

# Note on Unaccompanied Children Fleeing From Ukraine

March 2022



*Photo by Christopher Furlong/Getty Images*





**Kids in Need of Defense (KIND)** is the pre-eminent U.S. non-governmental organization devoted to the protection of unaccompanied and separated children. KIND envisions a world in which children's rights and well-being are protected as they migrate alone in search of safety. Since its inception in 2008, KIND has been referred more than 27,000 unaccompanied children and partnered with more than 700 law firm, corporate, law school and bar association partners.

**KIND Europe** is helping unaccompanied children in Europe access free legal assistance with partners in Belgium, France, Greece, Ireland, Italy, and the United Kingdom.



**Child Circle** is a not-for-profit centre of expertise and public interest engagement to protect children from violence and promote their rights in Europe, founded in Brussels in 2014. Child Circle works on policy development and regional projects with partners throughout Europe, in particular, in the field of children in migration and children in justice proceedings. Child Circle's vision: a Europe where children are protected from violence through effective cooperation across professions and borders.

## **Authorship and contributions**

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## **Other recent Child Circle/KIND publications include:**

[Advancing Protection](#) for Unaccompanied Children in Europe by Strengthening Legal Assistance

[Stepping Stones to Safety](#): Strengthening Key Procedural Safeguards for Unaccompanied Children in Transnational Procedures within the EU

[Briefing Paper with key recommendations](#) on Making proposed EU measures concerning migrant children at the EU external border more child-centred and child-sensitive

## **Cover image caption:**

Refugee children fleeing Ukraine are given blankets by Slovakian rescue workers to keep warm at the Velke Slemence border crossing.

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# Introduction

This briefing paper focuses on responses in the European Union (EU) to the arrival of unaccompanied children fleeing from Ukraine.

It is evident that the scale and pace, and potentially long lasting nature, of the situation leads to huge difficulties in organising comprehensive responses from a legal, policy, and practical perspective. Clearly, lack of shared information, and lack of connection between the different actors, could cause additional problems and place already vulnerable children at further risk.

This paper aims to serve the efforts of the many stakeholders who are working together under a common EU framework of measures, by providing an overview of key issues to consider in particular from the perspective of procedural safeguards and access to protection and safety.

It starts by identifying the different circumstances in which unaccompanied children fleeing Ukraine might arrive in Europe and briefly outlining the different rules that will apply to their situation. It then identifies the procedural difficulties they may encounter.

The paper sets out critical areas for action. The urgent need for responses (and limitations in resources) demands immediate and temporary arrangements. Nonetheless, alongside supporting humanitarian emergency responses, stakeholders must work together on the development of tools and resources that assist the child protection system's ability to respond to all of the issues and risks these children face, in the immediate and longer term. We focus on how to strengthen the safeguards available for unaccompanied children and support the path towards sustainable arrangements.

When suggesting practical avenues for support, we point to existing building blocks for action. Ongoing developments under the EU Pact on Migration and Asylum, the EU Anti-Trafficking Strategy, and the EU Strategy on the Rights of the Child, as well as past experience in Kosovo, Italy and Greece can be built on, from an urgent and intensely practical perspective. Moreover, the necessary tools to respond to the situation will have an application beyond the situation of unaccompanied children arriving from Ukraine and should also be deployed immediately for other unaccompanied children who may be in deplorable situations in Europe at this time, including at the Belarussian border and Greek islands.

The paper concludes with guiding principles for how stakeholders can act together, including by increasing transparency, developing procedures, harnessing additional capacity, and promoting collaboration both nationally and across borders.



*Photo by Philipp Schulze/picture alliance via Getty Images*  
Ukrainian refugees get off a bus at the refugee shelter. The small village of Sumte in Lower Saxony is prepared to receive several hundred refugees from Ukraine.

## The circumstances of unaccompanied children arriving into the EU from Ukraine

We use the term “unaccompanied children” to cover persons under 18 years of age, who are outside their country of origin or habitual residence, and who have been separated from both parents and who are not being cared for by an adult who, by law or custom, is responsible for doing so. They may be travelling with siblings (either child or adult siblings) or with other adults who are not their primary caregivers or legal guardians. Some children will be travelling alone. In other cases, they may be travelling with adults who are not involved in care arrangements for them. In some cases, children may be travelling with adults who may be intending to exploit them or do them harm.

Ukraine’s total population is 41.46 million, of which 7.5 million are children. In the first few weeks of the conflict, the UN has estimated that over 3 million people have fled from the country. The vast majority of this group are women and children, as men between 18 and 60 are not permitted to leave the country but have to join up for military service. At the time of writing, no agency currently has comprehensive data on the number of unaccompanied children who have fled from Ukraine. Moreover, the circumstances in which children arrive or become unaccompanied in Europe, having fled Ukraine, vary.

## Children whose parents remain in the Ukraine and who are sent away for protection

Some parents, such as the mother who sent her 11-year-old son from Zaporozhzhia to Slovakia on his own with a telephone number written on his hand, chose to do so as she had to remain with an elderly and disabled relative, who could not make the journey.

Some parents are also seeking temporary guardians for their children in neighbouring states so that they can both remain to fight against the Russian forces. Others will have turned to an adult that can help to get their child out of Ukraine, with the hope that the child will be brought to safety.

Some of these children will be headed towards identified care arrangements made through private initiatives. Some of these children will be headed towards the border, in the hope that they will be taken in by child protection actors in the EU.

## Children leaving Ukraine with one or both parents in the EU

There are also children who had been left with relatives in Ukraine, whilst their parents worked elsewhere. It has not always been possible for such parents to return to collect their children and some children may be leaving Ukraine on their own. For example, approximately 230,000 Ukrainians are legally resident in Italy, many of whom are women working in the care sector. As fathers are not able to leave because they must fight, children are being sent abroad to seek protection and family reunion on their own.<sup>1</sup> Children may also be trying to reach parents who have been living and working abroad for some time and who have an irregular or undocumented status in an EU Member State.



## Children transiting the EU to reach other countries outside the EU

Some children will be arriving from the Ukraine into the EU with the aim of reaching other countries outside the EU, such as the UK, Switzerland, Norway, Canada and Israel. In recent times, persons have faced significant hurdles, including almost impossible bureaucratic requirements, to enter the UK, which could leave children exposed to uncertainty, upheaval and potential danger.

## Children who were living in residential facilities in the Ukraine

At the outset of 2022, there were also an estimated 100,000 children designated as “orphans” in Ukraine and living in between 650 and 750 separate institutions or boarding schools. Half of them are children with disabilities. The term “orphan”<sup>2</sup> may be used without being rooted in a formal legal definition and some will have parents or legal guardians, who may still be in Ukraine or who may already be abroad. Some children who were in institutions may have left Ukraine with staff from an institution, while others may have become separated from their caregivers and become unaccompanied or separated children during the evacuation. In one reported case, children were relocated to Israel from an orphanage in Ukraine. Other groups of children from orphanages in Kyiv, Odesa, Kharkiv, and Zaporizhzhia have been taken to EU countries including Poland and Romania. The Ukrainian authorities are trying to ensure that the children travel with sufficient information about their identities and needs but it is unclear whether they are being transferred into the care of child protection agencies in their states of arrival or transit. In previous comparable international situations many children were placed for adoption without procedures being put in place to reunite them with suitable family members and this is no longer considered good practice.<sup>3</sup> In some cases, private individuals are taking these children into their care.

## Trafficked children arriving from the Ukraine

Children in Ukraine are known to have been trafficked internationally and internally for sexual exploitation, forced begging and labour exploitation in agricultural industries. Their traffickers may well take them across the Ukrainian border to further exploit them elsewhere in Europe and, in particular, in neighbouring states where child trafficking is prevalent. There have already been reports of traffickers targeting children at borders.<sup>4</sup>

**Ukraine is also an origin, transit and destination country for child trafficking according to the US State Department’s 2021 Trafficking in Persons Report.**

## Children who have been orphaned during the war

It is likely that, as the conflict intensifies, parents will be killed and that other adults will take their children with them as they escape.



Photo by Philipp Schulze/picture alliance via Getty Images  
Ukrainian refugees get off a bus at the refugee shelter. The small village of Sumte in Lower Saxony is prepared to receive several hundred refugees from Ukraine.

## Unaccompanied Roma children

There are estimated to be some 400,000 Roma in Ukraine, with many of them living in Zakarpattia and Odesa. Some of the children have already been separated from close family members or will be during flight given the difficulties they already face in obtaining passports or other documentation. They may also be crossing into neighbouring states that are generally hostile to children and adults from the Roma community.

## Stateless children

As reported by the European Network on Statelessness in its recent briefing note,<sup>5</sup> the last census in 2001 recorded 82,550 stateless people in Ukraine and in 2021, UNHCR estimated that 35,875 people in Ukraine were stateless or had 'undetermined nationality'. Furthermore, approximately 10-20% of the estimated 400,000 Romani people living in Ukraine are stateless or at risk of statelessness. Additionally, 55% of children born in Donetsk and Luhansk and 88% of children born in Crimea were reported to lack Ukrainian birth certificates or personal documents, putting them at risk of statelessness. It will be important that stateless children are identified, registered as such and that this status is recognised if they travel onwards in the EU.

## Other non-Ukrainian national children

There are children who will be fleeing from Ukraine and who are not Ukrainian nationals. Some children will be stateless as noted above (including some children from the Roma community), others will be unaccompanied children from third countries, who were in Ukraine when the fighting broke out. These children may have long-term residence in Ukraine or temporary residence. Still others may be undocumented, while some may be asylum seekers or refugees, including children who were evacuated from Afghanistan. Some children will be dual nationals, but may not have the documentation to prove this and to secure a durable solution in their second country of nationality or to reach family there.



## Children born as a result of international surrogacy arrangements

There are children who will have been born as a result of international surrogacy arrangements with parents outside of the Ukraine, who may now be being transported on an urgent basis into the EU. Under national law, some of these children will have the nationality of the parents, who arranged for the surrogacy, from birth and should be entitled to acquire a passport to prove their nationality.<sup>6</sup> There may also be Ukrainian children whose birth through surrogacy does not comply with national law.

## Children who are in the process of an international adoption

There are children who are in the process of being adopted, who may now be arriving in the EU through an urgent process. The legal process for adopting a child from Ukraine will vary depending on the nationality and state of residence of the adopters. It will also be affected by the fact that Ukraine is not a member of Hague Convention on the protection of children and co-operation in respect of intercountry adoption.

## Children who arrive from Ukraine accompanied by their primary caregiver but who become separated from them whilst in the EU

Some children will arrive accompanied by their parent or primary caregiver but will become separated from them whilst in the EU. This may happen for a number of reasons, including where a parent or primary caregiver returns to the Ukraine, where a parent can no longer take responsibility for the child because of their own physical or mental health reasons (including trauma) or where an adolescent travels to another EU country to take up work, or falls prey to traffickers, for example by claiming to help them find work somewhere else in the EU.



## Ukrainian children present in the EU unaccompanied and unable to return to the Ukraine

Some Ukrainian children were temporarily present in the EU as students and are unable to return. Should the original care and custodial arrangements come to an end, as has happened in a number of cases, they may need to be taken into State care whilst they are still under the age of 18 and to be referred to any necessary assistance they may need post turning 18 years old.



# 11.

## Background overview of legal framework within the EU

Different bodies of rules govern the situation of unaccompanied children from Ukraine in Europe, depending on their personal circumstances and the issues in question, now and moving forward. It is welcome that the EU is applying the Temporary Protection Directive under Council Implementing Decision 2922/382 which should ensure many children gain quick access to protection and should be able to access support, education and health. Whilst many children arriving fall within the categories of persons who will benefit from the Temporary Protection Directive, others (including those who are not Ukrainian nationals or long term residents who fled as of February 24) do not benefit from its application. The European Commission is strongly encouraging Member states to extend temporary protection to more categories of persons.<sup>7</sup>

The table below illustrates the fact that different laws may simultaneously address the situation of an unaccompanied child, whether at the national, EU or international level. Their provisions concern *entry into the EU and transit within the EU, access to protection, representation, guardianship and care and custodial responsibility and family responsibility* (e.g., in the case of family reunion, ongoing adoptions or surrogacy arrangements). Complex questions of law and procedure may arise for some children. Moreover, some key procedures are under development or have been rapidly developed to underpin some of the arrangements anticipated in these laws, e.g., the transfer provisions contained in the EU Temporary Directive.

# Illustrative overview of bodies of law applying to unaccompanied children from Ukraine in the EU

<p><b>Entry into the EU and transit through the EU</b></p> <p>Ukrainian nationals: visa free entry to the Schengen Area for 90 days</p> <p>Other persons exiting Ukraine, such as foreign national students and temporary workers, will be classed as foreign nationals and require a visa by other EU States unless the border guards exercise discretion and let them cross the border for humanitarian reasons as recommended under the Commission Communication providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders</p>	<p><b>Temporary Protection</b></p> <p>EU Temporary Protection Directive, for Ukrainian nationals or those with long-term residence status in Ukraine who are registered as entering as of February 24, with the temporary protection available for a year from March 4, 2022</p> <p>National temporary protection instruments</p>
<p><b>Trafficking Protection</b></p> <p>EU Anti-Trafficking Directive: durable solutions for unaccompanied children who have been trafficked</p>	<p><b>International Protection</b></p> <p>EU Asylum Instruments for those who may have a claim for international protection</p>
<p><b>Other Forms of Protection</b></p> <p>National humanitarian laws Non-refoulement provisions and other relevant obligations under the ECHR and other Council of Europe conventions and policies</p>	<p><b>Return decisions to third countries</b></p> <p>For those children who fall under the jurisdiction of EU Return Directive, <i>when in the best interests of the child</i></p>
<p><b>Access to child protection system</b></p> <p>Temporary Protection Directive Reception Procedures Directive Trafficking Directive National humanitarian, child protection and welfare law</p>	<p><b>Care and custodial arrangements</b></p> <p>Temporary Protection Directive Reception Procedures Directive National humanitarian, child protection, and welfare law</p>
<p><b>Guardianship</b></p> <p>Temporary Protection Directive EU International Protection instruments Trafficking Directive National guardianship measures</p>	<p><b>Parental responsibility</b></p> <p>Brussels II a bis Regulation 1996 Hague Convention on Parental Responsibility National family law</p>
<p><b>Family Reunification</b></p> <p>Reunification provisions in the Temporary Protection Directive; Reunification provisions in EU international protection instruments where relevant and the Family Reunification Directive; EU Return Directive safeguards where relevant to third country nationals;</p>	



## Issues faced by unaccompanied children

**Unaccompanied children moving from Ukraine into the EU may face the following issues (amongst others) depending on their circumstances:**

***Crossing the border:*** Children may wait a long time at border crossing points or there may be no formal registration as they cross into neighbouring countries. Either situation places unaccompanied children in a very precarious situation. Ukrainian rules concerning citizens crossing the borders have been under revision, to establish procedures for documentation, authorisation and consular registrations for Ukrainian citizen children leaving without parents, or without both parents. If stopped at either side of the border they may face identification issues when they are travelling without official documents or biometric passports. They may be unable to give their full name, prove their nationality or age. Some girls entering the EU may claim to be over 18, in the event that people supporting them in onward movement (who might be traffickers) have told them to do so. Difficulties in border crossings may mean that family members may be split up, siblings may end up separated from one another. Children who do not benefit from visa free travel because they are not Ukrainian nationals may face delays and difficulties in exiting Ukraine.

***Identification as unaccompanied on entry:*** Children arriving may not be identified as unaccompanied by a primary caregiver, particularly if physically present with an adult. There may be an assumption that the adult is the parent and therefore the child is not identified as unaccompanied at the border, given information, and referred to child protection authorities/the official child care system or procedure. Among those arriving from Ukraine will likely be many unaccompanied children who are younger than those typically received in the EU. It may be particularly important to identify young children, who may be accompanied by an adult who is not their guardian. The child protection system response will need to cater to the needs of younger children with an age and gender-sensitive approach.

***Registration in EU countries as having crossed the border for the purposes of the Temporary Protection Directive:*** Unaccompanied children, if not assisted properly, may miss being registered properly by national systems for the future application of the EU Temporary Directive or other national status. Some children will have arrived at the outset of the crisis before 24th February as set out in the EU Temporary Protection Directive.

***Immediate referral to front line child protection procedures following entry:*** There may not be adequate safe spaces, with child protection actors for children, (such as the Blue Dot hubs being set up by UNICEF and UNHCR) immediately after the border. Unaccompanied children may fail to be referred into a protection system in the border country, in particular if their status as unaccompanied children is not identified. They may be met by adults (whether they are family members, relatives, private sponsors or strangers offering assistance), but are not being entered into the child protection system themselves, which puts children at risk of harm and means they do not receive the services, rights, and information to which unaccompanied children are entitled.

***Registration in the national child protection system:*** Children arriving may not be registered within the national child protection system promptly, and adequate systems may not yet be available. Ideally this registration should happen at the country of first entry, even where children are immediately moving to other countries to ensure the ability of exchanging necessary information on the location and initial registration of children. Children should also be registered in all countries to which they travel. It is also to ensure that a child's true identity is recorded in order to facilitate family reunion when this is in their best interests in the future. The longer the delay from the time of separation that information about the child and the child's parents is captured, the greater the difficulty may become in locating the parent and later reunifying. In some receiving States unaccompanied children are being referred to local child protection systems that have uneven resources. Some, for example, are under-resourced and are struggling to meet the demands for care of arriving children.

***Risk of disappearances:*** At different moments of their journey from the Ukraine and after their arrival in the EU, there is a risk that unaccompanied children will go missing. There are many reasons for this. They include an absence of registration on arrival, lack of referral to the child protection system and appointment of a qualified guardian, an inability to share information across agencies and in cases where children traumatised by events travel on to Member States that they perceive to be safer or where they have family members and friends.

***Risk of trafficking, exploitation and abuse:*** There is a clear risk to children if they are taken in by persons who have the intention of trafficking, exploiting or otherwise abusing them. It has also been reported that human traffickers are present at transport hubs looking for children who they could befriend and exploit. This will particularly be the case, in a state that already has a history of child trafficking which is true for a number of the states bordering Ukraine.

***Connecting with family members/relatives/ private sponsors in the EU:*** Children being met by family members/relatives or private sponsors may face a series of risks if the persons receiving them are not well placed to take care of them because of age, ill-health, cultural differences or lack of experience with their particular needs on account of trauma or disability. There may not be any best interests assessment undertaken and child protection vetting of host families to ensure that transfer of care to such persons is safe. There may not be any measures undertaken to ensure the care arrangements are formalised and supervised by child protection authorities (or judicial authorities) in the location where these children eventually reside. Similar concerns will arise in some situations where children arrive with elderly grandparents who may not be able to care for them long term. If assessments are not undertaken, necessary support may not be provided to the grandparents or the child may not be assisted by the child protection system.

***Individual needs assessment:*** Children may not benefit from an individual assessment of their needs, including urgent health needs, whether physical or mental. The absence of capacity in the health system to respond to these needs on arrival may mean that the assessment is not undertaken, or if undertaken, the results risk not being available for follow-up with services engaged with the child. This is of particular concern, as it is known that many unaccompanied children with disabilities are in this particular migration flow. It appears that 50% of children in so-called orphanages have some form of disability.<sup>8</sup> This is a factor that is not typically as prevalent among other cohorts of unaccompanied children. Consequently, children with disabilities may not have their specific rights and needs met. It may also be that in this cohort children are also younger than is typical in other cohorts.

***Restoring contact with family members in Ukraine:*** Children may experience difficulties in contacting family members in Ukraine to inform them of their whereabouts. Family members may be left without information on the location and wellbeing of their children. As is foreseen in the Ukrainian rules being revised, children deprived of parental care arriving from Ukraine should be registered by consular authorities in the country in which they are present.

***Risk of statelessness and the need to protect legal identity and ensure the right to a nationality:*** Problems with documentation and registration as well as ad hoc care arrangements may present risks to the child’s identity and ability to establish their nationality in the future. As highlighted in EMN research, unaccompanied children are more likely to have problems establishing their legal identity and some may be at risk of statelessness. The fact that many children will be fleeing from occupied territory and that the current situation may lead to further state dissolution, also means that children could be placed at risk of statelessness.

***Information and interpretation:*** Information for children in Ukrainian and Russian on the procedures and care arrangements for them, under EU and national law, may not be available, or may not be available in age appropriate formats, or may not be up to date in line with the changing situation. Many children will need the assistance of interpreters to understand information and how to exercise their rights. There will also be cultural challenges which call for the involvement of cultural mediators.

***Guardians*** may not be appointed to unaccompanied children promptly, either in the country of first arrival from Ukraine, or in countries to which a child travels subsequently. Existing national guardianship systems may not have a mechanism for appointing temporary guardians (in the border context) or to children falling under the Temporary Protection Directive (as it has never before been applied)<sup>9</sup> and ensuring continuity and transfer of responsibilities within the country and abroad. In countries hosting children, guardians may not be available, as in some countries there are already waiting lists for guardians for unaccompanied children who have arrived from other countries, who continue to arrive in significant numbers in recent times. Many guardianship services may also lack capacity and will need funding to recruit, employ, train or support more guardians. Existing guardians may also have no experience of or training about some of the specific circumstances that unaccompanied children fleeing Ukraine may encounter, such as the circumstance of Roma children, trafficked children or children with a range of disabilities, or the protection status available to these children.

***Parental responsibility for children in private care arrangements or placed in foster families nationally*** where children are in the care of relatives, friends or foster families, national authorities, including courts, will need to clarify and confirm the nature of the care arrangements. This may involve contact with Ukrainian embassies or consular authorities. Sometimes these care arrangements may involve parental responsibility. However, they may in some instances comprise arrangements to provide daily care and shelter arrangements, and not parental responsibility. New parental responsibility arrangements, such as a child being recognised formally as being under the parental responsibility of the host State, may need to be considered. In some countries, in those situations, relatives, friends or foster families may be considered/or appointed to exercise guardianship, but may not receive support and assistance to do so. Moreover, there may be a need for the appointment of guardians - who are qualified or trained - to carry out specific tasks. For example, this may be the case where these children may need specific assistance for procedures in which they are involved such as international protection or family reunification procedures. Independent guardianship in such instances is also important to ensure the child's views are heard and best interests safeguarded.

***Parental responsibility and guardianship for children who have been transferred in orphanages:*** Where children have arrived with teachers or staff from orphanages in Ukraine, it will be important to establish what parental arrangements existed at the outset and establish whether they should remain in place. There may be situations where Ukrainian staff may wish or need to leave to address their own personal circumstances and family. Consideration needs to be given to whether these children are formally taken into the responsibility of the child welfare system of the host country, while the existing daily care arrangements from the Ukrainian staff remain in place and are supported. There may also be a need for the appointment of guardians who are qualified or trained to carry out specific tasks, for example, where these children may need specific assistance for procedures in which they are involved, such as international protection or family reunification procedures or where they may need access to legal assistance.

***Procedures to assist children to trace, restore and maintain links and reunite with family members and relatives*** where it is in their best interests may not be clear, and they may not be available to all children. Where they are triggered, they may be lengthy and cumbersome. This can lead to children either remaining too long in overcrowded reception facilities or disappearing from reception facilities in response to being trafficked or following ill-informed advice from peers or members of their community.



***Proper care and reception arrangements and access to services beyond immediate humanitarian assistance:*** There is clearly a huge challenge faced by children who do not receive these, due to lack of capacity in the system. Moreover, where children were initially received by private sponsors in response to urgent humanitarian needs, these arrangements may not be suitable, or may not be sustainable, in the longer term. Access to services, such as education and health care, may pose particular challenges for children and the actors supporting them, locally and nationally.

***Any transfers of unaccompanied children*** from one EU country to another in the event of a country having insufficient reception capacity may not be accompanied by sufficient information, assistance and a best interests assessment, including a personalised risk assessment, prior to relocation. Vital information about the circumstances of the child may not be transferred with them to serve in the procedures that determine proper care arrangements, family reunification and longer term protection procedures. Cross border case management procedures may not be clearly defined, or involve all the necessary steps and stakeholders.

***Lack of continuity and stability in support for children:*** children will likely need different information, support and services en route during their journey and once they are settled in a host community. Their situation may change or develop as they may seek to join family or to move to another country for other reasons. It may be that their caregiver is no longer able to care for them and they need a temporary care arrangement. Children may need time to understand their new situation and to think about their needs and questions once things calm down.

***Accessing durable solutions:*** Finding the right procedural pathway towards a durable solution in the mid-term may also prove complicated for unaccompanied children in light of the different procedures that could potentially apply and also depending on which solutions may be available in different national legal systems across the EU, including international protection alongside temporary protection, national humanitarian status or family law arrangements.

***Access to legal aid and quality legal assistance and representation:*** As described above, there are a myriad of legal issues that may come into play for an unaccompanied child fleeing Ukraine. Many unaccompanied children may not be able to afford any legal aid and should be able to avail of free legal information and counselling as well as free legal aid for representation by legal assistance providers where needed in relevant procedures. Without such assistance, children (both Ukrainian and non-Ukrainian) may not be able to navigate the procedures necessary for relocation within the EU or to join family elsewhere in the EU or outside of the EU or to seek durable solutions. Other complex proceedings, requiring legal assistance and representation, may arise where a child may have been trafficked or is facing racism in the country of arrival.

# IV.

## Recommendations on building blocks and critical areas of action, as well as practical avenues and guiding principles for action

### Building blocks for action

Despite the huge challenges, a positive starting point is that there are a wide range of specific EU policy and practical processes that directly apply or are of specific relevance to the procedural issues facing children, including for example recent relocation schemes for unaccompanied children in Greece. There are also more general EU measures, existing or anticipated, that can help, particularly in the field of child rights and justice measures. In particular, this includes EU action to strengthen the integrated national child protection systems which are key to responding to the arrival of children into the EU and which can help build better cross-border systems across EU States as well as the European Child Guarantee. Regional projects and regional networks, including those co-funded by the EU (such as the European Guardianship Network), could also play an important role in developing and adapting resources, as well as harnessing the capacity of stakeholders to work together and support each other.

New operational [guidelines](#) from the Commission have been issued for the implementation of the Council Decision applying the Temporary Directive. They underline new EU processes which are being put in place, including the EU Solidarity Platform. The EU Migration Preparedness and Crisis Blueprint Network is meeting regularly. The guidelines are described as a living document which will have to be updated regularly based on new questions received from Member States, to reflect the situation on the ground and take account of the Member States evolving needs. A [Communication](#) from the Commission “Welcoming those fleeing war in Ukraine: Readying Europe to meet the needs” also addresses the special protection needed for children. Further guidance and procedures are anticipated including standard operating procedures for transfers.

## Critical areas of action

Clearly there is an obvious and massive need to augment reception capacity for all children arriving from the Ukraine (including ensuring foster families for unaccompanied children who are supported and supervised) and to provide access to education and health services, including mental health services for traumatised children.

This paper focuses on strengthening the procedural safeguards which will be in place for unaccompanied children. From the issues identified above, we can see that there are a number of priorities for action, including:

- **Guidance on identification, registration and referral processes for national authorities.** As each EU MS will be responsible for the registration in a national system, it is important that this will be harmonised across the EU, that information can be shared between MS with respect for data protection rules and that registration from one MS is recognised by another. This includes guidance on what supporting documentation is provided and how family relations/caregiving arrangements are assessed and against what type of standards. It includes guidance on what data should be collected and for what purposes. It also includes support for ensuring access to such data where appropriate between different actors and across borders and promoting the presence of child protection actors at the border, as an essential part of such an identification process and which would facilitate the immediate referral of unaccompanied children to the national child protection system.
- **Promoting the development of national SOPs** for responding to the needs of unaccompanied children from the first encounter, referring them to child protection systems and providing access to temporary protection or other protection procedures. The specific processes made by each national system will vary in line with the different models of child protection, guardianship and reception that exist in each country, and by the very dynamic situation currently. However, all countries will have in common the need to have clear SOPs which will allow for coordination and accountability in the system. SOPs will assist to strengthen coordination at both the national and European levels. The EU can help promote the development of such SOPs and ensure an exchange of good practice on SOPs regionally. Such SOPs should be child-centred and take into account the specific needs and vulnerabilities of individual children.
- **Promoting child safeguarding actions and awareness of the risks of trafficking, exploitation, and abuse of unaccompanied children.** For example, information on trafficking trends should be compiled and shared, including through the involvement of Europol, in order to promote awareness and up-to-date risk indicators, based on the different ways in which criminals are responding to the situation. In addition, regional information sessions and training on child safeguarding should be carried out urgently with a range of actors starting with border guards but going across the range of actors involved in responding to the situation of these children. EU action can also include promoting resources on safeguarding processes, such as guidance for, and vetting of, volunteers as well as supervision and support for foster families.





- **Promoting the provision of information to unaccompanied children** (such as information on available support and assistance for them and access to education and health services) It includes through facilitating regional pools of interpreters and cultural mediators. This could also include support for the further development of digital platforms, and through creation of child-friendly and accessible materials.
- **Supporting guardianship** encouraging or funding the availability of pools of specialised emergency teams of guardians. Supporting the development of temporary models of guardianship, including supporting the development of specialised services, such as helpdesks, for newly recruited or volunteer guardians; encouraging the exchange of good practice on the provision of guardianship and support to children.
- **Promoting access to legal assistance providers:** Recognising the need for, and encouraging the availability of, publicly funded lawyers and legal assistance providers who have the skills and knowledge to address children’s cases. Encouraging and supporting pro bono efforts of the European legal community to support this, for example by assisting in the provision of information on the wide range of legal issues that may be involved in such cases and providing other forms of case management support, particularly in cross border procedures.
- **Supporting the development of child-centred multidisciplinary, inter-agency case management processes**, as part of national SOPs. As has been recognised in international guidance and in the EU Strategy on the Rights of the Child, *“the promotion of integrated child protection systems is intrinsically linked to the prevention and protection from violence. With the child at the centre, all relevant authorities and services should work together to protect and support the child, in their best interests.”* This would include, for example, ensuring strengthening individual assessment processes, including to address the needs of children with acute needs, such as children with disabilities.
- **Developing child centred cross-border procedures** between both authorities and other actors supporting children such as guardians and legal assistance providers. This would allow for the necessary exchange of information, best interests assessments, transfer of care and custodial arrangements, that are needed to address family reunification and relocation and to respond to disappearances of children.
- **Developing harmonised European processes relating to information collected.** This could include guidance on personalised case files for unaccompanied children, with a common European wide data protection protocol, e.g. establishing a process for obtaining the consent of the child or a guardian or parent, for the file to be shared where necessary for best interests assessments and other processes, nationally and where necessary across borders, or for sharing necessary data when responding to disappearances.

## Practical avenues for taking action

The EU clearly plays both a vital convening role in bringing together expertise and action and in centralising information and resources. Whilst concentrating significant efforts to respond to huge immediate needs, the EU also has the ability to support efforts dedicated to strengthening the systems that respond and the issues that await children and all working with them in the longer term.

A starting point to address crucial areas of action could be to convene a regional working group of stakeholders meeting regularly to advise on, and contribute to, specific action. This can be done through including representatives from different types of stakeholders on children's issues, such as European networks, like the European Guardianship Network, European Network of Ombudspersons for Children and the Council of European Bar Associations and Law Societies (CCBE), IGOS, and European agencies, as well as the NGOs and bodies of professional actors who often bring the specialised expertise on particular issues. Different thematic meetings can subsequently be organised to bring the necessary expertise and resources together. These can contribute in a targeted way to existing and planned EU initiatives.

## Illustrative examples of avenues to address critical actions:

 <b>Guardianship</b>	<p>The work of the EU funded European Guardianship Network, the EU Fundamental Rights Agency (guardianship study and guidance, upcoming training and resources to be developed with the EUAA) and the EUAA</p>
 <b>Child protection and child centered procedures</b>	<p>The initiative to support the development and strengthening of integrated child protection systems foreseen under the EU Strategy on the Rights of the Child, as these systems are the key channels to respond to the needs of children arriving. Such an initiative has great potential to ensure that better case management lies at the heart of these cases.</p>
 <b>Cross border procedures</b>	<p>Concerning transfers, family reunification and disappearances: include the work of the new EU Solidarity Platform and the EUAA VEN (within which a thematic meeting on relocation of unaccompanied children is foreseen). The report <i>Stepping Stones to Safety</i> included a range of specific suggestions on actions to support stronger procedural safeguards in transnational procedures.</p>
 <b>Trafficking</b>	<p>The EU Anti-Trafficking Strategy (priorities include early identification, the speedy appointment of guardians and the establishment of referral mechanisms). The work of FRONTEX (e.g. training of border guards on identifying (potential) victims of trafficking and responding appropriately) and Europol</p>

## Guiding principles for action

When taking action, a number of principles should guide stakeholders working to bring together their collective efforts. These principles should also guide contingency and emergency planning for the EU in the future. Events since 2015 showed that it is important to:

- **Gather and share data on a regional basis.** Having a central and regular monitoring of information, for example, through the EU Fundamental Rights Agency, is immensely helpful to all actors. Such data could include data on the situation of unaccompanied children arriving, disaggregated to show data such as nationality, age group and gender. It is important to gather information also on the responses available for children, including the type of care arrangements available within the EU, and the availability of support arrangements for them, e.g. the possible appointment of a guardian and access to legal assistance. In addition, it will be useful to include information on the number of children involved in family reunification, private sponsorship or relocation procedures respectively.
- **Be transparent and make information on new procedures and processes publicly and widely available.** For example, in recent years, lack of publicly available information on standard operating procedures on relocation schemes hampered the ability of key actors to prepare to support unaccompanied children coming from Greece.
- **Develop comprehensive procedures and promote coordination between all actors.** Many stakeholders play a role, alongside national authorities and international organisations. This is particularly important in this situation where many initiatives to relocate children are being undertaken by foundations and private actors. Therefore, it will be essential to develop coordination mechanisms at the national level. Cross border protocols developed at EU level should promote a multidisciplinary and inter-agency process and EU recommendations can promote a similar approach to coordination at national level.
- **Be inclusive in developing emergency or new procedures and get buy-in from all actors for them.** For example, representatives of all relevant stakeholders, including children's ombudspersons, civil society organisations and professionals working with unaccompanied children (and not simply national authorities and international agencies) should contribute to the development of key cross-border protocols and tools at EU level and to national procedures. The involvement of child protection and welfare actors in planning will avoid the risk that procedures overlook steps that function as crucial safeguards for children. An inclusive process will ensure that private actors are also aware of, and held accountable to the same standards.

- **Focus both on urgent humanitarian needs, but also ensure that the necessary longer term arrangements and procedural safeguards are being planned.** This action should be given political priority to ensure sustainable and appropriate responses to unaccompanied children to the maximum extent possible, given the uncertainty of their situation and the acute risks they face, both in terms of their immediate needs and their longer-term development.
- **Leverage regional resources:** support European projects and networks of actors which can immediately exchange on good practices, have common information sessions and work together to support each other, including through common training.
- **Fund innovative practices:** the EU should deploy funding to capitalise on innovative practice to harness and augment capacity. For example, some experience gained during the COVID pandemic on providing remote, on-line support or specific helpdesks (including in the provision of legal assistance) can be built on now.<sup>10</sup> Technology can be deployed to ensure access to information and to actors who can assist. Technology will be key to reaching such a large and dispersed population.
- **Focus on action which strengthens the integrated child protection system which should be at the fore of responding to the situation of these children.** For example, this should involve strengthening case management procedures and deploying standard national procedures and services to the extent possible. Procedures built into State structures will tend to be more sustainable. Efforts to strengthen the system should capitalise on procedures, models and tools in the field of child-friendly justice that have been specifically designed in a child-centred way and allow for multidisciplinary inter-agency approaches. These include drawing inspiration from inter-agency, under-one-roof approaches to responding to child victims of crime, such as the Barnahus ([www.barnahus.eu](http://www.barnahus.eu)). Another helpful resource for case management processes includes standards developed to strengthen the systematic use of inclusive and participatory individual assessment procedures, where children are involved in criminal proceedings as victims or suspects, such as in the recent FOCUS project.<sup>11</sup>
- **Promote child safeguarding at every moment and in all responses.** It is of utmost importance that the EU send a strong message about its commitment to child safeguarding and the need for communication and partnership on this issue. This should include conditions in relation to child safeguarding in all EU funding activities.

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- **Do no harm:** Ensure that no action harms children, including by avoiding further separation when not in the best interests of the child, and ensure that information regarding the child’s family is captured as early as possible. Lessons learned from the Americas and Afghan crisis context show that the further in time a child is from separation from family, the harder it is to gather accurate information and to reach the family. Information about a child’s family will also be important if parents are killed and can go towards a child’s “life story” book similar to those created for children who are adopted.
- **Promote child participation as a cross cutting activity:** work to give a voice to children both in terms of EU citizen children and children arriving from Ukraine. In the latter case, this will help focus on real needs and risks facing children arriving from Ukraine.<sup>12</sup>
- **Ensuring all unaccompanied children in vulnerable situations benefit from action. This is a point of fundamental importance.** Prior to the Ukraine crisis, the urgent need to address the extremely precarious situation of other groups of children arriving into Europe, including from Afghanistan was recognised. Action now should ensure that their protection remains a priority.



# Endnotes

## Note on Unaccompanied Children Fleeing from Ukraine

March 2022

- 1 <https://www.theguardian.com/world/2022/feb/26/at-ukrainian-border-mother-brings-strangers-children-safety>
- 2 In many former States of the USSR where one parent has died or both parents are unable to care for a child due to poverty, substance abuse or because of child protection concerns, they are placed in institutions and are generically known as “social orphans.”
- 3 [Unaccompanied and separated children fleeing escalating conflict in Ukraine must be protected \(unicef.org\)](https://www.unicef.org/ukraine/unaccompanied-separated-children-fleeing-escalating-conflict-ukraine-must-protected)
- 4 [Unaccompanied and separated children fleeing escalating conflict in Ukraine must be protected – UNICEF and UNHCR, 7 March 2022](https://www.unicef.org/ukraine/unaccompanied-separated-children-fleeing-escalating-conflict-ukraine-must-protected)
- 5 <https://www.statelessness.eu/statelessness-ukraine-crisis>
- 6 For example, the UK is making arrangements to issue British passports as an emergency measure to the surrogate children of British nationals.
- 7 Communication from the Commission on operational guidelines for the implementation of Council Decision 2022/38 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection.
- 8 [Unaccompanied and separated children fleeing escalating conflict in Ukraine must be protected \(unicef.org\)](https://www.unicef.org/ukraine/unaccompanied-separated-children-fleeing-escalating-conflict-ukraine-must-protected)
- 9 Similar to the provisions for unaccompanied children in the first generation EU international protection legislation, Article 16 of the Temporary Protection Directive adopted in 2001 provides for “legal guardianship or where necessary, representation by an organisation which is responsible for the care and wellbeing of minors or by any other appropriate representation”. The Directive was not subsequently revised to strengthen this safeguard for children, as occurred in the revision of the EU international protection legislation in 2013.
- 10 For example, European Lawyers in Lesvos, a partner in the KIND Europe Initiative, developed increased remote pro bono assistance support from lawyers to support cases involving unaccompanied children on the Greek islands during the Covid -19 pandemic.
- 11 Individual assessments when a child is involved in the criminal proceedings are intended to identify a child’s circumstances and immediate needs for support and assistance, which provide a gateway into processes that meet the child’s needs, including best interests assessments concerning arrangements in their regard.
- 12 A useful illustration of the concrete benefits of child participation in emergency responses includes the report by Save the Children Germany on child protection risk assessments for children in emergency shelters in Berlin in 2017 which included interviews with adolescents in their research.

# Note on Unaccompanied Children Fleeing from Ukraine

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