

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CDDH(2021)R95 Addendum 1
10/12/2021

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**GUIDE ON FAMILY-BASED CARE
FOR UNACCOMPANIED AND SEPARATED CHILDREN**

TABLE OF CONTENTS

1. INTRODUCTION.....	3
1.1. Context.....	3
1.2. Scope.....	4
1.3. Definitions.....	5
2. LEGAL PRINCIPLES.....	6
2.1. Best interests of the child.....	6
2.2. Primacy of the status of the child.....	9
2.3. Provision of care and protection.....	11
2.4. The right to respect for family life.....	14
2.5. The right to participation.....	15
2.6. Guardianship.....	16
3. PRACTICAL PRINCIPLES.....	17
3.1. An integrated child protection system.....	17
3.2. The specific needs of the child.....	19
3.3. Sufficient and suitable places and services.....	20
3.4. Recruitment of host families.....	22
3.5. Screening, training, and support to host families.....	23
3.6. Monitoring.....	24
3.7. Transitions.....	25
4. CONCLUSION.....	26

1. INTRODUCTION

1.1. Context

1. A large number of unaccompanied and separated children arrive in Europe after undergoing extremely difficult and potentially traumatic journeys.¹ A number of these children may also have experienced serious trauma prior to leaving their country of origin. Due to their inherent vulnerability – and the particular risks they face before, during and after their arrival – they are entitled to special protection and care. Despite their unquestionable right to protection, a number of unaccompanied and separated children remain in difficult conditions after their arrival in Council of Europe member States. The reasons are varied but include, *inter alia*, lack of appropriate accommodation and limited access to child-friendly services.

2. Against this backdrop and in light of Council of Europe priorities in the field,² the Drafting Group on Migration and Human Rights (“the CDDH-MIG”) paid particular attention to the rights of refugee and migrant children during the preparation of a comprehensive [Analysis of the legal and practical aspects of alternatives to detention in the context of migration](#) (“the CDDH Analysis”)³ and the accompanying Guide on “[Alternatives to immigration detention: Fostering effective results](#)” (“the CDDH Guide”).⁴ Building on the work already completed, the CDDH-MIG was asked to explore issues pertaining to alternative family-based care for unaccompanied and separated children.⁵

3. Long promoted as a preferred accommodation option for unaccompanied and separated children, alternative care principles promote deinstitutionalisation and family-based care as a way to better protect children. Notwithstanding the prevalence of Council of Europe, United Nations and European Union standards and guidelines on the benefits of family-based care for unaccompanied and separated children, its practice has been far from commonplace, with most children living in residential care.⁶ For example, in 2017, the European Union Agency for Fundamental Rights (“FRA”) noted that foster care for unaccompanied children was only available in 12 EU member States and was not available or extremely rare in 16 EU member States.⁷ The European Commission likewise indicated that “[w]hile the use of family-

¹ For an overview of available figures please see: United Nations Children’s Fund (“UNICEF”), United Nations High Commissioner for Refugees (“UNHCR”) and International Organisation for Migration (“IOM”), *Refugee and Migrant Children in Europe - Accompanied, Unaccompanied and Separated*, July 2021; UNICEF, UNHCR and IOM, Latest statistics and graphics on refugee and migrant children, available at: <https://www.unicef.org/eca/emergencies/latest-statistics-and-graphics-refugee-and-migrant-children>, last accessed on 08/10/2021; Eurostat, Children in migration - asylum applicants, *Data extracted in June 2021*, available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Children_in_migration_-_asylum_applicants#Main_features_at_EU_level_in_2020, last accessed on 08/10/2021.

² See, for example, Council of Europe Action plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025) adopted by the Committee of Ministers in May 2021; Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019) adopted by the Committee of Ministers in May 2017; Council of Europe (2016), Strategy for the Rights of the Child (2016-2021), March 2016.

³ Council of Europe, *Legal and practical aspects of effective alternatives to detention in the context of migration*, Analysis of the Steering Committee for Human Rights (CDDH) Adopted on 7 December 2017.

⁴ Council of Europe, *Alternatives to Immigration Detention: Fostering Effective Results*, Practical Guide Adopted at the 91st CDDH meeting (18–21 June 2019).

⁵ Document CDDH(2019)R91, para. 43.

⁶ European Union Agency for Fundamental Rights (“FRA”), Fundamental Rights Report 2017, Publications Office of the European Union, Luxembourg, 2017, (“FRA Fundamental Rights Report (2017)”), p.184; De Ruijter de Wildt, L; Melin, E; Ishola, P; Dolby, P, Murk, J; and van de Pol, P (2015), Reception and Living in Families – Overview of family-based reception for unaccompanied minors in the EU Member States, Stichting Nidos, Utrecht, p. 127.

⁷ Ibid.

based care/foster care for unaccompanied children has expanded in recent years and has proven successful and cost effective, it is still under-utilised”.⁸

4. Significant challenges to offering and expanding family-based care for unaccompanied and migrant children still remain. These are related to, *inter alia*, (a) a ‘disconnect’ between asylum and migration systems on the one hand, and child protection and youth care systems on the other; (b) difficulties relating to the recruitment of foster families; (c) limited practical knowledge and lack of concrete examples on how to increase the quality and availability of family-based care placements across Europe; (d) limited ability to provide care and protection following the increased arrivals since 2015; and (e) insufficient capacity, including unequal burden sharing among member States.⁹

5. Developing a holistic approach to care that recognises all children as right holders is the first essential step that needs to be taken to ensure greater support to unaccompanied and separated migrant children arriving in Europe. This can, *inter alia*, be addressed through a legislative framework that supports protection in practice. Such a system also foresees necessary safeguards for all children to be able to understand their rights, access relevant services and benefit from holistic support. A good model of reception in families can be based on practices that are developed locally and then scaled up once they have been properly analysed and evaluated. Policies can then be developed based on these experiences. Chances of success can be enhanced through proper follow-up and collaboration within the system as well as through guidance and support to those working at the grassroots level. Practical knowledge and concrete examples on how to address persisting challenges and increase the quality and availability of family-based care placements are further needed. A concerted approach, based on solidarity, rooted in human rights, and delivered in a coordinated and integrated manner, can help ensure that the current situation does not become a long-term structural problem whereby individual States are unable to cope with the pressures of arrivals.

6. Building on the aforementioned key principles and needs, this work on “*Family Based Care for Unaccompanied and Separated Children*” aims at clarifying key international standards and practical aspects in the field, thereby supporting Council of Europe member States in meeting their international commitments *vis-à-vis* unaccompanied and separated children.

1.2. Scope

7. This document focuses on unaccompanied and separated children in the context of migration, from the moment of arrival on the territory of Council of Europe member states and until a durable solution is found.

8. The scope of this work is to identify key aspects for Council of Europe member States to consider when developing and implementing family-based care for unaccompanied and separated children in the context of migration. As such, it aims at promoting effective protection systems for children on the move. It likewise aims at ensuring that unaccompanied

⁸ Communication from the Commission to the European Parliament and the Council, *The protection of children in migration*, COM(2017)211 final, 12 April 2017, p. 8.

⁹ CDDH-MIG, *Feasibility Study on the Reception Conditions for Refugee and Migrant Children*, Preliminary Draft, 2019, Document CDDH-MIG(2019)06, para. 17; see also, CDDH-MIG, Report, 7th Meeting, 23-24 October 2019, Document CDDH-MIG(2019)R7; para. 4. For an overview of sources with available figures see above footnote 1.

and separated children have access to quality care and support with a particular focus on family-based accommodation as a preferred option.

9. Family-based care is the type of care where a child lives in a family domestic environment other than that containing her or his usual primary caregivers. It contemplates placement in family settings either with adult relatives or suitable adults who are not related to the child. It covers kinship care, foster care and other family-based or family-like placements and refers to the context in which the care is provided.

10. Family-based care is nested within a broader range of accommodation options such as group care and supervised independent living arrangements which may be used by member States.¹⁰

1.3. Definitions

11. For the purpose of this work:

- (a) A child “refers to any human being below the age of 18 years”.¹¹
- (b) An Unaccompanied Child (UAC) is a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.¹²
- (c) A Separated Child (SC) is a child separated from both parents, or from his or her previous legal or customary primary caregiver, but not necessarily from other relatives. She or he may, therefore, be a child who is accompanied by other adult family members.¹³

12. Alternative Care is the care provided for children by persons who are not their usual primary caregiver and takes the form of:¹⁴

- (a) Informal care – a private arrangement provided in a family environment, where the child is looked after by relatives, friends or others in their individual capacity, on an ongoing or long-term basis. These arrangements have been set up at the initiative of the child, or his or her parents or other persons and have not been ordered by an administrative or judicial authority or accredited body.
- (b) Formal care – care ordered by a competent administrative or judicial authority. Formal care can either be provided in a family environment, or in a residential one.

13. Generally speaking, formal or informal placement options may be divided into the following types of care:

¹⁰ For a further information on the various types of alternative care see below paragraph 14.

¹¹ Council of Europe, Recommendation CM/Rec(2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration, 11 December 2019, (“Committee of Ministers, Recommendation CM/Rec(2019)11”), II. Definitions, para. 1.

¹² Council of Europe, Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied minors (“Committee of Ministers, Recommendation CM/Rec(2007)9”), para. I.5; United Nations, Committee on the Rights of the Child, *General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, CRC/GC/2005/6, 17 May – 3 June 2005, (“CRC Committee (2005), General Comment No. 6”), para. 7; United Nations, General Assembly, *Guidelines for the Alternative Care of Children*, Resolution 64/142, 24 February 2010, (“UNGACC”), para. 29(a)(i); United Nations, UNHCR, *Child protection Issue Brief: Alternative Care*, January 2014, (“UNHCR, *Child protection Issue Brief*”), p.1.

¹³ Committee of Ministers, Recommendation CM/Rec(2007)9, para. I.6; UNGACC, para. 29(a)(ii); UNHCR, *Child protection Issue Brief*, p.1; see also, Save the Children, UNHCR, UNICEF, *Statement of Good Practice – 4th Revised Edition: Separated Children in Europe Programme*, 2009, pp. 3-4.

¹⁴ UNGACC, para. 29(b).

- (a) Interim care – care provided on a temporary basis for up to twelve weeks. Following the initial twelve-week review, the placement should be referred to as longer-term care.
 - (b) Longer-term care – care placement lasting more than twelve weeks and may be with the same caregivers who provided the child with interim care.
 - (c) Permanent placement – “Adoption, kafala or other care arrangement that is stable, and expected to continue until the child reaches adulthood”.¹⁵
14. Alternative care may be provided to a child in the following contexts:¹⁶
- (a) Kinship care – “family-based care within the child’s extended family or with close friends of the family known to the child”. It can be either formal or informal in nature;¹⁷
 - (b) Foster care – a placement of the child in the domestic environment of a family authorised by a competent authority for the purpose of alternative care. A foster care family is not related to the child but has been selected, qualified, approved and supervised for providing such care;¹⁸
 - (c) Other family-based or family-like care placements – “care settings where an existing family plays a formal care role similar to that of a foster carer – but does not operate within the foster care service”;¹⁹
 - (d) Residential care – care for the child provided within a non-family-based group setting “such as places of safety for emergency care, transit centres in emergency situations, and all other short- and long-term residential care facilities, including group homes”;²⁰
 - (e) Independent living arrangements – “a living arrangement where an adolescent child, or group of adolescent children, live independently”;²¹
 - (f) Group Care – “a form of residential care where children are placed in small group home that is run like a family home, whereby groups of, say, six to eight children or young people are cared for by consistent caregivers within the children’s community”.²²

2. LEGAL PRINCIPLES

2.1. Best interests of the child

15. The principle of the best interests of the child, as enshrined in Article 3 of the United Nations Convention on the Rights of the Child (“CRC”), is the cornerstone of child protection and encompasses all decisions and actions involving them. The concept of the best interests of the child is flexible and adaptable. As such, it “should be adjusted and defined on an

¹⁵ Interagency Working Group on Unaccompanied and Separated Children, *Alternative Care in Emergencies Toolkit*, published by Save the Children on behalf of the Interagency Working Group on Unaccompanied and Separated Children (“Alternative Care in Emergencies Toolkit”), 2013 p. 57. “Kafala” refers to “a form of family-based care used in Islamic societies that does not involve a change in kinship status, but does allow an unrelated child, or a child of unknown parentage, to receive care and legal protection”, p.12.

¹⁶ UNGACC, para. 29(c).

¹⁷ *Ibid.*, para. 29(c)(i).

¹⁸ *Ibid.*, para. 29(c)(ii).

¹⁹ Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012). *Moving Forward: Implementing the Guidelines for the Alternative Care of Children*. UK: Centre for Excellence for Looked After Children in Scotland, p. 33.

²⁰ UNGACC, para. 29(c)(iv).

²¹ UNHCR *Child protection Issue Brief: Alternative Care*, p. 2

²² *Ibid.*, p.1

individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs”.²³ Determining the best interests of a child commences with an assessment of his or her best interests by reference to a variety of individual circumstances, including the age, gender, level of maturity and experiences of the child where the views of the child should be given due weight in accordance with his or her age and maturity. Other factors are also relevant, such as the presence or absence of parents, quality of the relationships between the child and family or their primary care giver, the child’s physical and psychosocial situation and their protection situation. The best interest of the child is inextricably linked to Article 12 of the CRC which establishes the right of every child to express his or her views freely, with due weight to be given to those views.²⁴ Overall, the interpretation and application of this principle must be in line with the CRC and other international legal norms, as well as with the authoritative guidance provided by the Committee on the Rights of the Child (“the CRC Committee”).²⁵

16. The concept of the best interests of the child has three facets: It is (a) a substantive right; (b) a fundamental and interpretative legal principle; and (c) a rule of procedure.²⁶ It is aimed at ensuring that the child can fully and effectively enjoy all rights recognised in the CRC, as well as their holistic development.²⁷ In applying the concept, a rights-based approach that engages all actors is essential to ensure the child’s holistic physical, psychological, moral and spiritual integrity and to promote his or her human dignity.²⁸

17. The best interests principle applies to all children, without discrimination, whether considered as a group or as individual children. It holds true for children who are citizens of a State or foreign nationals, including asylum-seekers, refugees, migrants or stateless children. The principle also applies whether children are with family members or are unaccompanied or separated.

18. The notion that “the best interests shall be a primary consideration” refers to a legal obligation to assess and ascribe proper weight to the best interests of the child in any action that may affect them.²⁹ The best interests of the child applies in both a legislative and policy context as well as individual contexts.³⁰ “Primary consideration” means that it is a consideration greater than all others, being a decisive element for the outcome of any measure affecting the child. Taking a strong position in relation to what is meant by “primary consideration” is justified by “the special situation of the child: dependency, maturity, legal status, and, often, voicelessness”.³¹

²³ 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)*, adopted by the Committee at its sixty-second session (14 January–1 February 2013), CRC/C/GC/14, 29 May 2013 (“CRC Committee, General Comment No. 14 (2013)”), para. 32.

²⁴ CRC Committee, General Comment No. 14 (2013), para. 43. See further on this in section 2.5.

²⁵ See, for example, CRC Committee, General Comment No. 14 (2013).

²⁶ CRC Committee, General Comment No. 14 (2013), para. 6.

²⁷ *Ibid.*, para. 4.

²⁸ *Ibid.*, para. 5.

²⁹ *Ibid.*, para. 14.

³⁰ *Ibid.*, paras 32-35; *Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the 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, para 29-30 (“Joint General Comment No. 3 (2017) of CMW and No. 22 (2017) of CRC”).

³¹ CRC Committee, General Comment No. 14 (2013), para. 37.

19. The implementation of this principle in practice requires the assessment and determination of a child's best interests. When children are unaccompanied or separated, for example, in refugee or migration contexts, a formal procedure of assessment and determination must take place to ensure the safeguarding of the best interests of the child,³² with the involvement of a guardian, promptly appointed after their arrival.³³

20. The United Nations High Commissioner for Refugees ("UNHCR") describes the 'best interests assessment' as an assessment made by staff taking action with regard to individual children, designed to ensure that such action gives a primary consideration to the child's best interests. The assessment can be carried out by a multidisciplinary team, with the required expertise, it may be conducted alone or in consultation with others and requires the participation of the child.³⁴ The assessment should be carried out as soon as possible upon the identification/arrival of the child in the country and should be monitored, reviewed and revised throughout the displacement cycle, until the implementation of a durable solution.³⁵

21. A 'best interests determination' is a formal and more in-depth process with strict procedural safeguards. It is designed to determine the child's best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve a multidisciplinary and gender-balanced panel of professionals with relevant areas of expertise, and balance all relevant factors in order to assess the best option.³⁶ As the "best interests of the child is a dynamic concept that encompasses various issues which are continuously evolving", the best interests determination must be subject to regular review.³⁷

22. Concerning specifically unaccompanied and separated children, the CRC Committee has stated that "the determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs."³⁸ The CRC Committee further clarified that allowing the child access to the territory is a prerequisite for this initial assessment process, which should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.³⁹

23. At the Council of Europe level, the European Court of Human Rights ("the Court") has in its jurisprudence expressly incorporated the principle that the best interests of the child must be a primary consideration in all actions concerning children.⁴⁰ Failure to take into account the

³² Joint General Comment No. 3 (2017) of CMW and No. 22 (2017) of CRC, paras 27-33.

³³ *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/23, para. 17 (i) ("Joint General Comment No. 4 (2017) of CMW and No. 23 (2017) of CRC")

³⁴ UNHCR, *Guidelines on assessing and determining the best interests of the child*, 2018 p. 9.

³⁵ UNHCR, *Field Handbook for the Implementation of UNHCR BID Guidelines*, 2011, p. 11.

³⁶ UNHCR, *2021 UNHCR Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child*, May 2021, pp. 43 and 181.

³⁷ CRC Committee, General Comment No. 14 (2013), paras 11 and 76.

³⁸ CRC Committee (2005), General Comment No. 6, para. 20.

³⁹ *Ibid.*

⁴⁰ *Rahimi v. Greece*, No. 8687/08, 5 April 2011, para. 108; (Article 5(1)(f) of the Convention); *Popov v. France*, Nos. 39472/07 39474/07, 19 January 2012, paras 140-141 (Article 8 of the Convention); *Bistieva and Others v. Poland*, No. 75174/14, 10 April 2018, paras 78 and 86 (Article 8 of the Convention); *Neulinger and Shuruk v. Switzerland [GC]*, No. 41615/07, ECtHR, 6 July 2010, para. 135.

best interests of the child is a factor that may raise doubts as to whether authorities have acted in good faith.⁴¹ The Court has, for example, held that it will not be in the best interests of a child where authorities refuse to reunite children with a family member and may lead to a violation of Article 8 in circumstances where those children have been arbitrarily placed with an unrelated adult.⁴² The need to give due consideration to the best interests of the child in any decision that affects them is clearly recognised by other Council of Europe bodies.⁴³

24. In the European Union context, the European Charter of Fundamental Rights (“EU Charter”) provides that the best interests of the child must be a primary consideration in all actions involving children whether taken by public authorities or private institutions,⁴⁴ when *inter alia*, member States are implementing EU law.⁴⁵ Under the EU secondary legislation, the best interests of the child is a primary consideration (or due account)⁴⁶ in its implementation or application.⁴⁷ The principle of the best interests of the child has also been reaffirmed in the jurisprudence of the Court of Justice of the European Union (“CJEU”).⁴⁸

2.2. Primacy of the status of the child

25. The primacy of the status of the child is the cornerstone for the rights that a child holds and the duties owed to it. The CRC applies to every child irrespective of status, including immigration status. The CRC Committee has reaffirmed this position by highlighting that the

⁴¹ *Rahimi v. Greece*, para. 109 (Article 5(1)(f)).

⁴² *Moustahi v. France*, No. 9347/14, 25 June 2020, paras 114-115.

⁴³ See, for example, Council of Europe Convention on Action against Trafficking in Human Beings (“the Anti-Trafficking Convention”), Article 28, para. 3, and para. 127 of the Explanatory Report to the Convention; Recommendation CM/Rec(2007)9, preamble; Parliamentary Assembly, Resolution 1810(2011) on Unaccompanied Children in Europe: issues of arrival, stay and return, para. 5.2; Declaration of the Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) on protecting migrant and refugee children against sexual exploitation and sexual abuse (adopted 28 June 2018), para. 2; Special Representative of the Secretary General on Migration and Refugees, *Thematic Report on migrant and refugee children*, 10 March 2017, chapter IV; Commissioner for Human Rights, Human Rights Comment, “High time for states to invest in alternatives to migrant detention,” 31/01/2017.

⁴⁴ Charter of Fundamental Rights of the European Union, OJ L 326/02, 26 October 2012, (“EU Charter”) Article 24(2).

⁴⁵ EU Charter, Article 51(1).

⁴⁶ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, OJ L 261/19, Article 10(a).

⁴⁷ 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), 29 June 2013, L 180/96, (“Recast Reception Conditions Directive”), Recital 9 and Article 23(1); 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) (“Recast Qualification Directive”), Recitals 18, 38 and Article 20(5); Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, (“Return Directive”), Recital 22, Articles 5(a), 10(1) and 17(5); 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) (“Recast Procedures Directive”), Recital 33 and Article 25(6); 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) (“Recast Dublin Regulation”), Recitals 13, 16 and Article 6(1) and (3). Directive 2011/36/EU of the European Parliament and of 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 L 101/1, recitals 8, 22 and 23 and Articles 13(1) and 16(2).

⁴⁸ *MA, BT, DA v. Secretary of State for the Home Department*, C-648/11, European Union: Court of Justice of the European Union, 6 June 2013.

enjoyment of all rights foreseen in the CRC should be enjoyed by all children irrespective of nationality, immigration status or statelessness.⁴⁹

26. Unaccompanied and separated children are a “particular vulnerable group of children”.⁵⁰ Article 20 of the CRC, which explicitly recognises the particular vulnerability of unaccompanied and separated children, clarifies that when a child is temporarily or permanently deprived of her or his family environment, she or he is entitled to special protection and assistance provided by the State. In other words, the State should provide alternative care in accordance with national legislation.

27. In line with their obligation under Article 2 of the CRC to respect and ensure the rights of every child within a their jurisdiction, States should provide care and protection to unaccompanied and separated children irrespective of status.⁵¹ The fact that children must always, first and foremost, be recognised as children, means that, when children are recognised as being in need of protection, there should not be disparities in the level of support and in the quality of services they receive.⁵² Unaccompanied and separated children should, in principle, enjoy the same level of protection as national children.⁵³ The implication is that migrant and refugee children who move across borders and are unaccompanied or separated, and therefore particularly vulnerable, should benefit from special protection, support and services adapted to their specific needs and circumstances.

28. At the Council of Europe level, the Court has emphasised the “extreme vulnerability” of children in the context of migration. Unaccompanied children in particular have been characterised as the most vulnerable members of society on account of their age-related needs, lack of independence, status as asylum seekers or migrants and the fact that they are unaccompanied.⁵⁴ This “extreme vulnerability” has two consequences: (a) it takes precedence over considerations relating to the child’s immigration status - *primacy of the status of the child*,⁵⁵ and (b) engages States’ positive obligations under Article 3 of the European Convention on Human Rights to protect and care for this particularly vulnerable group irrespective of their immigration status.⁵⁶

⁴⁹ CRC Committee (2005), General Comment No. 6, para. 5.

⁵⁰ See, for example, CRC Committee (2005), General Comment No. 6, para. 4; United Nations, Human Rights Committee (HRC), *General Comment No. 35, Article 9 (Liberty and security of person)*, 16 December, CCPR/C/GC/35, 2014 para. 18; See also UNHCR ExCom Conclusion on Children at Risk, No. 107 (LVIII), 2007, preamble para. 4.

⁵¹ CRC, Articles 2 and 22(2); CRC Committee (2005), General Comment No. 6, paras 12-18; see also, United Nations (2016), Committee on the Rights of the Child, *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, CRC/C/GC/20, 6 December 2016, para. 77.

⁵² Joint General Comment No. 3 (2017) of the CMW and No. 22 (2017) of the CRC Committee, para. 11.

⁵³ UNGACC, para. 141; see also European Parliament (2013), Committee on Civil Liberties, Justice and Home Affairs, *Report on the situation of unaccompanied minors in the EU (2012/2263 (INI))*, Rapporteur: Nathalie Griesbeck, A7-0251/2013, 26 August, para. 18.

⁵⁴ *Rahimi v. Greece*, para. 87; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, para. 55. See also Committee of Ministers, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and Explanatory memorandum, October 2011, III. Fundamental Principles, D. Protection from discrimination, para. 2, as well as paras 43 and 78 of the Explanatory Memorandum; Parliamentary Assembly, Recommendation 1985 (2011) on Undocumented migrant children in an irregular situation: a real cause for concern, para. 2.

⁵⁵ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, para. 55; *Muskhadzhiyeva and Others v. Belgium*, No. 41442/07, 19 January 2010, paras 56-58; *Popov v. France*, para. 91; *Khan v. France*, No. 12267/16, 28 February 2019, para. 74; *N.T.P. and Others v. France*, No. 68862/13, 24 May 2018, para 44; *Tarakhel v. Switzerland [GC]*, 29217/12, 4 November 2014, para. 99.

⁵⁶ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, para. 55; *Rahimi v. Greece*; *Khan v. France*.

2.3. Provision of care and protection

29. The entitlement of children to special protection and care is anchored in international and European instruments.⁵⁷ In the UN context, Article 3 of the CRC clarifies that a child must be ensured “such protection and care as is necessary for his or her well-being”.⁵⁸

30. For children deprived of parental care, the entitlement to special protection and assistance is reiterated in Article 20 of the CRC which foresees a responsibility for the State to provide alternative care in accordance with national legislation. In line with the non-discrimination principle and Article 22 of the CRC such protection and assistance, including alternative care, also applies to unaccompanied and separated children.

31. These principles have been reaffirmed by the CRC Committee which has underlined two crucial aspects when it comes to the protection of unaccompanied and separated children in the context of migration: That (a) immigration detention is never in their best interests and should be prohibited by law and its abolishment ensured in policy and practice; (b) special protection and assistance should be provided to them, including placement in the national/local alternative care system with priority to family- and community-based care in accordance with the UN Guidelines for the Alternative Care of Children (“UNGACC”).⁵⁹

32. The position against immigration detention of children and the need to provide special protection and assistance has been endorsed by various UN bodies.⁶⁰ For example, the UNHCR Guidelines on the Care and Protection of Children calls for national or local child welfare services to supervise the care and placement of unaccompanied children, who should receive care “that meets at least the minimum standards provided for national children”.⁶¹ The UNHCR’s Framework for the Protection of Children adopts a family and community-based approach as one of its principles.⁶² The UNHCR’s Beyond Detention strategy also contemplates alternative reception/care arrangements, citing foster care as an example.⁶³ Reception in foster care, supervised independent living and other family- or community-based living arrangements are also put forth by the United Nations Children’s Fund (“UNICEF”) when

⁵⁷ See for example, Article 25 (2) of the Universal Declaration of Human Rights (“UDHR”); Articles 23 and 24 of the International Covenant on Civil and Political Rights (“ICCPR”); Article 10 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”); CRC; Preamble of the Lanzarote Convention; Article 24 of the EU Charter.

⁵⁸ CRC, Article 3(2).

⁵⁹ Joint General Comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC Committee, paras 10- 13.

⁶⁰ See for example, *UNHCR’s position regarding the detention of refugee and migrant children in the migration context*, January 2017; UN Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, 7 February 2018, para. 11; UN General Assembly, *Report of the Special Rapporteur on the human rights of migrants, Ending immigration detention of children and providing adequate care and reception for them*, A/75/183, 20 July 2020; UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/37/50, 23 November 2018, para. 73; see also, Inter-Agency Working Group (IAWG) to End Child Immigration Detention, *Summary of normative standards and recommendations on ending child immigration detention*, August 2016.

⁶¹ UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994.

⁶² United Nations, UNHCR, *A Framework for the Protection of Children*, (“UNHCR Framework for the Protection of Children”), 202122012 p.15.

⁶³ United Nations, UNHCR, *Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees – 2014-2019*, 2014, p.17.

discussing the protection of unaccompanied and separated children in the context of migration.⁶⁴

33. The CRC and the UN Guidelines for the Alternative Care of Children provide extensive guidance for policy and practice on the care and protection that should be afforded to children who are not in the care of their parents or primary caregivers. The UNGACC provide extensive information on how to prevent unnecessary family separation, and on how to ensure that any alternative care is both necessary and suitable for the needs, circumstances, and wishes of every individual child. These principles – necessity and suitability – are at the core of the UNGACC.

34. In order to ensure that the “specific psycho-emotional, social and other needs of each child without parental care can be met”, a range of alternative care options should be made available, consistent with the general principles of the UNGACC, “with priority to family- and community-based solutions”.⁶⁵ Foster care should be considered before looking at other formal alternative care responses since it offers children the opportunity to live in a family environment. When considering an alternative care arrangement for a child, it is also essential to ensure that it can provide them with a sense of security, stability and belonging.

35. The UN Guidelines for the Alternative Care of Children also carefully consider the place of residential care within the child protection and alternative care system. Given that a range of high-quality alternative care options is required to ensure that the needs of each child without parental care can be met, the UNGACC recognise that residential care can complement family-based care. Its use, however, “should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests”.⁶⁶ On the contrary, institutional care settings – such as large residential facilities – are not an appropriate option. The UNGACC call for the development of other options in the context of an overall, clear and well-planned deinstitutionalisation strategy.

36. Council of Europe member States have an obligation under Article 3 of the Convention to take care of and protect children. This means that reception conditions should be appropriate and adapted to children’s particular personal circumstances and age⁶⁷ so as not to create a “situation of stress and anxiety with particularly traumatic consequences”.⁶⁸ The positive obligations under Article 3 of the European Convention on Human Rights are neither obviated by the child being accompanied⁶⁹ nor on account of there being “considerable difficulties in coping with the increasing influx of migrants and asylum seekers”.⁷⁰ In its assessment of special care the European Court of Human Rights has likewise noted that States must take appropriate measures to ensure that a child seeking refugee status enjoys protection and humanitarian assistance.⁷¹ Furthermore, if a child intends to seek asylum in

⁶⁴ United Nations, UNICEF, *A child is a child – Protecting children on the move from violence, abuse and exploitation*, 2017, pp. 48 & 50. See further, Save the Children, UNHCR & UNICEF, *Statement of Good Practice – 4th Revised Edition: Separated Children in Europe Programme*, 2009, pp. 28-29.

⁶⁵ UNGACC, para. 53.

⁶⁶ *Ibid.*, paras 21-23.

⁶⁷ See, for example, *Rahimi v. Greece*, paras 60, 62 and 86; *Khan v. France* para. 73.

⁶⁸ *Tarakhel v. Switzerland* [CG], para. 119.

⁶⁹ *A.B. and Others v. France*, No. 11593/12, 12 July 2016, para. 110.

⁷⁰ *G.B. and Others v. Turkey*, No. 4633/15, 17 October 2019, para 112; see also *S.F. and Others v. Bulgaria*, No. 8138/16, 7 December 2017, para. 92.

⁷¹ *Muskhadzhiyeva and Others v. Belgium*, para. 62; *Popov v. France*, para. 91

another State there is still an obligation to protect and care for it in the State in which it finds itself.⁷²

37. In order to fulfil their positive obligations under Article 3, State authorities should identify unaccompanied and separated children as soon as possible and ensure they are placed in appropriate accommodation.⁷³ In cases where children are deprived of their family environment, the special care and protection that can be provided by the State includes, but is not limited to, placement in alternative care. The Court has emphasised that placing unaccompanied and separated children with foster parents or in a specialised centre is more conducive “to the higher interest of the child guaranteed by Article 3” of the CRC.⁷⁴

38. Placing unaccompanied and separated children in alternative care is a long-standing good practice, recognised not only by the European Court of Human Rights but also other bodies of the Council of Europe.⁷⁵ The European Social Charter (revised) requires States to “take all appropriate and necessary measures designed to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family’s support”.⁷⁶ The European Committee of Social Rights has also reaffirmed the obligation of States under Article 31(2) of the revised European Social Charter to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction, whatever their residence status.⁷⁷ Both the Council of Europe Parliamentary Assembly and the Council of Europe Committee of Ministers have recommended the use of non-custodial, community-based care, such as foster care, for unaccompanied and separated children.⁷⁸ This is aligned with the Council of Europe’s long-standing promotion of family-type or family-based living and support of efforts towards de-institutionalisation.⁷⁹ In its recent declaration on out-of-home care, the Committee of the Parties to the Convention on the Protection of children against sexual exploitation and sexual abuse (“the Lanzarote Committee”) emphasised the increased risk of sexual violence that children in non-family based residential and large institutional settings face.⁸⁰

39. In the European Union, the rights of the child are expressly referred to in the Treaty on the European Union.⁸¹ A child’s right to protection and care is guaranteed under the EU

⁷² *SH.D. and Others v Greece, Austria, Hungary, North Macedonia, Serbia and Slovenia*, No. 14165/16, 13 June 2019, paras 52-62.

⁷³ *Khan v. France*, paras. 88-95.

⁷⁴ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, para. 83.

⁷⁵ Council of Europe, Committee of Ministers, Recommendation Rec(2003)5 of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers, 16 April 2003, para. 23; Council of Europe, Committee of Ministers, Recommendation No. R (87)6 of the Committee of Ministers on Foster Families, 20 March 1987; Council of Europe, Parliamentary Assembly, Resolution 1810, para. 5.9; Council of Europe, Parliamentary Assembly, Resolution 2020, The alternatives to the detention of children, 3 October 2014 (“Parliamentary Assembly, Resolution 2020”), para. 9.7.

⁷⁶ Council of Europe, European Social Charter (revised), CETS No.163,1996, Article 17 (1) (c).

⁷⁷ European Committee of Social Rights (“ECSR”), *Defence for Children International v. the Netherlands*, Complaint No. 47/2008, Decision on the merits, 20 October 2009, paras 44 and 64.

⁷⁸ Parliamentary Assembly, Resolution 1810, para. 5.9; Parliamentary Assembly, Resolution 2020, para. 9.7.

⁷⁹ See, for example, Recommendation Rec(2005)5 of the Committee of Ministers on the rights of children living in residential institutions; Recommendation CM/Rec(2010)2 of the Committee of Ministers to member states on deinstitutionalisation and community living of children with disabilities; Recommendation CM/Rec(2011)12 of the Committee of Ministers to member states on children’s rights and social services friendly to children and families, chapter A.c; C.c. (“Committee of Ministers, Recommendation CM/Rec(2011)2”); Parliamentary Assembly, Recommendation 1939(2010) on Children without parental care: urgent need for action, para. 2.1.1.

⁸⁰ Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse (adopted at its 25th meeting, 15-18 October 2019), para. b.

⁸¹ Treaty on the European Union (“TEU”), OJC 326/13, 26 October 2012, Article 3(3).

Charter⁸² when, *inter alia*, member States are implementing EU Law.⁸³ EU member States are required to take into account the specific situation of children⁸⁴ and to ensure an adequate standard of living for the child's physical, mental, spiritual, moral and social development.⁸⁵ Where accommodation has been provided at a border, in a transit zone or in an accommodation centre, children are to have access to leisure activities, including play recreational activities appropriate to their age.⁸⁶ Reception conditions are also applicable to those in a Dublin situation.⁸⁷ EU secondary legislation on asylum also provides for the placement of unaccompanied children in non-custodial settings, including with adult relatives, a foster family, or in accommodation centres with special provisions for children.⁸⁸ Unaccompanied and separated children are to be placed in such settings as soon as they are admitted to the territory and until the moment they are obliged to leave and/or when international protection is granted.⁸⁹ The European Commission has also encouraged EU member States to "ensure that a range of alternative care options for unaccompanied children, including foster/family-based care are provided".⁹⁰

2.4. The right to respect for family life

40. In the context of the best interests of the child, the right to respect for family life as enshrined in the European Convention on Human Rights, EU and international law, is of fundamental importance.⁹¹ The CRC, in its preamble, states that the family is the natural environment for the growth and well-being of children.⁹² It further specifies that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding".⁹³ Parents or guardians have the primary responsibility for the upbringing of their children, and they should receive appropriate support in their performance of these responsibilities.

41. The right to respect for family life applies to unaccompanied and separated migrant children even though they may be separated from their family. The right to respect for family life further entails that unaccompanied and separated children have to be allowed and enabled to maintain their contact and relationship with their family.⁹⁴ Siblings travelling together should remain together unless it is verifiably not in their best interests.⁹⁵ When children are travelling together with family members, care arrangements or other alternative solutions should extend to the entire family whenever it is in the best interests of the child to keep the family together.⁹⁶

⁸² EU Charter, Article 24

⁸³ *Ibid.*, Article 51(1).

⁸⁴ Recast Reception Conditions Directive, Article 22(1).

⁸⁵ *Ibid.*, Article 23(1).

⁸⁶ Recast Reception Conditions Directive, Article 23(3).

⁸⁷ Case C-179/11 *Cimade & Gisti*, Judgment, 27 September 2012

⁸⁸ Reception Conditions Directive, Article 19(2); Recast Reception Conditions Directive, Article 24(2).

⁸⁹ *Ibid.*; Qualification Directive, Article 30(3); and Recast Qualification Directive, Article 31(3).

⁹⁰ European Commission, Communication from the Commission to the European Parliament and the Council, *The protection of children in migration*, COM(2017) 211 final, 12 April 2017, p. 9.

⁹¹ The Convention, Article 8; Recast Reception Conditions Directive, Article 11 (3). CRC, Article 16(1); ICCPR, Articles 17(1) and 23(1).

⁹² CRC, Preamble.

⁹³ *Ibid.*

⁹⁴ CRC Committee (2013), General Comment No. 14, paras 60 and 65.

⁹⁵ United Nations (1994), UNHCR, *Refugee Children – Guidelines on Protection and Care* (2001 reprint), p.126; UNHCR Guidelines on Best Interests of the Child Determinations, *op. cit.*, pp. 72-73; CRC Committee (2005), General Comment No. 6, para. 40.

⁹⁶ See, Joint General Comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC Committee, para. 11.

42. The CRC Committee instructs that the term “family” should be interpreted broadly to include “biological, adoptive or foster parents, or, where applicable, the members of the extended family or community as provided for by local custom”.⁹⁷ According to the CRC Committee, children should be provided with a continuity of care, indicating that changes to residence and accommodation should “be limited to instances where such change is in the best interests of the child”.⁹⁸

43. The CRC expressly provides that the primary responsibility for the upbringing and development of a child rests with the parents or legal guardians. It further indicates that States are to render appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities.⁹⁹ This includes ensuring the developing of institutions, facilities and services for the care of children.¹⁰⁰ The primacy of the family “as the natural and fundamental group unit of society” which “is entitled to protection by society and the States” is also reflected in the International Covenant on Civil and Political Rights¹⁰¹ and the International Covenant on Economic, Social and Cultural Rights¹⁰².

2.5. The right to participation

44. The right of the child to express his or her views and be heard constitutes one of the fundamental values of the CRC and is key to realising the rights of the child. As one of the four general principles of the CRC, the right to participation is “not only a right in itself but should also be considered in the interpretation and implementation of all other rights”.¹⁰³ This right imposes an obligation on States to listen to the views of the child and give them due weight in accordance with the age and maturity of the child. In order to effectively realise this right, States have an obligation to undertake appropriate measures for all children regardless of, *inter alia*, nationality, status, etc.¹⁰⁴ In the context of alternative care, it is aimed at ensuring the full and meaningful engagement and participation of children, including in decisions related to their placement.

45. One aspect of ensuring children’s participation pertains to providing them with information about their rights in a manner they understand. This also includes child friendly information about the processes they are undergoing and the decisions affecting them.¹⁰⁵ The information shared with the children concerned should be provided in a manner that is appropriate to their age and maturity.¹⁰⁶ Children must be allowed and enabled to freely express their views. Where necessary, interpreters should be made available at all stages to

⁹⁷ CRC Committee (2013), General Comment No. 14, para. 59.

⁹⁸ CRC Committee (2005), General Comment No. 6, para. 40.

⁹⁹ CRC, Article 18(1).

¹⁰⁰ *Ibid.*, Article 18(2).

¹⁰¹ ICCPR, Article 23(1).

¹⁰² ICESCR, Article 10(1).

¹⁰³ CRC Committee, *General Comment No. 12 (2009): the right of the child to be heard*, 20 July 2009, CRC/C/GC/12, (“General Comment No. 12 (2009)”), para. 2.

¹⁰⁴ CRC Committee, General Comment No. 12 (2009).

¹⁰⁵ Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17 November 2010, pp. 17, 20 and 21; See, for example, United Nations, UNHCR & UNICEF, *Safe & Sound – What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, 2014, p. 21. Council of Europe, *How to convey child-friendly information to children in migration – A handbook for frontline professionals*, December 2018.

¹⁰⁶ See, for example, UNHCR and UNICEF (2014), *Safe & Sound, op. cit.*, p. 21.

enable children to express their views in every decision affecting them.¹⁰⁷ The overall approach adopted should be child sensitive and take due account of the specific circumstances of the child's individual situation.¹⁰⁸ The Council of Europe has produced child-friendly materials for informing children of their rights in alternative care¹⁰⁹ as well as tools for professionals in order to assist their communication with children in alternative care or in migration.¹¹⁰

2.6. Guardianship

46. A guardian “refers to a person who is appointed or designated to support, assist and, where provided by law, represent unaccompanied or separated children in processes concerning them. [...] The guardian acts independently to ensure that the child's rights, best interests and well-being are guaranteed. The guardian acts as a link between the child and all other stakeholders with responsibilities towards him or her.”¹¹¹ As such, guardians play a key role in safeguarding unaccompanied and separated children's best interests and ensuring the concrete exercise of their rights. They also act as a link between the child and all other stakeholders (authorities, agencies, individuals, etc.) and can help build trust with the children and ensure their well-being in cooperation with other actors. The prompt appointment of guardians is thus essential for every unaccompanied and separated child.

47. The important role of guardianship systems has been recognised in a number of international and European human rights documents.¹¹² A number of standards for guardians of separated children have been proposed at European level.¹¹³

48. The Recommendation CM/Rec(2019)11 of the Committee of Ministers to member States on effective guardianship for unaccompanied and separated children in the context of migration (“Committee of Ministers, Recommendation CM/Rec(2019)11”) is arguably the most up to date and comprehensive standard in the field. It sets out a set of essential principles and implementing guidelines targeting both decision-makers and practitioners working to secure the protection, reception, care and well-being of unaccompanied and separated children through guardianship.¹¹⁴ Member States are encouraged to put in place an effective guardianship system which takes into account the specific needs, circumstances and vulnerabilities of unaccompanied and separated children. The guidelines include specific guidance to form legislation, plan public policies and institutional measures. The principles are meant to ensure access to justice and effective remedies for these children and to improve cooperation and coordination among relevant stakeholders, including at international level.

¹⁰⁷ CRC, Article 12; CRC Committee (2013), *General Comment No. 14, op. cit.*, paras 53 and 54; UNGACC, para. 7.

¹⁰⁸ United Nations, *Global Compact for Safe Orderly and Regular Migration*, 2017 13 July (“Global Compact for Migration”), para. 15.

¹⁰⁹ Council of Europe & SOS Children's Villages International, *Children and young people in care: Discover your rights*, 2009.

¹¹⁰ Council of Europe & SOS Children's Villages International, *Securing children's rights: A guide for professionals working in alternative care*, 2013; Council of Europe, *How to convey child-friendly information to children in migration – A handbook for frontline professionals*, 2018.

¹¹¹ Committee of Ministers, Recommendation CM/Rec(2019)11.

¹¹² See for example, Joint General Comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC, para. 17(i); Committee of Ministers, Recommendation CM/Rec(2019)11.

¹¹³ See, Closing a protection gap 2.0: Implementing the Core Standards for guardians of separated children in Europe in practice, policy and legislation. Project Reference Number: JUST/2012/DAP/AG/2995

¹¹⁴ Committee of Ministers, Recommendation CM/Rec(2019)11.

49. The Committee of Ministers Recommendation CM/Rec(2019)11 highlights, *inter alia*, that unaccompanied and separated children should be designated a guardian without undue delay, and regardless of their immigration status.¹¹⁵ The guardian should be present in all planning and decision-making processes, including care arrangements, and through all efforts undertaken to search for a durable solution for the child.¹¹⁶ Their role should further encompass (a) advocating for the rights of children, and for all decisions to be taken in their best interests, aiming at their protection and development; (b) ensuring the participation of children in every decision that affects them; (c) acting as a bridge and focal point for children and all other actors involved; (d) assisting children in navigating complex asylum, social work and child protection systems; and (e) ensuring that children are informed of and understand their rights.¹¹⁷

50. Guardians should be independent and impartial, have a clear function and role, and have no conflict of interests. They should be adequately screened, reliable, qualified, supported, supervised and monitored throughout their mandate.¹¹⁸ In specific circumstances, they could be also supported by volunteer guardians to extend the quality and support received by children. Volunteer guardians may assist children by using their personal and professional networks. Any guardianship system should be properly monitored at regular intervals, including through consultation with children.¹¹⁹ Accessible, child-friendly complaint mechanisms and remedies should also be in place.¹²⁰

3. PRACTICAL PRINCIPLES

51. Member States are diverse and face vast differences in the field of migration. Across Europe, there are enormous disparities in the scale of migration movements as well as the infrastructure and resources available to address these. Taking into account that each State has different capacities and faces different challenges, the following section attempts to outline certain practical principles aiming to inspire and support member States when seeking to develop family-based care for unaccompanied and separated children.

3.1. An integrated child protection system

52. An integrated national child protection system can be defined as “the way in which all duty bearers (e.g. state authorities represented by law enforcement, judicial authorities, immigration authorities, social services, child protection agencies, etc.) and all system components (e.g. laws, policies, resources, procedures, etc.) work together across sectors and agencies sharing responsibility to form a protective and empowering environment for all children”.¹²¹ In the context of children on the move, the interaction between asylum and migration systems and child care and protection systems is particularly important.

¹¹⁵ Ibid.

¹¹⁶ Idem.

¹¹⁷ Ibid., principle 4.

¹¹⁸ Ibid., principle 4 (6), principle 6(4), principle 7.

¹¹⁹ Ibid., principle 2(4).

¹²⁰ Ibid., principle 5.

¹²¹ European Commission, 9th European Forum on the Rights of the Child, Coordination and cooperation in integrated child protection systems, 30 April 2015, pp. 3-4. At the European Union level, following the 2013 Commission Recommendation on Investing in Children, the 10 Principles on Integrated Child Protection Systems (2015) attempted to bridge migration and non-migration contexts to take a child-rights approach. As one of the central principles, it is noted that “families should be “supported in the role as primary caregiver”. It also noted as one of the principles, and that they families must be supported through “universal and targeted services, through every stage of intervention, particularly through prevention”. The fact that child protection systems must have

53. An integrated child protection system places the rights and best interests of children at its centre while all relevant actors work together in a coherent and comprehensive manner. This spans sectors such as health, education, welfare, social services, police, immigration, civil society, family and community. Integrating the migration or asylum reception system into the national child protection system and its standards is a recommended way of ensuring that there is equity of protection and family-based care for all children, regardless of, *inter alia*, immigration status. This can help guarantee that unaccompanied and separated children have access, in practice, to the same level of protection and care as all other children within a State's jurisdiction in line with the standards set out in the UN Guidelines for the Alternative Care of Children¹²² as well as relevant Council of Europe instruments on social services and alternative care.¹²³ The need for integrated and multidisciplinary protection systems is grounded, among others, in the Council of Europe Policy Guidelines on Integrated national strategies for the protection of children from violence (which, *inter alia*, identifies unaccompanied and separated children as subjects of particular policy focus),¹²⁴ as well as the Lanzarote Convention.¹²⁵

54. An integrated system can be promoted by examining the current situation in a member State in terms of (a) migration/asylum reception systems; (b) child protection systems; and (c) the characteristics and numbers of unaccompanied and separated children in need of care and protection. This will help to better understand the specific national strengths, challenges and needs enabling the development of systems adapted to the particular national context.¹²⁶

55. A supportive legal framework plays a key role in the effective integration with child protection systems and helps ensure equality of treatment for all children. Any such legislative framework should ideally allow for the development of proactive and targeted measures that address the specific needs and circumstances of each individual child.¹²⁷

56. Although essential, having good legislation in place is obviously not sufficient for effective protection. It is also crucial to ensure implementation in practice. This is, *inter alia*, done by removing barriers to the provision of family-based care. In all circumstances, discrimination must be avoided, such as differentiation based on the origin of children, their legal status, or a lack of resources.¹²⁸

57. A successful integrative approach also implies ensuring sufficient financial resources so that services can support children and families effectively. Creating a budget for a national

transnational and cross-border mechanisms in place is another principle noted. European Commission, Ten Principles for Integrated Child Protection Systems (presented at the 2015 European Forum on the Rights of the Child), 2015, Principle 4.

¹²² UNGACC, para. 141.

¹²³ See, for example, Committee of Ministers, Recommendation CM/Rec(2011)12, chapter IV.A.e and chapter V.E "Interdisciplinary and multi-agency collaboration"; Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse (adopted at its 25th meeting, 15-18 October 2019).

¹²⁴ Appendix I, Recommendation CM/Rec(2009)10 of the Committee of Ministers to member states on integrated national strategies for the protection of children from violence, Part 5.2.3.

¹²⁵ See Chapter IV – Protective measures and assistance to victims. See also European Commission, 10 Principles for integrated child protection systems.

¹²⁶ De Ruijter de Wildt L., Melin E., Ishola P. and Dolby P. (2015), p. 9.

¹²⁷ D'Addato A., Giraldi M., Van De Hoeven C., Fontal A. (2017), Let Children be Children: Lessons from the Field on the Protection and Integration of Refugee and Migrant Children in Europe, Eurochild and SOS Children's Villages, Brussels, p. 146-147.

¹²⁸ D'Addato A., Giraldi M., Van De Hoeven C., Fontal A. (2017), *op. cit.*, p. 140.

approach may facilitate pooling or better use of resources, and guarantee equity of access to services.¹²⁹

58. The ability of relevant actors to work in partnership is another condition for the good functioning of an integrated, national child protection system. Overall responsibility for coordinating service provision and delivery (including needs assessment and case management) should ideally rest with governmental authorities or a duly mandated agency. NGOs and civil society organisations can, obviously, develop and deliver programmes and services that support and complement those provided by the authorities. The roles and responsibilities of each agency, authority or service provider must be clearly defined to avoid duplication of roles and ensure oversight.

3.2. The specific needs of the child

59. When considering family-based placements, it is important to recognise that unaccompanied and separated children have particular needs and circumstances. While the need to live in a stable and caring environment is the same for all children, the particular background and experiences of unaccompanied and separated children call for their specific needs to be addressed. Accordingly, best interests of the child assessments within national child protection systems are essential to identify and address these specific needs through referral to specialised or other services as necessary and appropriate, including alternative care arrangements tailored to those specific needs.

60. Unaccompanied and separated children have, inevitably, gone through very difficult times. They may likely have been exposed to risks such as violence, including gender-based violence, sexual abuse and exploitation, trafficking,¹³⁰ physical and psychological hardships, lack of money and resources, hostility, stigma and discrimination, and/or inappropriate treatment (for example by smugglers, fellow travellers or even officials, etc.). Even if children have not been severely traumatised, they will have had to cope with drastic changes while still in their developmental years. In a number of cases, they might also have had stable home and family environments at some points before their journeys.¹³¹ In a number of cases, they may not have been able to make any real decisions of their own, including on whether to migrate away from their families.

61. This specific context requires a particular type of support to address the specific needs of each child. These needs may include specific mental health needs, such as addressing post traumatic stress disorder, as well as forging ways that enable the children to deal with feelings of despair, loneliness, and missing their families, friends and home countries. Managing the difficult experiences children have gone through while on the move adds yet another layer of concern. Such support also entails helping them cope with their individual

¹²⁹ See Committee of Ministers, Recommendation CM/Rec(2007)9, chapter II: Life projects: an integrated policy goal.

¹³⁰ See further Lanzarote Committee Special report, Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse (adopted 3 March 2017); Group of Experts on Action against Trafficking in Human Beings (GRETA) (2018) Trafficking in children: Thematic Chapter of the 6th General Report on GRETA's activities; Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) (2021), Mid-term Horizontal Review of GREVIO baseline evaluation reports, Chapter VII.

¹³¹ Stichting Nidos, Reception Families for unaccompanied children seeking asylum, *op. cit.*, p. 4.

hopes and dreams, tapping into their resilience and resourcefulness to confront their present and future.¹³²

62. Navigating uncertainty in their present and future, including complex procedures such as asylum applications, and adapting to a new country with a different culture, language and possibly religion and ethnicity, are other conditions necessitating specific support. This may only be offered through professional planning and implementing a variety of measures.¹³³ These measures include making sure that the support and protection provided to each child reflects the diversity of their situations, aspirations, strengths and needs. According to their age and maturity, provision of tailored support should ideally include participation of the child during assessment, planning, implementation and monitoring.¹³⁴

63. The provision of psycho-social support is essential to strengthen resilience and avoid the aggravation of mental and other health problems. Emotional suffering is commonly related to the stresses that children are exposed to upon arrival. The ability to help children recognise their skills and build their confidence is equally important, as is supporting them to regain a sense of normality, for example through participation in educational, recreational and leisure activities.¹³⁵

64. These are important considerations when matching children with foster parents. Crucially, this also requires the availability of a sufficient number of foster families from a variety of backgrounds.¹³⁶

3.3. Sufficient and suitable places and services

65. Following a best interests of the child assessment within the national child protection system to identify and address a child's specific needs, alternative care arrangements such as a placement within a family may be deemed the best option going forward. As set out in section 2.1, a best interests of the child assessment includes a comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, in addition to her or his particular vulnerabilities and protection needs. On the basis of that assessment, it may sometimes be determined that it is in the best interests of the child to be placed in a family with a similar cultural or ethnic background. Such an arrangement, however, is far from being a general rule and strictly on an individual basis.

¹³² Sayers A., Lowe K. and Megna F., *op. cit.*, p. 87-101; Sirriyeh, A. and Ní Raghallaigh, M. (2018) "Foster care, recognition and transitions to adulthood for unaccompanied asylum seeking young people in England and Ireland" Children and Youth Services Review, 92, pp. 89-97.

¹³³ Wade J., (2019), Supporting unaccompanied asylum-seeking young people: The experience of foster care, Child & Family Social Work, 24(3), pp. 383-390; see also Kohli R. K. S. (2007), Social work with unaccompanied asylum seeking children. Basingstoke: Palgrave Mcmillan, cited in Wade J., (2019).

¹³⁴ Sayers A., Lowe K. and Megna F., *op. cit.*, pp. 87-101; See also CELCIS/ University of Strathclyde, Caring for Children Moving Alone: Protecting Unaccompanied and Separated Children, Course Step 2.12 and Course Steps 2.17, 2.18 and 2.19; see specifically on child participation and Avramović M. (2014), When we are asked, not questioned – Consultations with children on the move, Save the Children International, Sarajevo, esp. pp. 22-30.

¹³⁵ Ventevogel P., Schinina G., Strang A., Gagliato M., Juul Hansen L. (2015), Mental Health and Psychosocial Support for Refugees, Asylum Seekers and Migrants on the Move in Europe. A Multi-Agency Guidance Note, UNHCR, IOM and MHPSS.net. See also Sirriyeh, A. and Ní Raghallaigh, M., *op.cit.*, pp. 89-97.

¹³⁶ De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), *op. cit.*, Nidos, SALAR, CHTB. P. 6-7, 70-71 and 126-129, and Wade J., *op. cit.*, p. 385. See also, To become a foster family, on <https://www.nidos.nl/en/voor-opvangouders/opvangouder-worden/> as well as D'Addato A., Giraldi M., Van De Hoeven C., Fontal A. (2017), *op. cit.*, p. 141.

66. Family placements play an important role in easing children's integration into the new community and may also make learning the local language, culture, and values easier. This can in turn help with education and potentially fulfilling children's aspirations. Families that do not share the same cultural or ethnic background as the particular child in question might feel less competent in offering support and cultural guidance. It has been noted that placements can work especially well when families have intercultural experience and knowledge. Intercultural awareness can, *inter alia*, be supported through attending workshops and working with interpreters for both language and culture (cultural mediators), who help the host families to better understand the child's background. Host families should also be able to take into consideration the particular experiences the child has gone through, to allow contact with the biological family of the child if possible, and to create a space for them even if they are absent.¹³⁷

67. The recruitment of suitable and willing host families is a necessary requisite for ensuring sufficient places for unaccompanied and separated children within families. Certain structural efforts may be needed to enhance this. If, for example, the alternative care system is not organised and managed at the national level by a central authority or mandated agency, there may be good practices that remain limited to the local level. Efforts could be made to share these and replicate elsewhere. Financial and organisational structures may also need to be strengthened to support the development of a sufficient and well-trained pool of carers.

68. Coordinated, state-led efforts may be needed to enhance effective change. Alignment of child protection and migration legislation to ensure an equity of care may also facilitate putting in place a structured system. This could, in turn, allow the mandated body to coordinate placement of children in family-based care. Having a State-wide system in place may also make it possible for promising practices to be shared and replicated, thus ensuring their long-term sustainability.¹³⁸

69. Even if family-based care is a preferred option for any child in need of alternative care, it is but one option among a range of viable care options. The suitability of an individual child's care must remain "a meaningful exercise"¹³⁹ and "frequent changes in care settings" should be avoided.¹⁴⁰ Other options include semi-independent living arrangements or small group homes. Semi-independent living arrangements are often available for older children in preparation for transitioning to independent living. All of these alternative care options should in any case be made available to those unaccompanied and separated children whose needs may not be suited to, or who may not want to, live with a family. This can be due to their age and maturity, and/or because they are used to being independent. Clearly, their particular needs and circumstances must be properly assessed.¹⁴¹

¹³⁷ Stichting Nidos, Reception Families for unaccompanied children seeking asylum, *op. cit.*, p. 6. See also PiB – Pflegekinder in Bremen gemeinnützige GmbH, Kinder im Exil. Ein Angebot im Rahmen der Vollzeitpflege für unbegleitete minderjährige Ausländer gem. §§ 33 und 42 SGB VIII, available at <https://www.pib-bremen.de/kinder-im-exil>.

¹³⁸ De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), *op. cit.*

¹³⁹ Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012), p. 71; see also UNGACC, paras 53-54.

¹⁴⁰ UNGACC, para 60; Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012), p. 71.

¹⁴¹ UNGACC, paras 53-54. See also Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012), p. 71-73; Rezaie H. (2019), Commentary on "Supporting unaccompanied asylum-seeking young people: The experience of foster care", *Child & Family Social Work*, 24, pp. 391-392.

3.4. Recruitment of host families

70. Recruiting and maintaining a good pool of carers has been described as a question of “constant effort, patience and perseverance”.¹⁴² Recruitment could start with the development of a plan, outlining specific needs as well as characteristics of foster families, which can be particularly important when placing siblings or children with specific needs. Developing a plan will help to formulate targets, strategies and concrete activities to pursue.¹⁴³

71. When considering what families to recruit as foster carers, the key question to reflect upon is whether or not they will be able to meet the needs of the child. Some of the aspects to consider are their intercultural awareness, whether or not they have a sincere interest in the well-being of the child and, perhaps most importantly, their pedagogical and nurturing skills – their ability to support the child. Host families should be able to take into consideration the particular experiences the child has gone through, to allow contact with the biological family of the child if possible, and to create a space for them even if they are absent.¹⁴⁴

72. There are various ways in which recruitment can be organised: Through advertisements and/or the organisation of campaigns; by distributing flyers in carefully chosen distribution areas; and, potentially, through social media. The approach must, of course, be carefully crafted and disseminated. Direct communication and a personal approach may be ideal. Informational meetings can be organised with a variety of groups, for example at religious gatherings, with NGOs, migrant associations, schools, community centres, etc. Host families can be invited to share information about their experiences, and they can also help to identify and recruit other potential families for the placement of unaccompanied children.¹⁴⁵

73. Being proactive and reliable in making contact with potential host families can prove essential. Working with ‘leaders’ in the ‘target’ community can also yield good results, as particular contacts and individuals may have a special influence within their communities. The support and engagement of cultural mediators or advisors can prove invaluable. Former unaccompanied and separated children can likewise be good contacts to build a stronger network of host families.¹⁴⁶

¹⁴² Schippers M., van de Pol P., and de Ruijter de Wildt L. (Nidos), Thys K. (Minor-Ndako), Krogshøj Larsen M. (Danish Red Cross), Massoumi Z. (Jugendhilfe Süd-Niedersachsen) and Rozumek M. (Organization for Aid to Refugees) (2016), ALFACA Alternative Family Care. Manual for staff working with reception families and unaccompanied children living in reception families. Nidos, Utrecht, The Netherlands, p. 64.

¹⁴³ Schippers M. et al., *op. cit.*, p. 64-68; Stichting Nidos, Reception Families for unaccompanied children seeking asylum, *op. cit.*, p. 6.

¹⁴⁴ Stichting Nidos, Reception Families for unaccompanied children seeking asylum, *op. cit.*, p. 6. See also PiB – Pflegekinder in Bremen gemeinnützige GmbH, Kinder im Exil. Ein Angebot im Rahmen der Vollzeitpflege für unbegleitete minderjährige Ausländer gem. §§ 33 und 42 SGB VIII, available at <https://www.pib-bremen.de/kinder-im-exil>.

¹⁴⁵ Schippers M. et al., *op. cit.*, p. 64-68; Stichting Nidos, Reception Families for unaccompanied children seeking asylum, *op. cit.*, p. 6. For examples from different countries, see De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), *op. cit.* p. 56 (Ireland), p. 64-65 (Italy), p. 71 (The Netherlands); see also Grinvald M., Ristić T., Vukašin G. (2017), Specialised foster care for unaccompanied children in Serbia. Case Study, Save the Children International, Belgrade, Serbia. Another example is provided in D’Addato A., Giraldo M., Van Der Hoeven C. and Fontal A. (2017), p. 72-80.

¹⁴⁶ Schippers M. et al., *op. cit.*, p. 64-68

3.5. Screening, training, and support to host families

74. Carers, irrespective of whether they have the same, similar or different ethnic or cultural background of the child, should be selected through a rigorous process, in line with a legal framework, formal [fostering] procedures and policies with pre-determined criteria to be a foster parent or host family. This should also include comprehensive screening procedures.¹⁴⁷ Host families should receive specific training to support migrant children and thereby be better prepared to cater for their specific needs. These can include helping to teach the language and customs of the new country in which the children now live and supporting their cultural needs – such as maintaining their sense of identity. It may also include psychosocial support to help them deal with any trauma or specific vulnerabilities they may have. Another aspect may be the ability to understand and support children with their asylum application or other legal processes they may be involved in, such as age assessments. These processes are complex, especially when a child is already adapting to a new context.

75. In a nutshell, relevant topics to include in specific trainings for foster carers/ host families may be:

- The specific experiences of unaccompanied and separated children, including why they leave home, the particular risks they face, and how they become unaccompanied or separated;
- Their specific rights and obligations, the processes they may undergo and how these can impact the children. This can, *inter alia*, include the children's prospect of leaving or staying in the country, the support they are entitled to as well as their psychological well-being, which requires managing the impact of the uncertainty they live with;
- Their specific needs, such as integration, identity, and expectations about their life - whether their own or those of their families, and how these may impact the choices they face;
- Interviewing techniques and communicating with children; child development; follow-up procedures for referral, monitoring, support and assisting the child's integration into the community; and child protection and safety.¹⁴⁸

76. If the host family has a different ethnic or cultural background to that of the child, training and preparation for placement may also include areas such as cultural awareness and sensitivity, immigration procedures and how they can affect children. Training can also cover aspects such as how to make children welcome so that they can begin to develop a sense of belonging. Information about the child's country of origin, their customs and/or religion, as well as tools and strategies to find out more, are other topics to be covered. Culture and background can influence matters of everyday importance such as what food children can eat and/or are able to digest. Language and communication skills also play a pivotal role in inclusion. Supporting children to learn the local language and attend school are equally important aspects.¹⁴⁹

¹⁴⁷ Alternative Care in Emergencies Toolkit, pp. 76-77.

¹⁴⁸ Ibid.

¹⁴⁹ For training of, and support to, foster families, see also: Wade J. *op. cit.*; Sayers A., Lowe K, *op. cit.*; CRC Committee, General Comment No.6(2005), paras 95-97; European Expert Group on the Transition from Institutional to Community-based care (2012), Common European Guidelines on the Transition from Institutional to Community-based care, Brussels, Belgium, pp. 151-152.

77. In addition to formal training, foster parents can benefit from sharing experiences and learning from each other. This can be achieved by promoting opportunities for peer learning, support and exchange, and through activities such as meetings or information sessions with experienced foster carers. Another consideration is to invite experienced foster families to contribute to formal training courses that are organised by the relevant, mandated authority.¹⁵⁰

78. Other areas to cover through training are the importance for children of keeping in touch with their family so that they can be informed about the life and development of their children in the new country and culture. This will allow them to be involved in important decisions for their children, which also helps avoid “conflicts of loyalty” that they may develop towards their families and communities.¹⁵¹

79. Finally, capacity building should ideally provide for how to care for the carers. This means informing host parents on how they can support their own well-being, recognise signs of stress and burn out, and make use of available help. Such help could, for example, be found through social workers, other foster carers, or through discussions during supervisory meetings. While it is paramount to provide a solid initial training to foster carers, some topics are complex and may still require them to undergo additional capacity-building, or to seek the support of social workers, specialised professionals and/or experienced colleagues.¹⁵²

3.6. Monitoring

80. Monitoring is an integral component of providing care and protection. Providers of alternative care should be duly authorised by a competent authority responsible for regular monitoring and review. The ability to prioritise the monitoring of children at high risk should be based on clear criteria.¹⁵³ This should be according to criteria on treatment, protection, contact with family and staff qualifications, in addition to aspects that relate to more basic needs such as quality of accommodation. In other words, the emotional and cultural development of the child should be part of the plan so that her or his safety and well-being can be ensured. The UN Guidelines for the Alternative Care of Children also stipulate that monitoring and inspection should happen both through scheduled and unannounced visits, and, importantly, that interviews with children must happen under conditions of privacy. Monitoring should lead to identifying and then delivering any support that may have to be provided to the host family or the child, whether through training, coaching or other means.¹⁵⁴

81. The most common form of family-based care for unaccompanied and separated children is a kinship or network family placement. These may not be kin but persons known to the child before they arrived in the country. Often, this type of placement is informal: it happens outside of the scope of the formal child protection system and is consequently not monitored. This situation can pose unnecessary risks to children as they may be subjected to neglect or abuse. All placements should ideally be arranged by the relevant authority, including kinship placements. This ensures that the family receives adequate support, including training and compensation, and can strengthen their accountability and responsibility towards the child. Regional and project-based approaches should also be integrated with child protection systems to ensure appropriate oversight and safeguards for children.¹⁵⁵

¹⁵⁰ De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), *op. cit.*, p. 64-66.

¹⁵¹ *Ibid.*

¹⁵² Sayers A., Lowe K, *op. cit.*, pp. 128-136.

¹⁵³ Alternative Care in Emergencies Toolkit, pp.109-110.

¹⁵⁴ Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012), pp. 108-110.

¹⁵⁵ FRA Fundamental Rights Report, Luxembourg: Publications Office of the European Union, 2017, p.185, and De Ruijter de Wildt L., Melin E., Ishola P., Dolby P., Murk J., van de Pol P. (2015), *op. cit.*, p.7.

3.7. Transitions

82. The transition to adulthood is a delicate and complicated period for any child. It is particularly difficult for children who have grown up in care and even more so for unaccompanied and separated children, considering that turning 18 may entail a significant loss of rights, protection and entitlements. In some cases, they may lose their permit to stay in the country, be detained or forced to leave.¹⁵⁶

83. It is recommended to support unaccompanied and separated children in preparing and planning for radically different scenarios. Firstly, drawing up a transitional plan to support the child in a period of uncertainty while they await the outcome of their asylum application or claim decision. Secondly, developing a longer-term plan to support them if they are granted international protection, including access to supported or independent accommodation, to higher education and/or more. Thirdly, preparing the young person to return to their country of origin if their application is unsuccessful or if they wish to do so. Starting a conversation with the child or young person on the possible outcome of their asylum application can be emotional and challenging. However, it is important to discuss this topic so that the proper planning can be put into place.¹⁵⁷ This information should be provided to the child in a child-friendly manner.

84. If the young person is allowed to stay in the country, she or he will need help with integration and securing continued support. Similarly, the young person will need to be provided with realistic, age and gender appropriate information, which includes details of any other decisions that may affect them. They will need information about what 'ageing out of care' entails, and how to ensure a successful transition to independent living and/or departure from the host country. Planning for leaving their care placement and transitioning to other arrangements should also be discussed. This could also include ongoing support they may be entitled to once they leave a particular type of care, such as continued contact with the host family.¹⁵⁸

85. This process of transition should ideally be managed through the development and implementation of a 'leaving care plan', including information about all the topics to consider regardless of whether the young person is staying or leaving the country (for example health and well-being, personal development, positive relationships, learning and work, accommodation, practical skills, finances, rights and legal matters). These young people may benefit from schemes such as scholarships and mentorships, facilitated access to continued education and/or training opportunities; or by participating in quality internships and similar measures.¹⁵⁹

86. Coaching in self-reliance can be particularly beneficial for unaccompanied and separated children and young people. This will preferably start before they reach the age of

¹⁵⁶ D'Addato A., Giraldi M., Van Der Hoeven C. and Fontal A. (2017), *op. cit.*, p. 149.

¹⁵⁷ Sayers A., Lowe K, *op. cit.*, 71-74.

¹⁵⁸ Recommendation CM/Rec(2019) 11 of the Committee of recommends that that guardianship measures "should also be applicable, as appropriate, to young persons who need continuing care and support through guardianship or other means for a transitional period after reaching 18 years of age or in specific situations" (principle 3). See also, Recommendation CM/Rec(2019)4 on supporting young refugees in transition to adulthood adopted by the Committee of Ministers of the Council of Europe on 24 April 2019.

¹⁵⁹ CELCIS/ University of Strathclyde, *Caring for Children Moving Alone: Protecting Unaccompanied and Separated Children*, Course Steps 6.8, 6.9, 6.11, 6.12. See also Cantwell N., Gale C., McGhee K., Skinner K. (2017), *Prepare for Leaving Care. Practice Guidance*, SOS Children's Villages International and CELCIS, University of Strathclyde.

18. It is important to help them build a support network, both formally through organisations and informally through friendships, schools, religious communities, or clubs; as well as through meeting compatriots who have integrated in the host country. Ideally, the host family will also remain within the support network of the child after they turn 18.¹⁶⁰

4. CONCLUSION

87. Integrated child protection systems are best placed to respond to the specific needs and circumstances of unaccompanied and separated children. Developing responses that are rooted in a rights framework that recognises children as children first – rather than as refugees, migrants or asylum seekers – will make it possible for unaccompanied and separated children to access the support they need on an equal basis with others and in accordance with their best interests.

88. Family-based care can provide children with the opportunity to create relationships that have a significant impact on their well-being, as well as their present and future circumstances. It can provide them with support and connections that strengthen their emotional, legal and social recognition and resilience. It can help them navigate the difficult and complex legal procedures necessary to achieve case resolution. It can likewise empower them to face the prospects of returning to their countries of origin or, as the case may be, forge their path towards independence in their new country if status is granted.¹⁶¹ Inclusion and integration in the broader community can be facilitated through opportunities for local populations and newcomers to meet and establish relationships.

89. The previous chapters have presented some of the strategies that can be followed by authorities to strengthen child protection and alternative care systems, with a view to making the provision of quality family- and community-based care to unaccompanied and separated children possible. These strategies can also help determine budgetary priorities and the long-term benefits of realising the rights of every child for the benefit of society as a whole.

90. A European approach can be particularly helpful as there is an added value in sharing knowledge, expertise, and innovation across countries when authorities at all levels grapple with similar questions and issues. Providing a framework or forum at the European level on the exchange of good practices and challenges can lead to mutual learning and a more comprehensive appreciation of potential solutions from a variety of perspectives.

91. Family-based care has for a long time been promoted as the preferred accommodation option for unaccompanied and separated children and has received increasing interest in recent years. However, despite the numerous benefits of quality family-based forms of care, not only for unaccompanied and separated children but the community at large, underlying challenges limit their use and expansion.

92. There is a need firstly, for legal and policy coherence between child protection and migration policy spheres; and secondly, for the exchange of knowledge, practical know-how and promising practices beyond the local and regional levels and beyond EU member States to and between all Council of Europe member States.

¹⁶⁰ Sirriyeh, A. and Ní Raghallaigh, M., *op. cit.*

¹⁶¹ Ala Sirriyeh, Muirrean Ní Raghallaigh (2018), Foster Care, recognition and transitions to adulthood for unaccompanied asylum seeking young people in England and Ireland, Children and Youth Services Review 92, 2018, 87-97.

93. There is no “one-fits-all” care placement that will meet the needs, vulnerabilities, strengths, risks and circumstances of each unaccompanied and separated child. Additionally, every national context will have specific challenges which may put strains on the ability to provide care and protection to children in the context of migration.

94. The development and implementation of effective care systems needs to carefully examine the specific national context and develop placement options that take into account the best interests of the child and at the same time meet a minimum level of quality standards. A range of options should ideally be available and developed in cooperation with local authorities and all relevant stakeholders to promote a sense of shared ownership. Regardless of the particular form of care, the quality of family-based alternative care is central to the well-being of unaccompanied and separated children.

95. Having regard to the international and European human rights standards and the underlying challenges hindering the use and expansion of alternative family-based care, the Council of Europe could be well-placed to make a strategic contribution in the field. It could further support its member States in their endeavors, thereby helping to create lasting positive changes in the way unaccompanied and separated children are cared for and protected in Europe.

* * *