative	Article 2(k)
	Best interests of the child and family unity	Recital (16)
	Best interests of the child	Recital (13), (24), (35), Articles 2(k), 6, 8, 20(3)
	Right to information	Recital (4) and Annex XI Implementing Regulation (EC) No 118/2004
	Identification of family members and relatives	Recital (35)
	Family tracing, identification of family members and relatives	Article 6(4), 8
	Exchange of information on the child	Annex VII Implementing Regulation (EU) No 118/2014
	Exchange of information on the family	Annex VIII Implementing Regulation (EU) No 118/2014
Implementing Regulation (EU) No 118/2014	Family tracing, identification of family members and relatives	Article 1(7) Annex II LIST A(I), LIST B(I)
	Exchange of information on the child	Annex VII
	Exchange of information on the family	Annex VIII
	Information for unaccompanied children on Dublin procedure	Annex XI
Eurodac regulation (Regulation (EU) No 603/2013) recast	Best interests of the child	Recital (35)
Anti-trafficking directive (Directive 2011/36/EU)	Identification of child victim of trafficking and protection measures	Recital (23)
	Child	Article 2.6
	Vulnerability	Article 2.2
	Best interests of the child	Recital (8), (22), (23), Articles 13, 16(2)
	Procedural safeguards in criminal investigations	Article 15
	Protection of unaccompanied children victims of THB	Article 16
Directive on residence permits for victims of human trafficking (Directive 2004/81/EC)	Unaccompanied minor	Article 2(f)
	Best interests of the child	Article 10(a)
	Identification as unaccompanied child	Article 10(c)
	Family tracing	Article 10(c)

Legal provision		Relevant article
Family reunification directive (Directive 2003/86/EC)	Unaccompanied minor	Article 2(f)
	Family reunification	Article 2(d)
	Family members	Article 4
	Best interests of the child	Article 5
	Restoring family links	Article 4, 10
	Vulnerable persons/ vulnerability	Article 3(9)
Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece	Best interests of the child	Article 6, recital 27
Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece	Best interests of the child	Article 6, recital 33

Soft law instruments

UN Committee on the Rights of the Child (CRC Committee), General comment No 14 (2013) 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.
UN Committee on the Rights of the Child, General Comment No 13 (2011) on the rights of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC13.
UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Joint general comment No 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/2.
UN Committee on the Rights of the Child, General comment No 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6.
UN Committee on the Rights of the Child, General comment No 12 (2009) The right of the child to be heard, 1 July 2009 CRC/C/GC/12.
UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), Joint General Comment No 3 (2017) and No 22 (2017) of UN Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration), 16 November 2017, CMW/C/GC/3-CRC/C/GC/22.
UN Committee on the Rights of the Child, General Comment No 20 (2016) on the implementation of the rights of the child during adolescence, 6 December 2016, CRC/C/GC/2.

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BZ-03-18-415-EN-N

ISBN 978-92-9476-446-1
doi:10.2847/084111