

HANDBOOK

A horizontal band consisting of three panels, each showing a pair of hands (one light, one dark) reaching towards each other against a blue background with a circular pattern.

# Guardianship for children deprived of parental care

A handbook to reinforce  
guardianship systems to cater  
for the specific needs  
of child victims  
of trafficking



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# **Guardianship for children deprived of parental care**

A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking



# Foreword

Children who are unaccompanied or separated from their primary caregiver are particularly vulnerable to abuse and exploitation. They are entitled to special protection.

Guardians are one of the most important features of a protection system for children who are deprived of their family environment or who cannot have their interests represented by their parents, as may be the case in situations of parental abuse or neglect.

A comparative report on child trafficking published by the European Union Agency for Fundamental Rights (FRA) in 2009 showed significant differences among European Union (EU) Member States on how the concept of guardian is understood and applied. In addition, interviews carried out by the FRA for a report on separated children seeking asylum published in 2010 revealed that the quality of the services and the degree of protection offered to children under existing guardianship systems may vary considerably even within the same state.

In this framework of diverse national practices, the Anti-Trafficking Directive (2011/36/EU) requires Member States to appoint a guardian or a representative for a child victim of trafficking from the moment the child is identified by the authorities as unaccompanied as well as in cases where the holders of parental responsibility cannot ensure the child's best interest and/or represent the child. *The EU Strategy towards the eradication of trafficking in human beings 2012–2016* also recognises that comprehensive child-sensitive protection systems, ensuring interagency and multidisciplinary coordination, are key in catering to the needs of diverse groups of children, including victims of trafficking. The EU Strategy therefore included as a deliverable the publication of this handbook.

This handbook aims to strengthen the protection of children by assisting national authorities and other stakeholders across the EU to further develop existing guardianship systems. It seeks to clarify the role of guardians as an essential component of an integrated child protection system. It underlines the importance of the role of guardians and legal representatives in preventing and responding to child abuse and exploitation, and in protecting and assisting child victims of trafficking. The handbook promotes a shared understanding of the main principles and features of a guardianship system. By presenting a set of core common principles and key standards it aims to improve conditions for children under guardianship, and promote respect for their fundamental rights.

We would like to thank the many experts who contributed with constructive comments to the development of this handbook.

**Cecilia Malmström**  
*EU Commissioner  
for Home Affairs*

**Morten Kjaerum**  
*Director of the European Union Agency  
for Fundamental Rights*



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# List of abbreviations

- CRC** United Nations Convention on the Rights of the Child
- ECHR** European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
- SCEP** Separated Children in Europe Programme
- UN** United Nations
- UNHCR** United Nations High Commissioner for Refugees
- UNICEF** United Nations Children’s Fund



# How to use this handbook

This handbook aims to support public officials in European Union (EU) Member States who are in charge of, or involved in, guardianship and legal representation of children at a national, regional or local level. It provides guidance on how to establish and run national guardianship systems, and it points to the main tasks that a guardian should carry out. In doing so, the handbook also aims to foster a common understanding of the function and role of guardians and legal representatives in the EU as an essential component of child protection systems. This, in turn, should contribute to promoting a shared understanding of the main principles and features of a guardianship system. Such a common understanding should help standardise the level of protection offered to children throughout the EU.

The guidance provided is addressed primarily to EU Member State officials and guardians. It is also largely applicable to systems for legal representation of children in specific procedures (such as asylum procedures), even if a legal representative only complements the limited legal capacity of the child for the purposes of a particular procedure and thus is not responsible for the full range of tasks normally assigned to a guardian.

This handbook does not address the appointment of lawyers who provide free legal aid to a child in specific civil, criminal or administrative procedures. Nor does it deal with persons who are in charge of the child's day-to-day care.

The handbook is structured in three parts.

- The **introduction** provides basic information on what the handbook covers and on the overall role of the guardian. It relates to national child protection systems set up to cater for the needs of different categories of children.
- **Part I** of the handbook sets forth the fundamental principles of guardianship systems and provides guidance on managing and strengthening guardianship systems. It is addressed to policy makers who are developing a national framework for the management and reinforcement of their guardianship system, and to the national authorities that are assigned guardianship responsibilities. It further describes the appointment procedures and the duration of the guardianship.
- **Part II** explains the tasks of the guardian. It is primarily addressed to guardians and those who are in charge of supervising their work.

The handbook, produced jointly by the European Union Agency for Fundamental Rights (FRA) and the European Commission, responds to a request in the *EU strategy towards the eradication of trafficking in human beings 2012–2016*. Various EU law sources,

including the [EU Anti-Trafficking Directive \(2011/35/EU\)](#), the EU asylum *acquis*, the [EU Victims' Directive \(2012/29/EU\)](#) and the [Directive on sexual exploitation of children \(2011/92/EU\)](#) contain provisions referring to guardianship or legal representation of children deprived of parental care. Full details of these sources may be found in [Annex 1](#). See Tables 1, 2 and 3 for an overview using these provisions in EU law, as well as those of other relevant European or international instruments and documents. These provisions do not, however, offer comprehensive guidance on what a guardian should be and what he or she should do. This handbook is intended to fill this gap.

This handbook takes an integrated, child-centred approach. It puts at its heart the United Nations (UN) Convention on the Rights of the Child (CRC), whose provisions are applicable to all children without discrimination. The handbook suggests covering the specific needs and rights of identified or presumed child victims of trafficking by adapting, where necessary, guardianship systems established for all children in need of a guardian. A large part of this handbook contains suggestions that are common to all guardianship arrangements, regardless of whether they relate to a child victim of trafficking or not. The best way to promote the rights and well-being of a child victim of trafficking is by adhering to principles and safeguards common to all guardianship systems – such as a guardian's independence or absence of conflict of interest – combined with knowledge and skills to do with trafficking in human beings. The handbook discourages, therefore, the establishment of separate guardianship systems dealing only with child victims of trafficking in human beings. [Section 3 of the introduction](#) explains which situations of guardianship arrangements the handbook covers and which it does not.

International and European standards on the rights of the child and on the protection and assistance of child victims of trafficking have been taken as the starting point for this handbook. Provisions from legally binding texts such as the CRC and EU law are brought together with non-binding texts that offer authoritative guidance and recommendations. The legal sources used to draft the handbook are listed in [Annex 1](#). [Annex 2](#) includes further literature that the reader is encouraged to consult. Findings from previous FRA research on separated children and on child trafficking were also considered in compiling the handbook. Existing legal standards have been translated into practical guidance by collecting and comparing, through desk research, how EU Member States manage guardianship systems. Separately, FRA will publish a comparative overview of such research covering all 28 Member States.

A group of experts discussed the draft handbook at a meeting organised by FRA at its premises in November 2013. The group comprised representatives of relevant European and international organisations and of non-governmental organisations (NGOs), as well as selected practitioners and representatives of responsible authorities

at national level. These were selected to represent different national guardianship systems and different realities on the ground. Additional stakeholders working on child protection and child trafficking were consulted in writing. Finally, the draft was shared with Member State representatives for comments through the European Commission's informal expert group on child rights.

To help the reader to find relevant legal sources relating to a particular issue covered in this handbook, the sources are provided in blue and bold in the relevant paragraph.

The handbook also includes examples of promising practices identified in EU Member States which provide policy makers and practitioners with suggestions on how to address specific challenges. The part on the guardians' tasks contains checklists of possible actions guardians may need to take to promote the best interests of the child in his or her various life spheres.

The following textbox outlines the terminology used in this handbook. For some of the terms, including 'guardian', there is no commonly agreed definition.

## KEY TERMINOLOGY

**Victim of trafficking:** A 'victim of trafficking' is a natural person who has been subject to trafficking in human beings as defined in Article 2 of the EU [Anti-Trafficking Directive \(2011/36/EU\)](#).

*Trafficking:* The EU [Anti-Trafficking Directive \(2011/36/EU\)](#) defines 'trafficking' as "the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."

*Exploitation:* "Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs."

When such conduct "involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used."

[Anti-Trafficking Directive \(2011/36/EU\)](#), Article 2

**Child:** A child "shall mean any person below 18 years of age."

[Anti-Trafficking Directive \(2011/36/EU\)](#), Article 2 (6); see also [CRC](#), Article 1

"Where the age of the [victim] is uncertain and there are reasons to believe that the victim is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection".

[Anti-Trafficking Directive \(2011/36/EU\)](#), Article 13 (2)

**Unaccompanied child:** An ‘unaccompanied minor’ is a child “who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a [child] who is left unaccompanied after he or she has entered the territory of the Member States.”

*Qualification Directive (2011/95/EU), Article 2 (l)*

**Separated child:** A ‘separated child’ is a child who has been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

*UN Committee on the Rights of the Child General Comment No. 6 CRC/GC/2005/6 and the UN Guidelines for the Alternative Care of Children (UN Alternative care guidelines) A/HRC/11/L.13, paragraph 8*

The Separated Children in Europe Programme (SCEP) uses the word ‘separated’ rather than ‘unaccompanied’ because it more accurately defines the essential problem that such children face, namely that they lack the care and protection of their parents or primary caregiver and, as a consequence, suffer socially and psychologically from this separation. In this handbook, the term ‘unaccompanied’ will be used to refer to both unaccompanied and/or separated children, in order to be in line with the terminology ‘unaccompanied’ used in EU law and avoid possible confusions and inconsistencies.

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

*UN Committee on the Rights of the Child General Comment No. 6 CRC/GC/2005/6 and the UN Alternative care guidelines A/HRC/11/L.13*

**Representative (sometimes referred to as legal representative):** A representative “means a person or organisation appointed by the competent bodies in order to assist and represent an unaccompanied [child] in [international protection] procedures with a view to ensuring the best interests of the child and exercising legal capacity for the [child] where necessary.”

*Reception Conditions Directive (2013/33/EU), Article 2 (j)*

Representatives or legal representatives differ from the qualified lawyer or other legal professional who provides legal assistance, speaks on behalf of the child and legally represents him or her in written statements and in person before administrative and judicial authorities in criminal, asylum or other legal proceedings as provided in national law

**Guardianship authority:** The ‘guardianship authority’ is the institution or organisation or other legal entity that has the responsibility for recruitment, appointment, monitoring, supervision and training of guardians. The role of the guardianship authority or organisation should be laid down in the law.

*UN Alternative care guidelines, A/HRC/11/L.13 and UN Committee on the Rights of the Child, General Comment No. 6 CRC/GC/2005/6*



# INTRODUCTION

## 1. Who is a guardian?

EU Member States apply a variety of models for guardianship and legal representation.

Source: FRA (2009), Child trafficking in the European Union: Challenges, perspectives and good practices, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/529-Pub\\_Child\\_Trafficking\\_09\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/529-Pub_Child_Trafficking_09_en.pdf)

There is no commonly agreed definition of a guardian. While EU law recognises the importance of guardianship and legal representation to safeguard the child's best interests and well-being, it does not define the notion of guardian, nor does it define his or her functions. In addition to the term 'guardian', EU law uses the terms 'legal or other representative' and 'special representative' to describe the person appointed to assist and support unaccompanied children or children whose parents are precluded from exercising parental rights. Under EU law, the asylum *acquis* defines only legal representatives (see Table 1). Legal representatives exercise a much narrower function than guardians (see Section 2.7). Nor is there a definition of 'guardian' in the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. The guardian's role and responsibilities have been comprehensively described at the United Nations level in the *UN Guidelines for the Alternative Care of Children* and by the UN Committee on the Rights of the Child (CRC) in General Comment No. 6.

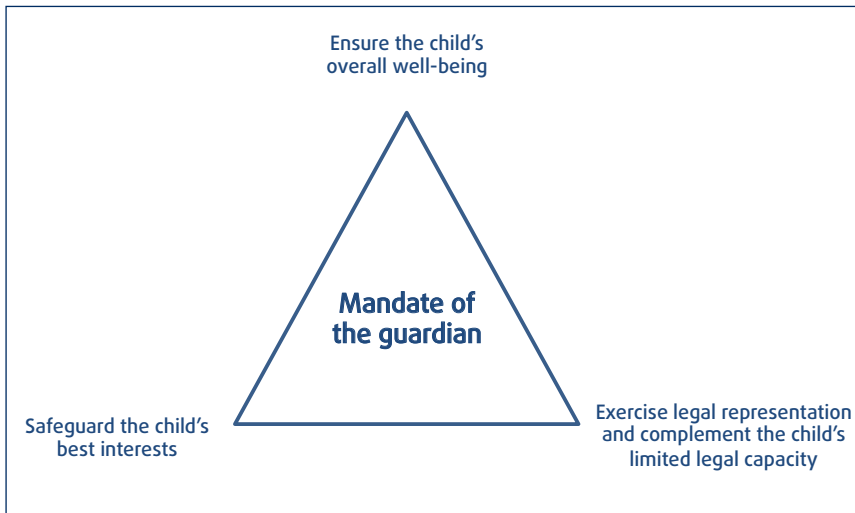
**Table 1: Terminology and definitions used in international and European policy documents**

Instrument	Terminology used	Reference
<b>United Nations and Council of Europe instruments</b>		
UN Committee on the Rights of the Child, General Comment No. 6 CRC/GC/2005/6	Guardian Legal representative	Paragraph 33
UN Alternative care guidelines A/HRC/11/L.13	Legal guardian Recognized responsible adult	Paragraph 100
2005 Council of Europe Convention on Action against Trafficking in Human Beings	Legal guardian	Article 10 (4) (a)
<b>European Union instruments</b>		
Anti-Trafficking Directive (2011/36/EU)	Guardian Representative	Article 14 (2) Article 16 (3)
Reception Conditions Directive (2013/33/EU)	Representative	Article 2 (j)
Asylum Procedures Directive (2013/32/EU)	Representative	Article 2 (n)
Qualification Directive (2011/95/EU)	Legal guardian Representative	Article 31 (1) Article 31 (2)
Victims' Directive (2012/29/EU)	Guardian Special/legal representative	Article 24 (b) Preamble (6o)
Sexual exploitation of children Directive (2011/92/EU)	Special/legal representative	Article 20
Dublin Regulation (604/2013/EU)	Representative	Article 2 (k)

The use of the terms 'guardian', 'representative' and 'legal representative' is inconsistent, and national terminologies also vary, so the emphasis should be on the functions of the appointed person, rather than on the title or terminology used.

For the purpose of this handbook, the guardian is considered to be an independent person who safeguards the child's best interests and general well-being, and to this effect complements the limited legal capacity of the child, when necessary, in the same way that parents do. He or she exercises three distinct functions as shown in Figure 1.



**Figure 1: The mandate of the guardian**

Source: FRA

The guardian differs from a qualified lawyer or other legal professional who provides legal assistance, speaks on behalf of the child and legally represents him or her in written statements and in person before administrative and judicial authorities in criminal, migration or other legal proceedings as provided for in national law.

The guardian must also be distinguished from social workers and other caregivers responsible for the material needs of the child. Social workers or other caregivers and persons who provide a child with day-to-day care are not guardians, unless, as a result of provision by law, they exercise responsibility for the well-being of the child and complement the limited legal capacity of the child.

Responsibility for legal representation of the child within particular legal or administrative proceedings might be dissociated from the other two functions of guardianship. In this case, such responsibility is assigned solely to an independent person or institution, usually called the 'legal representative' or 'representative'. Representatives, unlike guardians, have a restricted mandate, which is often precisely defined when they are appointed: to represent the child in particular proceedings.

Therefore, a guardian who can cover all three functions listed in Figure 1 should always be appointed when the child lacks parental care. This will help to ensure that

the child's best interests and overall well-being are protected and safeguarded. This goes far beyond pure representation in given proceedings or complementing the limited legal capacity of the child when required.

## 2. Guardianship as an essential component of child protection systems

The *EU Action Plan on Unaccompanied Minors (2010–2014)* notes that the standards established by the CRC are at the heart of any action concerning unaccompanied minors. Article 19 of the CRC calls on states parties to take necessary measures to prevent all forms of violence against children, including abuse and neglect, as well as to protect and support child victims. Article 20 of the CRC requires states parties to offer special protection and assistance to all children who are temporarily or permanently deprived of their family environment. The Committee on the Rights of the Child, in its [General Comment No. 13 \(2011\) on \*The right of the child to freedom from all forms of violence\*](#), underlines the importance of a child rights-based and integrated child protection and support system. The prompt appointment of a guardian, when necessary, is therefore one of the most important practical measures to be taken to protect children (Committee on the Rights of the Child, [General Comment No. 6](#)).

Article 16 of the [Anti-Trafficking Directive \(2011/36/EU\)](#) prescribes that Member States must take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking. Moreover, Article 14 provides that Member States shall appoint a guardian or a representative for a child victim of trafficking from the moment the child is identified by the authorities and “where, by national law, the holders of parental responsibility are, as a result of a conflict of interests between them and the child victim, precluded from ensuring the child's best interests and/or from representing the child”. The guardian should accompany the child throughout the entire process until a durable solution is found.

“Violence against children demands an integrated (systemic, holistic) approach. [...] It implies that all programmes and actions aimed at preventing and protecting children from violence, in the broad context of the promotion of the rights of the child, should operate across a range of disciplines and sectors”.

Source: Council of Europe (2009), Council of Europe's policy guidelines on integrated national strategies for the protection of children from violence, *Strasbourg*, available at: [www.coe.int/t/dg3/children/News/Guidelines/Adoption\\_guidelines\\_en.asp](http://www.coe.int/t/dg3/children/News/Guidelines/Adoption_guidelines_en.asp)

Historically, child protection has focused on particular issues or on specific groups of vulnerable children. Although this approach can be effective in serving the needs of a targeted group, it also has important limitations. Many children,

including child victims of trafficking, may have multiple child protection problems. Fragmented child protection responses may deal with one of these problems, but fail to provide a comprehensive solution. Focusing on selected issues alone, or on particular groups of children, is neither sustainable nor effective. In cases of child victims of trafficking, identification as a child victim or a child at risk of trafficking may occur at different points on a continuum of a child's individual protection needs. Therefore, increasingly, there is a move away at the European and global levels from fragmented issue-focused approaches to a systems approach to child protection.

This handbook adopts UNICEF's integrated child protection approach. Although designed with child victims of trafficking in mind, it suggests covering their specific needs primarily by taking measures which should be common to all guardianship arrangements. It also addresses how guardians should interact with other actors and elements of the child protection system, while seeking to ensure the best interests of the child are taken into consideration in all actions concerning the child.

An integrated child protection system places the child at the centre. It ensures that all essential actors and systems – education, health, welfare, justice, civil society, community, family – work in concert to protect the child. Such an integrated approach can respond to a variety of situations an individual child can encounter. It must respond to the needs of children, including victims of trafficking within their country of nationality as well as those who have crossed international borders. The best interests of the child must be the primary or paramount consideration, as required by the CRC.

An integrated child protection system still needs issue-based expertise and responses, but places them within the context of the overall system.

National guardianship systems are an integral part of child protection systems. They should seek to respond to the needs of all children who are permanently or temporarily deprived of parental care and need protection.

The United Nations Children's Fund (UNICEF) defines a child protection system as:

"the set of laws, policies, regulations and services needed across all social sectors – especially social welfare, education, health, security and justice – to support prevention and response to protection-related risks. These systems are part of social protection, and extend beyond it [...]. Responsibilities are often spread across government agencies, with services delivered by local authorities, non-State providers, and community groups, making coordination between sectors and levels, including routine referral systems, a necessary component of effective child protection systems."

*Source: UNICEF (2008), UNICEF child protection strategy, E/ICEF/2008/5/Rev.1, 20 May 2008, available at: [www.unicef.org/protection/files/CP\\_Strategy\\_English.pdf](http://www.unicef.org/protection/files/CP_Strategy_English.pdf)*

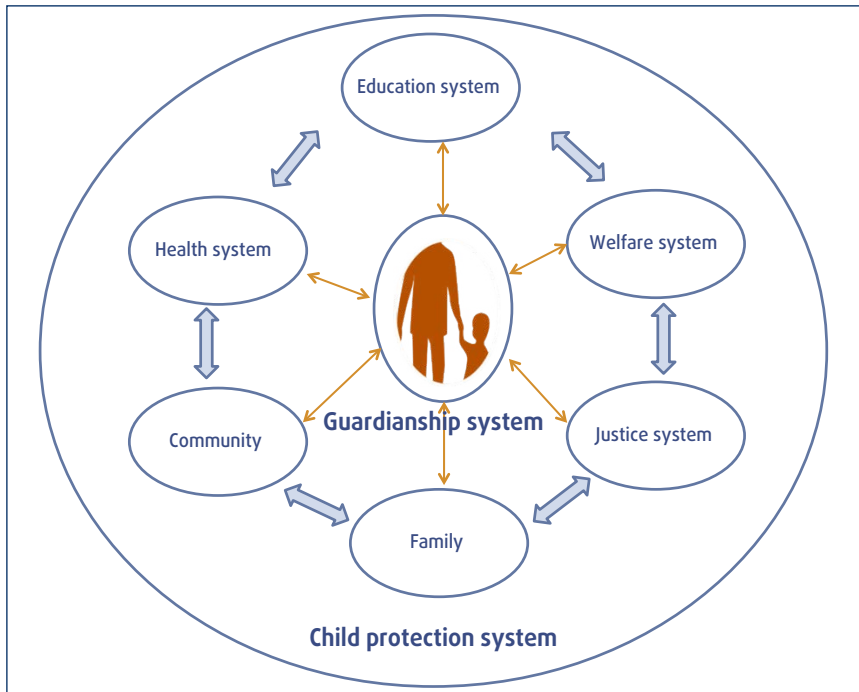
The UN General Assembly guidelines on children in alternative care provide guidance on the protection and well-being of all children deprived of parental care or at risk of being so. The guidelines include provisions aiming to ensure that there is always a legally recognised person or body holding **legal responsibility** for the child when the parents are absent or not in a position to make day-to-day decisions deemed to be in the child's best interests.

Source: General Assembly (2010), Resolution 64/142, Guidelines for the alternative care of children, 24 February 2010, A/RES/64/142, available at: [www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf)

The guardian should be the person with the most comprehensive view of the child's situation and individual needs. A guardian is in a unique position to connect the various authorities and the child. The guardian can also help to ensure continuity in the protection of the child and to enable the child to participate effectively in all decisions affecting him or her, in line with the provisions of Article 12 of the CRC. Putting the guardian next to the

child at the centre strengthens the guardian's preventative as well as protective role (Figure 2).

**Figure 2: Child protection systems and the role of the guardian**

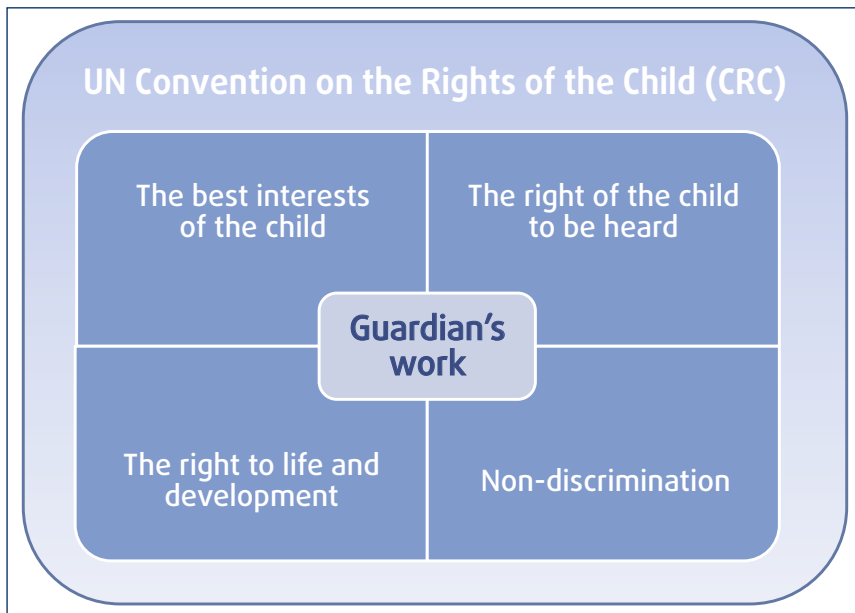


Source: FRA

Guardians' work must be guided by the four core principles set out in the CRC (Figure 3). States parties are required: to respect and promote the right of the child to life and development, including mental, physical and psychological development; to give due weight to the child's views based on his or her age, maturity and developing capacities; to safeguard the child's best interests as a primary consideration in all decisions and actions involving the child; and to respect fully and promote non-discrimination.

The UN Committee on the Rights of the Child, in its General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, paragraph 1), provide comprehensive guidance for the best interest assessment and determination procedure and a list of key elements.

**Figure 3: The four core principles of the CRC must guide the work of guardians**



Source: FRA

### 3. What does this handbook cover?

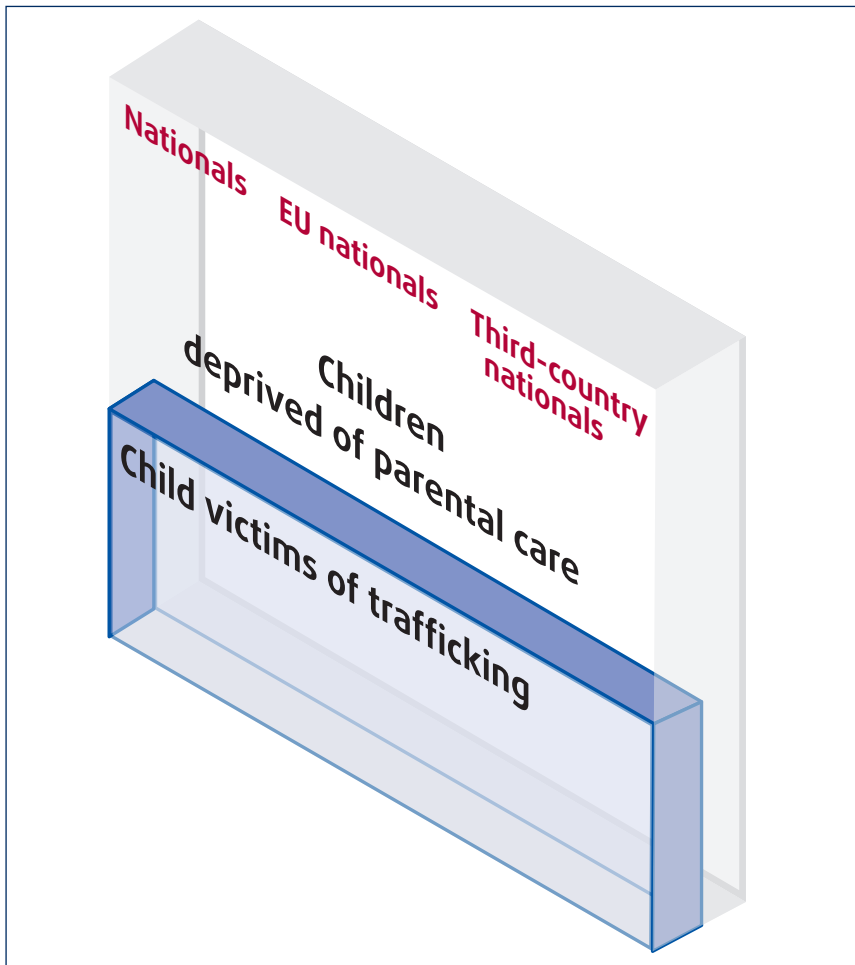
This handbook provides guidance on how to establish and run national guardianship systems, and it lists a guardian's main tasks. Most considerations are common points applicable to all guardianship situations. They relate primarily to guardianship systems for children deprived of parental care in general, although some are specific to child victims of trafficking, such as issues relating to the child's involvement in criminal procedures against traffickers.

The handbook describes those considerations that relate to child victims of trafficking who have been separated from their parents. They may be third-country nationals, EU nationals or citizens of the Member State in which they were trafficked.

This handbook focuses on the issue of guardianship as a key safeguard for children's rights when their parents are not able or willing to exercise parental rights and duties or have been precluded from doing so. This can be the case with child victims of trafficking; separation can be the result or the risk factor for trafficking. This handbook aims to strengthen the preventative and protective role of guardianship as one of the elements of an integrated child protection system. The handbook does not, however, deal with the overall protection of child victims beyond guardianship systems.

The handbook also does not cover the particular aspects of all guardianship situations, such as, for example, the case of children whose parents are imprisoned. Neither does it address all aspects of effective child protection, including how to respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact and how to re-establish the parent's capacity to resume exercising their parental responsibilities. Figure 4 illustrates what the handbook covers and what it does not.

**Figure 4: Children deprived of parental environment and child victims of trafficking**



Source: FRA

This handbook does not address the appointment of legal professionals who provide a child with free legal aid in civil, criminal or administrative procedures. Nor does it deal with persons who are in charge of the child's day-to-day care. Nevertheless, some aspects of the handbook may also be useful to them, particularly if they interact with guardians.

## 4. Transnational cooperation in the context of child protection

With increased mobility within the EU and globally, a child may be of concern to more than one EU Member State. To protect a child effectively from exploitation, abuse, neglect and violence, it is essential to have cooperation and coordination mechanisms within the EU, as well as internationally.

In cases of unaccompanied children and of child victims of trafficking exploited outside their country of origin, cooperation between EU Member States and with third countries is vital. There may, for example, be a need to establish the identity of an undocumented child, or to identify and evaluate durable solutions (see also [Chapter 9](#)). In addition, other situations involving children, such as children going missing, parental child abduction or inter-country adoption, require effective transnational cooperation among different child protection authorities.

Cross-border or transnational coordination involving guardians may be required when:

- a potential victim of trafficking from one EU Member State is identified in another Member State;
- a guardian needs to help the child reestablish family contact or liaise with a child's parents or extended family in another EU Member State or outside the EU;
- an unaccompanied child from outside the EU goes missing from one EU Member State and is found in another;
- children are separated from their family during migration to the EU.

EU Member States should develop structured and systematic intra-EU as well as international cooperation mechanisms. Member States should use their resources to ease transnational cooperation, where possible capitalising on EU financial support. EU institutions could also take initiatives to coordinate such cooperation, when it falls within their competence.

Currently, two legal instruments address jurisdiction issues when particular cases involving children fall under their scope.

The 1996 Hague [Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children](#) determines, among other things, the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child.



At the EU level, the [Brussels II Regulation](#) (Council Regulation (EC) No. 2201/2003, as amended by [Regulation \(EC\) No. 2116/2004](#)) brings together in a single document the provisions on divorce and on parental responsibility. The regulation applies to civil proceedings relating to divorce, separation and marriage annulment, as well as to all aspects of parental responsibility, and establishes a full system of rules on jurisdiction.

Moreover, the 1993 Hague [Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption](#) establishes safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law. It establishes a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent abduction of, sale of or traffic in children.

Transnational cooperation should go beyond the cooperation of judicial or police authorities. When necessary for the child's best interests, this cooperation should extend to national child protection authorities, including guardianship authorities, both within EU Member States and with third countries. Such cooperation should not be limited to only certain categories of children.



# Part I – Reinforcement of guardianship systems



Part I provides guidance to policy makers developing a national framework to manage and strengthen their guardianship system, and to national authorities with guardianship responsibilities. It first lists those core elements which can be considered fundamental principles of guardianship systems.

[Chapter 2](#) addresses issues related to the employment status, professional qualifications and training requirements of the guardian. These include vetting procedures, conflicting interests and the impartiality of guardians. It also examines the distinctive roles and interaction between the guardian, the legal representative appointed to represent the child in particular proceedings and the lawyer or other qualified legal professional who provides the child with legal assistance. [Chapter 3](#) offers guidance on the management of guardianship systems and of individual guardians, including the development of standards and internal guidelines, case administration, accountability and monitoring provisions as well as the support and supervision of guardians. [Chapter 4](#) describes appointment procedures and the duration of the guardianship.

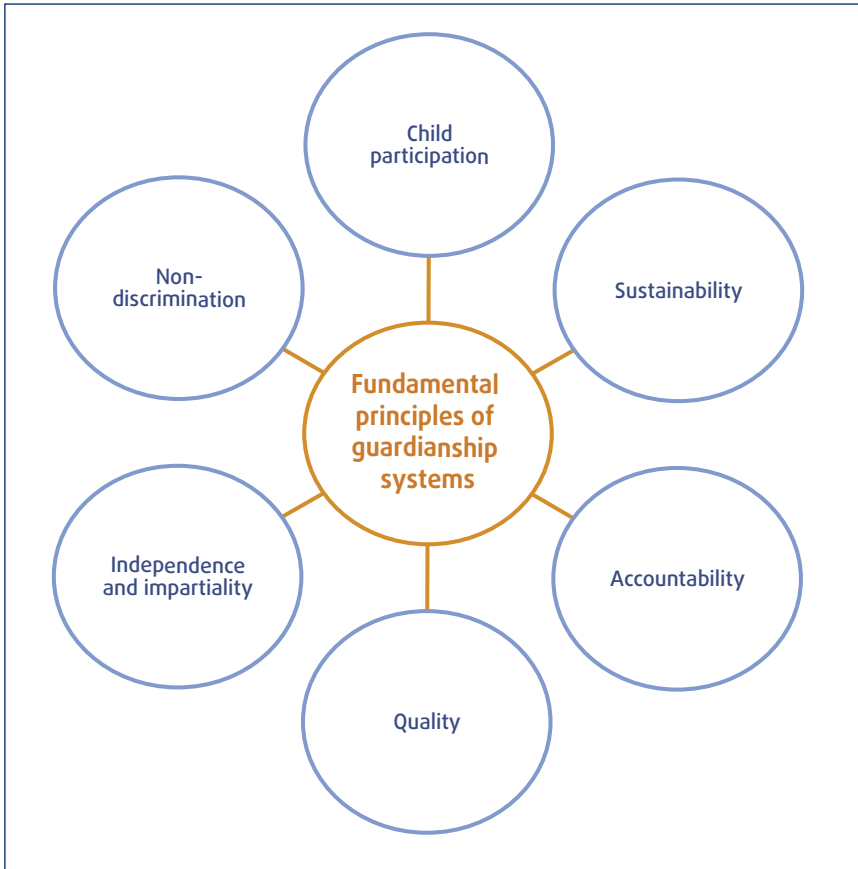
## 1. Fundamental principles of guardianship systems

Guardianship systems in EU Member States vary from one country to another, as they depend on needs, resources allocated and cultural, social and historical factors. Nonetheless, they share common features and encounter common challenges.

Regardless of the type of guardianship system and the national child protection system within which it operates, there are six fundamental principles that should

apply to all types of guardianship arrangements. These six, which can be derived from international standards (see Tables 1–4 and Annex 1), are shown in Figure 5.

**Figure 5: Fundamental principles of guardianship systems**



Source: FRA

### **1. Non-discrimination**

All children deprived of their family environment and parental care are entitled to the same level of protection irrespective of their age, immigration status (i.e. EU national, legal resident, asylum seeker, migrant in an irregular situation), nationality, gender, ethnic background or any other non-discrimination ground listed in Article 21 of the

**EU Charter of Fundamental Rights.** Particular attention should be given to the gender dimensions of violence against children.

The principle of non-discrimination also requires equal protection for all children within the state's territory, irrespective of the place of residence. EU Member States should harmonise guardianship provisions and services. Where protection systems are the responsibility of regional or local government, national governments should ensure consistency of standards and practices among different regions and localities within their territory.

## **2. Independence and impartiality**

Appointed guardians and legal representatives must be in a position to make independent and impartial decisions, assessment, actions and representations guided by the best interests of the child. Organisations, institutions and/or individuals should be precluded from guardianship and/or legal representation duties if their interests conflict, or could potentially conflict, with those of the child.

## **3. Quality**

Appointed guardians and legal representatives should have appropriate professional qualifications in the field of child welfare and/or child protection. In addition, they should receive appropriate initial and continuous training by the relevant authorities. To identify and protect child victims of trafficking it is important that guardians have the knowledge and skills required to detect child victims. Guardians who deal with children with particular needs, such as child victims of trafficking or unaccompanied children, must also have the necessary expertise to respond effectively to such needs, for instance knowledge and experience in working with traumatised children.

## **4. Accountability**

National law should provide the legal basis of guardianship and define the authority responsible for it. This guardianship authority should be held responsible and accountable for the acts of the appointed guardian. The exercise of guardianship and other representation functions should be monitored regularly and independently. The legal basis of guardianship in national law should include sufficiently precise legal provisions defining a guardian's duties and functions.

## **5. Sustainability**

Guardianship and legal representation systems should be an integral part of the national child protection system. States should allocate sufficient human and financial resources for the guardianship system's operation. The budget should include costs related to effective monitoring and oversight of guardianship services as well as training.

## **6. Child's participation**

Guardianship and legal representation arrangements and procedures should respect the child's right to be heard, and they should give due weight to the child's viewpoint. Children should receive, in a manner they understand, appropriate information regarding the scope of guardianship arrangements and about all available services that could provide assistance to them. Children should also be adequately informed about their rights and the possibility of lodging complaints whenever they feel that their guardians are not respecting their rights.

## **2. Guardianship systems: initial considerations**

An inclusive guardianship system contributes to the efficient prevention of child abuse and exploitation, including child trafficking. It makes protection and rehabilitation of victims more effective. This chapter covers basic considerations related to guardianship systems necessary to ensure effective protection of children, such as the employment status of guardians, qualification requirements and safeguards against conflict of interest.

### **2.1. What should be laid down in legislation and/or policy?**

There are certain basic requirements which need to be clarified in a transparent manner. The degree to which these requirements are laid down in national law may vary according to the legal system. Essential aspects should, however, be defined in a clear manner. These include:

- recruitment and appointment procedures, including the employment status of guardians and legal representatives;
- duties, rights and responsibilities of guardians and legal representatives;
- professional requirements, qualifications and vetting procedures for guardians;
- training requirements;
- monitoring and oversight procedures, including an accessible individual complaint mechanism for children;
- the right of children to express their views at different stages of the procedure and a duty to ensure that the competent authorities take such views into consideration and give them due weight.

## 2.2. One uniform guardianship system for all children?

No EU Member State has a guardianship system only for child victims of trafficking.

*Source: FRA 2014, Child victims of trafficking: overview of guardianship systems in the European Union (forthcoming)*

To function effectively, the guardianship system should be an integral part of the national child protection system, and must operate within the child protection law and procedures. This approach is recognised in the *EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*, which states that “comprehensive child-sensitive protection systems that ensure interagency and multidisciplinary coordination are key in catering to diverse needs of diverse groups of children, including victims of trafficking”.

The appointment of a guardian may be required in different situations, for example for unaccompanied and separated children who find themselves outside their country of origin or for those who apply for asylum, or, within the country of origin, for children whose parents’ interests are in conflict with the child’s.

Some EU Member States have one guardianship system for all children; in others, there are different systems depending on the child’s migration status. Such differences affect the treatment of child victims of trafficking, since child victims in the EU may have differing migration statuses. They might, for example, be:

- children who are trafficked and exploited within their own EU Member State;
- EU nationals trafficked from one EU Member State to another;
- third-country nationals who hold a residence permit or a right to stay and are trafficked;
- third-country nationals who are in an irregular situation and are trafficked.

In some countries, the appointment of a legal guardian is dependent on international protection applications. Thus, not every victim of child trafficking is automatically ensured assistance by a legal guardian. Law and practice regarding the appointment of a legal guardian were found to diverge between EU Member States. In some Member States, the appointment of a legal guardian is a very rare occurrence because victims of child trafficking are not identified and/or because childcare institutions do not focus on this issue.

*Source: FRA (2009), Child trafficking in the European Union: Challenges, perspectives and good practices, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/529-Pub\\_Child\\_Trafficking\\_09\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/529-Pub_Child_Trafficking_09_en.pdf)*

Victims of trafficking are also found among international protection applicants. The status of children may change over time from one category to another. An integrated approach ensures that children are at the centre, irrespective of their legal or residence status. However, although an integrated approach on child protection is needed, expert knowledge and issue-based responses are still necessary and should be placed within the context of the overall system.

Child victims of trafficking are often unaccompanied, although there are cases where the child's parents or legal guardians are involved in the trafficking and exploitation, or where the child has been trafficked together with his or her parents. Separation from the parents might be the result of exploitation and trafficking of the child, or it might be one of the risk factors that contributed to the child being trafficked.

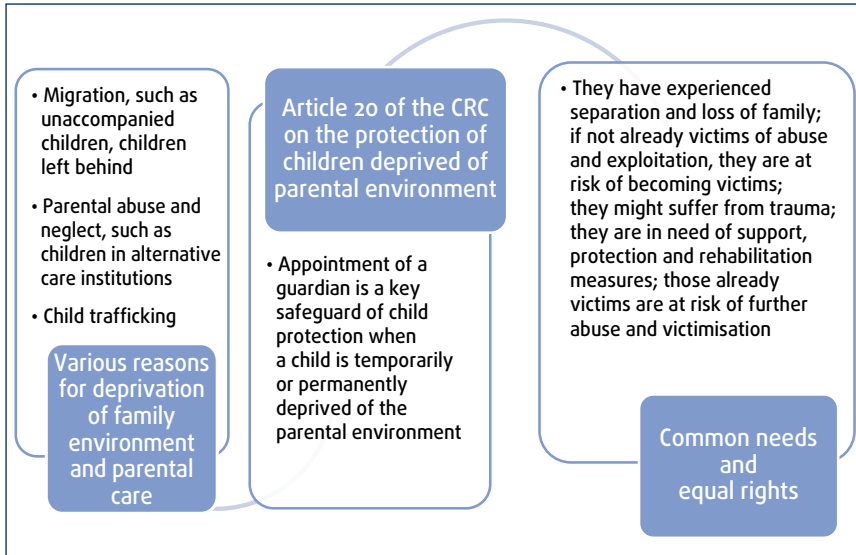
In view of the need to prevent child trafficking, authorities should pay special attention to children who for various reasons are temporarily or permanently deprived of their parental environment. This will include, in particular, children who are living in residential care facilities and unaccompanied children.

Special consideration should also be given to children with disabilities, including intellectual and mental disabilities, who are at high risk of exploitation and abuse. Disability can also be the result of being trafficked. Children who have been trafficked and abused are substantially more likely to develop disabilities as a result of physical and psychological trauma.

The differing circumstances but common needs and rights of unaccompanied or separated children are shown in Figure 6.



**Figure 6: Common needs and equal rights for all children deprived of parental environment**



Source: FRA

Children in long-term care and from institutionalised backgrounds have additional needs. Not only are they separated from their parents but they may also have an emotional relationship with the trafficker, one of dependency, for example, in part due to their psychosocial needs. This requires specialist assessment to ensure they are properly protected and cared for. When such children are returned to alternative care settings, special protection measures should be in place to protect them and other vulnerable children from traffickers.

### 2.3. Employment status of guardians: professionals or volunteers?

EU Member States have a duty to ensure that a guardian is appointed to safeguard the child’s best interests and the overall well-being of the child, and to ensure appropriate legal representation.

“Without denying the added value of individual volunteers or the exemplary dedication and commitment of some, a system of professional guardianship is in this regard preferred over a voluntary system. Should this be impossible, volunteers may well be a second best option or a back-up”.

Source: ENGI (European Network for Guardianship Institutions) (2011), Care for unaccompanied minors: Minimum standards, risk factors and recommendations for practitioners, *Guardianship in practice, final report, Utrecht*, p. 17, available at: [www.engi.eu/publications-and-links/](http://www.engi.eu/publications-and-links/)

To ensure that each child has a qualified and skilled guardian, **guardians should be employed as such**. There must be clear accountability lines with the designated guardianship authority.

**Volunteers** may hold important **supportive roles** to the appointed guardian, acting under his or her or other professional supervision. A guardianship system should not, however, rely entirely

on volunteer services, meaning guardians who are not trained professionals, either employed or self-employed. A system based solely on volunteers may lack continuity and sustainability. Guardians may not have the necessary knowledge and expertise. This exposes children to additional risks, particularly as they often suffer from trauma and are in need of special protection and treatment. Moreover, accountability mechanisms and monitoring for volunteer guardians could be weak or difficult to enforce.

It is therefore of primary importance to ensure that, whenever volunteers are appointed as guardians, the same standards apply to them as to professional guardians. This includes qualifications, vetting procedures, training, monitoring mechanisms and accountability measures. Codes of conducts and written guidance on recruitment, training, monitoring, evaluation and supervision developed for professional guardians should also be used for volunteer guardians.

Supervision by professionals and continuous support should be offered to all volunteers who assist in the care and protection of vulnerable children. This is particularly important for those volunteers who are appointed as guardians or are performing guardianship duties for child victims of trafficking.

Volunteers who are required to act as guardians should be compensated for their expenses when performing their assigned tasks.

## 2.4. Who can act as a guardian?

### Professional qualifications

Guardians must be qualified and equipped to deal with the wide variety of laws and procedures that regulate asylum, migration or other issues they may need to engage with. The professional qualifications required to become a guardian should be

laid down in domestic law or in official documents. Guardianship authorities should have written policies setting out clear procedures, methods and standards for the recruitment, training, monitoring, evaluation and supervision of appointed guardians.

Guardianship authorities should ensure that appointed guardians have the professional knowledge and expertise required to effectively represent the child's best interests and perform their duties.

National legislation does not always set specific professional or educational qualification requirements for guardians. This is particularly true for volunteers appointed as guardians. Instead, national legislation typically focuses on the moral and personal characteristics that potential guardians should fulfil.

*FRA, 2014, Child victims of trafficking: overview of guardianship systems in the European Union (forthcoming)*

This means that individuals appointed as guardians must have:

- expertise on and experience in child welfare and protection, including child development and child psychology;
- an understanding of cultural as well as gender issues;
- sufficient knowledge of the national child protection systems, as well as the national healthcare and educational systems;
- sufficient knowledge of the legal framework.

Guardians play a vital role in preventing child abuse and exploitation. They should therefore be aware of child-specific risk factors relating to trafficking and be familiar with strategies to avoid children disappearing from residential facilities. Guardians should know how to contact specialised services, including the European hotline number for missing children: [www.hotline116000.eu/](http://www.hotline116000.eu/).

Guardians must have the necessary knowledge to identify and detect child victims. Those working with child victims should also know and understand the specific rights and needs of child victims of trafficking and should be capable of assessing their needs and dealing with them in a respectful, sensitive, professional and non-discriminatory manner.

Table 2 outlines the requirements and criteria that various legal sources lay down.

**Table 2: Who can act as a guardian? Sources in policy documents and EU law**

Instrument	Responsible	No conflict of interest	Independent	Qualified	Trained
<b>United Nations and Council of Europe instruments</b>					
UN Committee on the Rights of the Child, General Comment No. 6 CRC/GC/2005/6	Paragraph 33	Paragraph 33	-	Paragraph 33 Paragraph 95	Paragraph 95
UN Alternative care guidelines A/HRC/11/L.13	Paragraph 19 Paragraph 101	-	Paragraph 103	Paragraph 103	Paragraph 57 Paragraph 103
2005 Council of Europe Convention on Action against Trafficking in Human Beings	-	-	Article 29 (1) (3) (general provision)	Article 29 (1) (3) Article 10 (1) (general provision)	Article 29 (3)
<b>European Union instruments</b>					
Anti-Trafficking Directive (2011/36/EU)	-	-	-	-	Recital 25 Article 18 (3)
Reception Conditions Directive (2013/33/EU)	-	Article 24 (1)	-	Article 24 (1) Article 24 (4)	Article 24 (4)
Asylum Procedures Directive (2013/32/EU)	-	Article 25 (1) (a)	-	Article 25 (1) (a)	-
Qualification Directive (2011/95/EU)	Article 31 (1)	-	-	Article 31 (6)	Article 31 (6)
Dublin Regulation (EU) No. 604/2013	-	-	-	Article 6.2	
Victims' Directive (2012/29/EU)	-	-	-	-	Article 25 Recital 61 (general provisions)
Sexual exploitation of children Directive (2011/92/EU)	-	-	-	-	Article 23 (3) Recital 36 (general provisions)

## Gender and cultural considerations

As far as possible, personalised care and assistance should be provided to children.

Particular consideration should be given to gender and cultural aspects. When possible and desirable, a guardian of the same gender should be assigned, particularly for girls

who are victims of sexual exploitation (see also [Section 6.5](#) on gender-specific issues and healthcare).

Guardians should gain culturally sensitive competencies, attitudes and skills that enhance cross-cultural communication and interaction with children from different cultural backgrounds. This will include knowledge of the effects of culture on the beliefs and behaviour of others, as well as awareness of one's own cultural attributes and stereotypes and their impact on one's behaviour and beliefs.

UNICEF has developed a practical tool, providing information about the steps and procedures that constitute 'good practice' in the protection and assistance of child victims of trafficking. It comprehensively addresses aspects of gender and cultural identity, as related to the care and assistance of victims.

*Source: UNICEF (2008), Reference guide on protecting the rights of child victims of trafficking in Europe, Geneva, available at: [http://www.unicef.org/ceecis/UNICEF\\_Child\\_Trafficking\\_low.pdf](http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf)*

Child victims of trafficking share a number of common experiences and circumstances, but they also differ in culture, gender and age as well as experiences before, during and after being trafficked. This individuality should be acknowledged.

The guardianship authority should promote training activities for guardians on gender and cultural aspects in victim support; promote cultural and gender diversity and inclusivity in recruitment of staff and volunteers; provide access to translation and interpretation services by qualified personnel; and use cultural mediators (see also [Chapter 7](#)).

## Vetting

No guardian should be allowed to work before he or she has undergone a vetting procedure. Proactive protection measures should be taken to safeguard respect for children's rights and minimise any risk of abuse or exploitation of children or any other violation of their rights.

The guardianship authority should have a written policy ensuring that candidate guardians' references be checked and that those appointed as guardians meet at least the minimum education, training and experience requirements.

All candidate guardians must undergo a criminal record and abuse registry check. [Article 10](#) of the [Directive on combating the sexual abuse of children](#) (2011/92/EU) disqualifies persons who have been convicted of certain specific offences from exercising professional activities involving regular contact with children. It is essential to check criminal records, particularly in regard to convictions related to child abuse and exploitation and/or other illicit activities such as drug-related crimes, which could indicate potential

risks for a child. It is important not only that such checks be applied upon recruitment or initial appointment of guardians but that systematic reviews take place.

The same vetting procedures should apply to all guardians, including volunteer guardians.

## **Conflict of interests**

Agencies or individuals whose interests could potentially be in conflict with the interests of the child should not be eligible for guardianship. Guardians should be in a position to make independent and impartial decisions, assessments and representations that are in the best interests of the child concerned and that promote and safeguard the child's well-being.

Therefore, guardianship services and persons appointed as guardians should not be in any way linked or related to, or dependent on police, migration or any other authorities responsible for formal identification of the child as a victim, or for decisions related to return, residence permit or international protection status.

Guardianship services and appointed guardians should be independent and not have financial or institutional connections with institutions, services or public authorities responsible for providing the child with accommodation or day-to-day care.

Guardians who are at the same time working for a reception facility may find themselves in a situation of potential conflict of interest between the management of the reception centre and the child. For example, employees are expected to perform their tasks in the interest of their employer (the care facility) and act under the instructions of the director. At the same time, they have to hold the care facility, its director and its staff accountable for the care and protection offered to the child.

Such considerations need to be seen in the light of the fact that violence against children very often takes place in the care institution where the child resides. Directors or staff of residential care facilities should therefore not be appointed as guardians.

Staff of social welfare services, being responsible for delivering care services, may also find themselves in a situation of conflict of interest.

If persons appointed as guardians have any potential conflict of interests that could affect their role and duties as guardians, they should declare them to the appointing authorities. The appointing authorities are responsible for assessing the possible impact of such conflict of interests.

## 2.5. Appointment of relatives as guardians in the context of child trafficking

If the child is separated from his or her parents, or the parents are precluded from exercising their parental rights and duties in the best interests of the child, other close relatives or members of the extended family, may, when possible, be assigned as guardians, unless there is an indication that this will not be in the best interests of the child, e.g. in cases of conflict of interests. Where extended family members are appointed as guardians after a risk assessment, the child protection system should ensure regular monitoring and review of the child's situation. In such cases, the guardianship authority should take supplementary measures, such as the appointment of a child's adviser or a family guardian or assistant to support the family and monitor the child's situation.

For child victims of trafficking in particular, the competent authorities must carefully scrutinise the suitability of accompanying family members in the receiving country or of child's relatives in the country of origin to avoid further exploitation and victimisation of the child and/or the child's being trafficked again upon return.

When family members are able and willing to provide day-to-day care, but unable to adequately represent the child's best interests in all spheres and at all levels of the child's life a guardian should be appointed to cover these gaps. This is particularly relevant for children who have been trafficked and require professional counselling and support when involved in often multiple or protracted judicial proceedings.

## 2.6. Representatives and/or legal representatives

Legal representation is one of the three key functions of guardianship, along with safeguarding the child's best interests and ensuring his or her well-being (see also [Figure 1](#)). When EU and national law give priority to this function, attention has to be paid to ensuring that a focus on legal representation does not lead to disregarding the other two functions.

EU law provides for the appointment of a representative for unaccompanied children applying for international protection [Asylum Procedures Directive \(Article 25\)](#). It also safeguards the rights of child victims in criminal investigations and proceedings, where, under national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim ([Article 15 \(1\), Anti-Trafficking Directive \(2011/36/EU\)](#); [Article 20, EU Directive on combating the sexual abuse of children \(2011/92/EU\)](#); [Article 24, Victim's Directive \(2012/29/EU\)](#)).

In EU law, the term ‘representative’ or ‘legal representative’ is defined as “a person or organisation appointed by the competent bodies in order to assist and represent a child, when parents are not able, not willing or have been precluded from doing so, in civil, administrative or judicial procedures with a view to ensuring the best interests of the child and exercising legal capacity for the child where necessary” (Article 2 (j), Reception Conditions Directive (2013/33/EU)).

Thus, the appointment of representatives aims solely to ensure representation of a child in particular proceedings, so it cannot be seen as equivalent to the appointment of guardian. The legal representative’s mandate does not cover all aspects of a child’s life and development.

Therefore, the appointment of a guardian should take place in all cases where a child is deprived of the parental environment, irrespective of the appointment of a legal representative. This approach would follow the spirit of the CRC and of Article 24 of the EU Charter for Fundamental Rights.

When a legal representative is appointed before a guardian is assigned, the legal representative should continue working (if, for example, his or her expertise is still required) in close cooperation with the guardian and the child.

The legal representative must keep the guardian and the child regularly informed about the procedure at hand, including possible decisions to be taken, and provide feedback on the outcome of his or her actions.

## 2.7. Legal counselling and legal assistance

In addition to legal representation, in certain administrative, criminal or civil proceedings in which the child is involved, he or she is entitled to free legal aid.

The European Council for Refugees and Exiles (ECRE) has developed a tool on quality legal assistance to unaccompanied children. The goal of the tool is to support Member States in improving legal assistance systems and to aid legal advisors in providing effective legal assistance. The tool was developed within the framework of the project ‘Right to Justice: Quality Legal Assistance for Unaccompanied Children’, co-funded by the EU.

*The tool, along with other project materials, will be available in the second quarter of 2014 at: <http://ecre.org/component/content/article/63-projects/325-right-to-justice.html>*

The right to legal aid is realised through the appointment of a lawyer or other qualified legal professional who provides legal assistance, speaks on behalf of the child and legally represents him or her in written statements and in person before administrative and judicial authorities in criminal, asylum or other legal proceedings as provided for in national law.



**Article 15 (2)** of the **Anti-Trafficking Directive** (2011/36/EU), read in the light of Recital 19, entitles child victims of trafficking to access without delay free legal counselling and free legal representation, including for the purpose of claiming compensation, unless they have financial resources. Similar provisions are found in the **Victims' Directive** (2012/29/EU) (**Article 13**) and in the **Directive on sexual exploitation of children** (2011/29/EU) (**Article 20**).

If a child is involved in administrative, criminal or civil proceedings, the guardian and/or other representative – if no guardian has been assigned yet – should ensure that the child has access to free legal aid and that competent national authorities appoint a qualified legal professional in accordance with national legal provisions.

Whenever the appointment is not taking place *ex officio* by the respective national authorities, the guardian or other representative should initiate the appointment procedure by issuing a request to the competent authorities.

The role of qualified lawyer or other qualified legal professional who provides legal counselling and legal assistance to the child differs from the mandate and actual role of the 'representative' or 'legal representative' as defined in EU law (see **Chapter 1** and also the textbox on **key terminology**).

The distinction between roles should always be taken into consideration, even if individuals appointed as 'representatives' or 'legal representatives' have a legal professional background or are lawyers or attorneys-at-law, as happens in many EU Member States.

Access to legal counselling and legal assistance, which an independent and qualified legal professional provides, functions as an additional safeguard in protecting and promoting the child's best interests.

### 3. Managing guardians

This chapter describes the system that should be in place to manage and administer guardians. It covers the support and oversight function of the entity entrusted with the management of guardians, and the network of cooperation with other entities that should be established. The guidance provided in this section is also applicable to systems of legal representation for children.

### 3.1. The guardianship authority

National law should designate an independent authority responsible for guardianship. Such an authority should be an integral part of the national child protection system. Where more than one guardianship authority is created to cater for different needs (for example a separate authority for third-country nationals), they should all be integral parts of the system. The authority should also be part of the national referral mechanism for child victims of trafficking. The authority responsible for guardianship should be independent, for example from state authorities deciding on the residential status of the child, on the removal of the child from parental care or on the child's placement in alternative care (see also [Section 2.4](#) on conflict of interest). It should be responsible and accountable for the acts of appointed guardians. The mandate and functions of the guardianship authority should be clearly defined in domestic legislation.

EU Member States should allocate sufficient human and financial resources to the guardianship authority and ensure sustainable funding. A sufficient budget should be earmarked for costs related to effective monitoring and oversight of guardianship services as well as necessary training activities, even if these are carried out by other authorities.

### 3.2. Develop guidelines for guardians

“States must put in place formal processes, with strict procedural safeguards, designed to assess and determine the child’s best interests for decisions affecting the child, including mechanisms for evaluating the results. States must develop transparent and objective processes for all decisions made by legislators, judges or administrative authorities, especially in areas which directly affect the child or children”.

*UN Committee on the Rights of the Child, General Comment No. 14 (2013), paragraph 87, 29 May 2013, CRC/C/GC/14*

One of the tasks of the guardianship authority is to develop standards and to provide guidance to those working as guardians. Practical guidelines as well as standard operational procedures should be considered for the following three actions in particular:

- assessing each child’s individual needs and protection risks;
- assessing the parents’ capacity to exercise parental responsibility;
- determining the child’s best interests when the competent authorities identify a durable solution.

Guidelines should clearly define the persons responsible for undertaking such assessments, the factors that need to be considered and how these should be weighed, the timing and length of the assessments, and the roles of the different professionals

involved. They should include the right of the child to be heard and to have his or her views given due weight.

To respect quality standards, guardianship authorities should also consider developing a code of conduct for guardians and legal representatives. The code would clearly define the ethical standards that guardians and legal representatives need to uphold during their work. Codes of conduct for guardians should set out clear rules on the principle of confidentiality.

Guardianship authorities should be responsible for ensuring that effective mechanisms are in place to inform the child and other adults responsible for or involved in their care, such as social workers and the staff of accommodation facilities, about the scope of guardianship duties.

## Child-friendly information

As a prerequisite of the right to be heard (**Article 12, CRC**), the guardianship authority should ensure that children receive and understand appropriate information regarding the scope of guardianship arrangements, and all available services that could provide assistance and support. Children should also be adequately informed about their rights and the possibility of filing complaints whenever they feel that their guardians are abusing or undermining their rights.

“Many children were not fully aware of the responsibilities of a guardian or even whether they had one or who this was. Even some adult respondents – not guardians themselves – were unsure of a guardian’s role; for example, if this entailed only legal or also welfare support.”

*Source: FRA (2010), Separated, asylum-seeking children in European Union Member States, Comparative report, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/1692-SEPA-comparative-report\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1692-SEPA-comparative-report_EN.pdf)*

Guardianship authorities should, therefore, consider developing child-friendly information material in languages that children are able to understand, and provide guidance on how to disseminate such materials.

Information to children should be provided in different ways, including orally, in writing, through social media or otherwise, as appropriate (see also **Chapter 7**).

Information provided to children should cover:

- the functions, rights and duties of the guardian;
- confidentiality of communication and its limits as well as accessibility of the guardian;
- the role, rights and duties of legal representatives;
- the individual complaint mechanisms available to a child to report violations of his or her rights;
- the child's rights, taking into consideration the particular situation of each individual child, as regards residence status, international protection needs, need for victim support etc.;
- available assistance and protection measures, and existing service providers, according to the particular situation of the child, including helplines;
- various criminal, administrative and civil proceedings the child might be involved in, including access to compensation.

### 3.3. Coordination and cooperation with other agencies and authorities

The guardian must safeguard the child's well-being and the continuum of care he or she requires. However, guardians must not duplicate the work of other actors. The function of the guardian is to coordinate but not replace the actions of social workers in child protection, welfare authorities or staff providing the child with care. The guardian should function as the child's reference person and act as a link between the child and specialist agencies, individuals and service providers.

The guardian should coordinate the various service providers and ensure that the network of services supporting the child functions adequately. EU Member States should establish effective coordination mechanisms and foster cooperation between the guardianship authority and the authorities related to child victims of trafficking. This is an approach stipulated in the [Anti-Trafficking Directive](#) (2011/36/EU) and further elaborated in the EU Strategy, stating that "a multi-disciplinary, coherent policy against trafficking in human beings requires the involvement of a more diverse group of actors than before", such as migration and police authorities, civil society and consular and diplomatic staff, child and victim support services.

Formal protocols and agreements between the guardianship authority and other concerned entities can help such cooperation. They also clarify who is responsible for a particular task and facilitate oversight, thus promoting accountability.

Possible details to include in such cooperation arrangements are:

- clear provisions on the roles and responsibilities of all relevant actors involved in the protection of a child;
- clear guidance on when the guardian should be contacted and/or informed, attaching contact details of the guardianship authority and of other entities which usually deal with victims;
- instructions on how to inform the child;
- instructions on what information about the child can or cannot be shared;
- coordination mechanisms set up to clarify open issues and exchange views on a regular basis.

## Transnational cooperation

Children may be trafficked within their own country or across borders. When children are trafficked across borders, transnational cooperation is essential for the prosecution of traffickers as well as for the protection of victims. For the importance of intra-EU and transnational cooperation, see [Section 4 in the introduction](#). Such cooperation is needed, for example, to obtain the information needed to determine the best interests of the child when seeking and implementing a durable solution (see also [Chapter 9](#)).

The guardianship authority should facilitate transnational cooperation with the relevant authorities, both within EU Member States and with third countries, when necessary for the child's best interests. Such cooperation should not be limited to certain categories of children.

Guardianship authorities should be included within the framework of the established mechanism of transnational cooperation, e.g. in relation to police and judicial authorities.

Guardianship authorities should, taking into consideration the existing national framework and cooperation agreements, advocate transnational cooperation in ensuring effective child protection and safeguarding the rights of the child.

### 3.4. Case administration

The guardianship authority should ensure that guardians are able to **manage effectively** all children assigned to them. They should have frequent contact and spend sufficient time with each child, providing each with appropriate support.

#### Promising practice

##### Finding guardians via search engine

Finland has a database of guardians available for appointment in child protection cases. The 'Find-a-Guardian' search engine provides quick and easy access to guardians operating in different regions of the country. The easy-to-use service helps social services and registry offices to find child protection guardians within their region. Persons who have participated in training courses for guardians, or those already working as guardians, can sign up to the register. The database is continually updated, so it is advisable to perform the search anew each time a guardian is required.

The search engine for guardians was created by the 'Guardianship in Child Protection' project (2005–2009), coordinated by Save the Children. Selected local and regional authorities participated as partners.

*Sources: [www.sosiaaliportti.fi/en-GB/find\\_a\\_guardian](http://www.sosiaaliportti.fi/en-GB/find_a_guardian); Marjomaa, P. and Laakso, M. (2010), Lastensuojelun edunvalvonta – lapsen oikeus osallisuuteen häntä koskevassa päätöksenteossa: Käsikirja lastensuojelun edunvalvonnasta, Helsinki, Pelastakaa lapset ry, pp. 27–29, available at: <http://pelastakaalapset-fi-bin.directo.fi/@Bin/54e503f5886c92f93ac69975f85250fe/1379614449/application/pdf/779480/K%C3%A4sikirja%20lastensuojelun%20edunvalvonnasta.pdf>*

When making case assignment decisions, the guardianship authority must consider not only the number of cases but also the type of case and the level of support required. Establishing a defined maximum number of cases to be assigned to an individual guardian is one way to make sure that the caseload of guardians remains reasonable, allowing guardians to perform their duties efficiently without jeopardising the child's rights. In doing so, national authorities might take into consideration international and national standards that have been developed for caseload management in other professional disciplines, such as social work.

To ensure quality, the maximum number of cases assigned per guardian should be monitored and the minimum number of contacts with the child regulated, on either a weekly or monthly basis. There must be flexibility, however, to take into account every child's individual needs, which may affect how often such contact is required.

The guardian's accessibility should also be regulated. The responsible authority should ensure that the guardian is nearby and avoid having a guardian located far from where the child resides. It should also make sure that the child can easily contact the guardian, particularly in emergencies, and provide the child with the guardian's contact details. Guardians should be available beyond office hours. The authority should further provide the child with information on how to act in emergencies.

The guardianship authority should **keep records** of all children referred to it. It should keep individual case files on every child under its care. The guardianship authority should ensure the confidentiality of these records, based on applicable EU and national privacy and data protection law. Examples of the type of information to be included in individual case files include:

- the date when the child was referred to the guardianship service;
- the date of the appointment, name and contact details of the guardian, as well as any change in the guardianship arrangements and reasons for it;
- the child's residence status, accommodation arrangements etc.;
- the identity and personal data of the child, including copies of the child's identity documents;
- all changes in guardianship arrangements, in accommodation and/or in residence status of the child;
- the date and results of the child's needs assessment, by whom it was undertaken and which actors were involved;
- the individual care plan for the child as well as any updates;
- relevant medical information on the child;
- the child's education, including reports on the child's progress at school;
- details and relevant documentation on criminal, administrative and/or civil proceedings, including information related to the legal representation of the child;
- decisions, actions, assessments and representations taken on behalf of the child by the guardian;
- hearings, meetings and other interaction between the child and other authorities and services (e.g. migration authorities, victim support services);

- interaction between the guardian and the child, including date and place of meetings;
- any significant events affecting the child;
- when and why the file was closed.

If a child goes missing, the file should include information on the known circumstances of the disappearance. Actions taken by the guardian and the guardianship authority to find the child, including reporting to police authorities, should also be recorded in the file. The files should be complete and up to date and should follow the child throughout the guardianship period.

### 3.5. Training

Guardians must possess the knowledge and skills required to perform their tasks. This includes, first of all, child protection expertise to ensure that the child's best interests are safeguarded.

In addition to child protection expertise, guardians should have the skills to work directly with children. They must have an understanding of the special needs of child victims of abuse and exploitation as well as of cultural issues concerning the children entrusted to them. Child victims of trafficking are in a particularly vulnerable position, as recognised in the [Anti-Trafficking Directive \(2011/36/EU\)](#).

The UN Committee on the Rights of the Child emphasised that guardians should have “the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child’s legal, social, health, psychological, material and educational needs are appropriately covered by, *inter alia*, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child”.

Source: UN Committee on the Rights of the Child (2005), *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin*, 1 September 2005, CRC/GC/2005/6, available at: <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2005/6>

Guardians have a duty not to cause any further harm to the child and to ensure protection from further abuse and/or repeat victimisation. Lack of professional knowledge and skills may lead to unintentional mistakes, with serious consequences for the child's well-being.

Well-trained guardians are able to complete tasks effectively and on time. Training programmes provide guardians with competencies and increased commitment to their work.

Guardianship authorities should ensure that a variety of training initiatives are offered to build competencies and align skills with new practices and methodological tools. This could be facilitated through



partnerships with universities, educational institutions and other relevant entities dealing with child protection, which may assist in offering training as well as in developing training materials.

## Training obligation

Guardians should, therefore, receive appropriate training and professional support.

Only a few Member States offer systematic induction training for guardians, without this training necessarily being mandatory.

*FRA, 2014, Child victims of trafficking: overview of guardianship systems in the European Union (forthcoming)*

Guardianship authorities should ensure that guardians are provided with **induction training** upon appointment and before they exercise any guardianship duties. There should also be a system to ensure that **refresher training** is offered. Guardians should be obliged to attend a minimum number of annual training hours, which are defined on the basis of needs. The development of training modules for guardians is necessary to ensure efficient and harmonised guardian training and to establish and promote quality standards.

Initial training and continuing education of guardians should be required by law. The guardianship authority should make sure that appointed guardians receive adequate induction and ongoing training, as required by EU law, to perform their duties efficiently.

## Certification

Responsible states and guardianship authorities should not underestimate the potential for harm through the use of unqualified guardians. The quality of guardianship services and the protection of children may be enhanced by certifying guardians. A certification process determines the core competencies a guardian must have. It includes qualification and training requirements, establishes standards for conduct and imposes consequences for failing to meet those standards.

## General training courses

Training programmes for guardians should, as a minimum, cover general child protection issues, such as:

Overall, the training of guardians is not organised in a systematic or consistent manner. Only a few Member States make guardians participation in training activities mandatory.

*FRA, 2014, Child victims of trafficking: overview of guardianship systems in the European Union (forthcoming)*

- CRC principles and provisions;
- appropriate interview and counselling techniques;
- child development and psychology;
- the legal framework (EU and national law of relevance);
- gender- and culture-related issues including cultural sensitivity and intercultural communication.

Furthermore, general training courses for guardians should include the risk factors and prevention strategies relating to the disappearance of children, information on available specialised services, knowledge of risk factors for child trafficking and detection strategies and indicators used for identifying child victims.

## Specialised training

In addition to general training, guardians should have expertise and/or receive training specifically tailored to the needs and the rights of particular groups of children, such as unaccompanied children, child victims of sexual abuse or child victims of trafficking.

The need for specialised and continuous training for all staff and officials coming into contact with victims, including guardians, is addressed in the [Anti-Trafficking Directive \(2011/36/EU\)](#), [Article 18 \(1\) and \(4\)](#), according to which “Member States shall promote **regular training** for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings”.

The [Anti-Trafficking Directive \(2011/36/EU\)](#) in Article 14 obliges EU Member States to take measures “to ensure that the specific actions to assist and support child

victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child." Guardians and all other officials who are likely to come into contact with child victims of trafficking, and are involved in the needs and risk assessments which determine their needs for protection and support (see [Section 3.5](#)), should receive specific training on how to carry out such assessments. Training should make extensive use of the standard operational procedures for individual needs assessment, risk assessment, parental assessment and best interests' determination, as well as any other guidance developed for guardians.

"Persons assigned legal guardianship duties, as well as any other persons in charge of safeguarding the child's best interests, should be provided with appropriate training and support to carry out their functions adequately".

Source: FRA (2010), Separated, asylum-seeking children in European Union Member States, *Comparative report*, p. 12, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/1692-SEPAC-comparative-report\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1692-SEPAC-comparative-report_EN.pdf)

EU Member States should work closely with civil society organisations in research and education programmes and in training, as well as in monitoring and evaluating the impact of anti-trafficking measures ([Anti-Trafficking Directive](#), [Recital 25](#)). When developing and implementing general or specialised training on the rights and needs of particular groups of children (such as unaccompanied children or child victims of trafficking), Member States and guardianship authorities in particular, should cooperate with NGOs and other public or private entities that operate in the field or have developed specialised services for children in general and for particular groups. EU Member States could consider cooperating with NGOs to develop training modules and provide training activities.

EU Member States differ considerably in their offerings of specialised or advanced training for guardians, focusing on the needs and vulnerabilities of particular groups of children, such as child victims of trafficking or unaccompanied children. Most Member States do not offer such training at all while others do not do so systematically.

FRA, 2014, Child victims of trafficking: overview of guardianship systems in the European Union (*forthcoming*)

To provide optimal support to child victims of trafficking, guardians working with them should be additionally trained and have sufficient knowledge of:

- the culture of and current conditions in the child's country of origin, including how to use databases on country-of-origin information (COI) developed for asylum processing, such as UNHCR's [www.refworld.org](http://www.refworld.org); the Austrian Red Cross's [www.ecoi.net](http://www.ecoi.net); or EASO's [COI portal](#);
- particular vulnerabilities (e.g. substance addiction) and psychological needs of child victims of trafficking;
- possible special medical needs (e.g. children at risk of sexually transmitted diseases or pregnant victims);
- child-specific reasons and risk factors related to trafficking, along with different types and sectors of exploitation of child victims, for example in the sex industry, begging or petty crime;
- the protection needs of child victims of trafficking, including victims in a particularly vulnerable position, such as those being sexually abused and exploited or those who have been trafficked with the complicity of their parents or other persons of trust;
- gender-specific issues related to child victims (risk factors, types and sectors of exploitation related to the gender of the victim) and their protection needs;
- issues related to the migration status of child victims and their rights (reflection period, entitlements to residence permits, international protection needs etc.);
- research-based information as the field develops.

### Training activities in common with other relevant agencies

Guardians should also be involved in **common training activities** targeting a wider range of officials and professionals who come into contact with child victims and children at risk of being trafficked. Such shared or multidisciplinary training activities could foster a common understanding of concepts and issues related to child victims of trafficking, thus facilitating and strengthening cooperation among the relevant actors.

Training activities could include, for example, study visits or exchange of good practices among guardianship authorities in other EU Member States. Such training activities would also contribute to strengthening transnational cooperation.

## Promising practice

### Supporting and supervising guardians

Belgian Red Cross-Flanders developed a project for coaching newly appointed, inexperienced guardians. Under the project, guardians meet regularly to discuss various aspects of guardianship and to share tips, knowledge and experiences. Between meetings, they can ask questions by email or discuss specific cases one-to-one. The coach can guide them, provide information where necessary and assist them in their communication and cooperation with official bodies.

The project primarily addresses the need of individuals, volunteers and freelance guardians who lack systematic support and supervision, providing them with a structured forum to facilitate communication and cooperation. Ultimately, it helps them to cope better with their daily tasks and responsibilities.

The Belgian Red Cross-Flanders has worked on the project in partnership with the Custodial Care Department at the Ministry of Justice since 2011.

*Source: Belgian Red Cross-Flanders (2012), Annual Report 2012, available at: <http://jaarverslag.rodekruis.be/content/jvs10/2012/Annualreport2012.pdf>*

## 3.6. Support to guardians

Guardianship authorities should directly provide guardians with access to support services or facilitate their access when other actors provide the services.

As good practice, guardians should have access to a multidisciplinary team of professionals to seek expertise, advice and assistance when performing their guardianship duties.

It is essential for guardians to have access to legal advice and counselling provided by expert lawyers and/or other qualified legal professionals, so that they are adequately informed on legal issues related to administrative and criminal procedures in which the child victim might be involved (e.g. application for international protection or temporary residence permit, criminal proceedings against the trafficker, compensation claims).

When necessary, professional interpreters should be provided to facilitate regular communication between the child and the guardian or other representative.

Guardians should receive systematic professional supervision and psycho-social support to prevent burn-out and ensure the quality of their work. Supervision helps guardians to gain knowledge and build the skills needed to conduct their work more effectively and efficiently.

Guardians can function only within the limits of the child protection systems and the normative framework within which they operate. Guardians should be aware of the limits of their competence, including from an emotional perspective.

Working conditions, including remuneration and the number of cases assigned per guardian (see also [Section 3.4.](#)), should be such as to maximise motivation, job satisfaction and continuity, and hence guardians' disposition to fulfil their roles in the most appropriate and effective manner.

"The exercise of legal guardianship and other representation functions should be monitored through regular and independent assessments, by judicial authorities for instance".

*Source: FRA (2010), Separated, asylum-seeking children in European Union Member States, Comparative report, p. 12, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/1692-SEPAC-comparative-report\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1692-SEPAC-comparative-report_EN.pdf)*

### 3.7. Review and oversight mechanisms

Guardianship authorities should define guardians' reporting duties and monitoring criteria. They should also determine the measures to take in case guardians do not comply with their duties, including defining effective disciplinary measures and the circumstances in which these are to be applied.

Review and oversight mechanisms serve parallel but different purposes. They are necessary for monitoring the quality of guardianship services. Indirectly, they help to ensure that the best interests of the child are the primary consideration throughout the decision-making process. They also fulfil an important preventative function, reducing the risk of abuse and violation of the rights of the child.

## Promising practice

### Facilitating effective child participation

Effective child participation is a key quality safeguard for a guardianship system. In the Netherlands, NIDOS seeks to promote and facilitate child participation in the monitoring and evaluation of guardianship services.

Children are given the opportunity to express their opinion in different ways.

- They talk about their experiences and express their views in meetings and in surveys on their welfare, organised annually by the guardianship authority.
- At the end of a guardianship period, they complete an evaluation form on the performance of their guardian and the implementation of their individual plan.
- They have the opportunity to issue complaints against their guardians if their rights are violated or they feel that their needs are not met. Guardianship institutions are obliged by law to establish an independent complaints procedure. A complaints commission is made up of at least three independent persons who are not employed by the organisation itself.

To ensure that children are adequately informed and facilitate child participation, the guardianship authority has developed an introduction folder which contains all relevant information on guardianship, including on the complaint procedure. Information is provided in the children's national languages.

*Sources: The Netherlands, Youth Care Act (Wet op de jeugdzorg), Article 68; Nidos (2012), Annual Report 2011 (Jaarverslag 2011), Utrecht, Nidos; Knowledge Centre on Social Innovation (Kenniscentrum sociale innovatie) (2013), Underage asylum seekers and their guardians (Minderjarige asielzoekers en hun voogd), available at: [www.innovatievemaatschappelijkedenstverlening.nl/Content.aspx?PGID=4a912568-1d54-4bba-a9a4-70892bf40340](http://www.innovatievemaatschappelijkedenstverlening.nl/Content.aspx?PGID=4a912568-1d54-4bba-a9a4-70892bf40340)*

Given their importance, monitoring and oversight mechanisms should be explicitly anchored in national law. Evaluation and monitoring should not be restricted to financial and case management issues but should be extensive and meaningful, encompassing issues of quality of services and level of protection offered to children. Monitoring should not be limited to internal mechanisms – such as reporting duties – but should also include regular independent evaluations carried out by external actors.

### Child participation

Effective monitoring mechanisms require respect for the child's right to be heard. The rights of the child to be heard should be fully respected, and children's views and opinions should always be taken into account, considering their age, maturity and developing capacities, as required by **Article 12 of the CRC**.

Therefore, children must be informed about guardianship and legal representation arrangements, their right to be heard and to have their views given due weight. Information must be adequate and provided in a child-friendly manner.

Children should be encouraged and enabled to participate in and contribute to the monitoring of guardianship systems.

## Individual complaint mechanisms

Individual complaint mechanisms must be accessible to children. Children should be informed, in a child-friendly manner and in a language they understand, about individuals to whom or organisations to which they can report complaints against their guardians, in confidence and safety, including through telephone helplines. Reliable procedures should be in place to ensure that children using complaint mechanisms and reporting procedures will not be exposed to retaliation.

In the majority of Member States no particular mechanism or provisions for filing complaints against guardians are in place. Where they exist, individual complaint mechanisms are insufficiently developed and often inaccessible to children.

*FRA, 2014, Child victims of trafficking: overview of guardianship systems in the European Union (forthcoming)*

Given that an increasing number of children go missing from residential care facilities, review and oversight mechanisms should monitor the rate of disappearance of children under guardianship, including unaccompanied children and identified or presumed child victims of trafficking. An in-depth evaluation and quality assessment of guardianship appointment procedures and services would address more efficiently the problem of missing children, as an effective guardianship system can contribute to resolving the issue of children who go missing or who are at risk of going missing.

## Regular reviews of guardianship

Decisions on appointing guardians are based on an individual needs assessment of each child (see also [Section 4.1](#)). The guardianship authority should review each individual guardianship arrangement at regular intervals, at least once a year. Reviews of guardianship arrangements must be documented. The views of the child must be taken into consideration in any such assessment.



## 4. Assigning a guardian to a child

This chapter contains guidance on the procedure for appointing a guardian to individual children. It stresses the importance of timely appointment. In addition, it addresses the duration of guardianship and what support to provide when children reach 18 years of age.

“No child should be without the support and protection of a legal guardian or other recognized responsible adult or competent public body at any time”.

Source: UN General Assembly, Resolution 64/142, Guidelines for the alternative care of children, 24 February 2010, A/RES/64/142, paragraph 19

### 4.1. When should a guardian be appointed?

#### Promising practice

#### Ensuring prompt appointment of guardians

Under the Dutch NIDOS programme, the first contact between NIDOS and the unaccompanied child must take place on the day of his or her arrival at the application centre. From that moment, NIDOS fulfils the role of a guardian and asks the court to appoint it to act as guardian until the court appoints the child a specific guardian. To facilitate a guardian’s prompt appointment, NIDOS signed a memorandum of understanding with migration services to ensure NIDOS can be contacted immediately when the services identify an unaccompanied child.

A special team of NIDOS guardians operates in the Ter Apel Application Centre and at Amsterdam’s Schiphol Airport. Following the initial intake of the child by the aliens police, the child is interviewed by NIDOS guardians, who try to determine if the child might be a victim of trafficking. If so, the child is transferred to a protected reception facility for trafficked children.

Sources: *The Netherlands, Executive Order Youth Care Act (Uitvoeringsbesluit Wet op de Jeugdzorg), Article 44; Kromhout, M. H. C. and Liefwaard, A. (2010), Between control and guidance: An evaluation of the pilot ‘Protected Reception UMAS at Risk’ (Tussen beheersing en begeleiding. Een evaluatie van de pilot ‘beschermde opvang risico-AMV’s’), The Hague, Scientific Research and Documentation Centre (Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC)*

Prompt appointment of a guardian is a key safeguard for a child’s rights and overall well-being, protecting unaccompanied children and preventing child trafficking and other forms of child abuse and exploitation.

A guardian must be appointed from the moment the authorities identify a child as a possible victim of trafficking, when required to safeguard the child’s best interests

and well-being ([Anti-Trafficking Directive \(2011/36/EU\)](#), [Article 14 \(2\)](#)). Thus, domestic law should provide that a guardian be assigned as soon as possible. In practice, it is possible that unaccompanied children may already have a guardian, because of their status as unaccompanied, before being identified as a victim of trafficking.

Prompt appointment of guardians for presumed victims of trafficking or for unaccompanied children at risk of exploitation and abuse is also in accordance with the [1996 Hague Convention](#) on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children to which most EU Member States are party. Article 5 of the convention sets out the general rule according to which the authorities of the state of the child's *habitual residence* have jurisdiction to appoint a guardian. For refugee children and children whose habitual residence cannot be established, jurisdiction lies in the state in which the child is at present ([Article 6](#) and also [Article 13](#) of the [Brussels II Regulation](#), amending [Regulation \(EC\) No. 2201/2003](#)). Even when a state does not have jurisdiction, however, it can take an urgent and provisional measure ([Articles 11 and 12](#) of the [1996 Hague Convention](#)). [Article 20](#) of the [Brussels II Regulation](#) (amending [Regulation \(EC\) No. 2201/2003](#)) also envisages the possibility to take provisional, including protective measures, in urgent cases, with regard to persons or property

situated in that state. EU Member States can use these provisions to appoint a guardian even if habitual residence has not yet been established, whenever authorities take actions which are likely to compromise the protection of an unaccompanied child.

The practical handbook on the operation of the 1996 Hague Convention suggests that a useful approach for authorities to determine whether a particular situation is 'urgent' may be to consider whether the child is likely to suffer irreparable harm or to have his or her protection or interests compromised if a measure is not taken to protect him or her.

Source: Permanent Bureau of the Hague Conference on Private International Law (May 2011), Revised draft practical handbook on the operation of the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, *Chapter 6.2*

The competent authorities should set a time limit for appointing a guardian, starting from the moment an unaccompanied child is identified.

## 4.2. What is the best procedure for assigning a guardian to a child?

Core procedural steps to assign a guardian should be the same for all children, even when different guardianship systems are in place for EU citizens and third-country nationals. If guardians are assigned at a regional or local level, the same safeguards should apply regardless of the location. This means, for example, that the time required to assign a guardian should not diverge significantly between regions or localities.

In view of how often children go missing from care, extra efforts should be made to prevent disappearances before the guardian has been appointed and/or has first met with the child.

Concerning the procedure to assign a guardian, two different situations must be distinguished.

- The child is unaccompanied or separated from his or her parents. In such cases, the assignment of a guardian can start immediately.
- There is a conflict of interest between the holders of parental responsibility and the child victim; as a result, they are precluded from ensuring the child's best interests and/or from representing the child. In this case, a temporary guardian or a legal representative should be assigned, if it is deemed necessary by the body that, under national law, is responsible for conducting a parental assessment and risk assessment to decide on separating a child from his or her parents, if the separation is in the best interests of the child.

In principle, a child who is with his or her parents or primary caregiver does not require a guardian. The parents will cater for the child's well-being. There may, however, be situations in which the parents have been involved in the trafficking of their child, have a conflict of interests with the child or may otherwise be precluded from ensuring the child's best interests ([Anti-Trafficking Directive, Article 14 \(2\)](#)). When authorities have reasons to believe, based on an initial risk assessment and of the individual circumstances of the case, that the parents or other primary caregivers might be involved in the trafficking of the child, they must carefully scrutinise their suitability to represent the child's interests.

Separation from parents can be a serious infringement of a child's rights and may have long-lasting psychological and social consequences. According to [Article 9](#) of the [CRC](#), children should not be separated from their parents against their will, unless this is necessary for the best interests of the child, as in cases of parental abuse and neglect. [Article 8](#) of the [ECHR](#), as interpreted by the European Court of Human Rights' case law, points in the same direction. Such separation may be done only by competent judicial authorities in accordance with applicable law and procedures, and must be subject to judicial review. Procedural and substantial safeguards established by national law must apply, regardless of the nationality of the child.

If children are victims of trafficking, adults accompanying the child, who might appear to be parents or caregivers, could instead be part of trafficking networks exploiting

the child. When there is a doubt about the identity of the accompanying adults, and in the absence of proper documentation, responsible authorities should carefully examine and scrutinise their relationship with the child. Authorities should develop standardised procedures for verifying parenthood and family relations. Such assessments should be carried out by qualified professionals.

The following core safeguards should be applied when establishing the need to appoint a guardian, following the reporting and referral procedure in place and upon identification of a child in need of protection. An individual needs assessment of the child's family situation should take place expeditiously, taking these considerations into account (see also [Chapter 5](#)).

- Parental capacity to care for and represent the child's interests should be assessed where the competent authority has reasonable cause to believe that the parents were involved in the exploitation or trafficking of the child and when the well-being of the child is at risk.
- The assessment should be carried out by suitable, qualified professionals on behalf of the responsible authority.
- The assessment should be carried out by a multidisciplinary professional team and not by a single professional.
- The child should be informed of the procedures and consulted throughout in accordance with his or her age, maturity and developing capacities.
- All stages of the procedure must be documented.
- Procedures should comply with the applicable laws, and, when relevant, parents should be informed of the procedure and their right to a legal representative.

### **Time of appointment**

When the need to appoint a guardian has been established, a guardian should be assigned to the child as soon as possible, and within a maximum time limit, which should be set by law (Table 3). The appointment decision should be subject to judicial review.

When a guardian is being appointed, children should be given the opportunity to be heard, and due weight should be given to their views.

**Table 3: International and European legal sources on the time by which a guardian should be appointed**

<b>Instrument</b>	<b>Information</b>	<b>Terminology</b>	<b>Appointment should take place as soon as possible following identification of the child</b>
<b>United Nations and Council of Europe Instruments</b>			
UN Committee on the Rights of the Child, General Comment No. 6 CRC/GC/2005/6		Guardian/ legal representative	Paragraph 33 "Expediently", "Prompt" (Paragraph 21, Paragraph 24)
UN Alternative care guidelines A/HRC/11/L.13		Legal guardian/ Recognised responsible adult	Paragraph 18
2005 Council of Europe Convention on Action against Trafficking in Human Beings		Legal guardian	Article 10 (4)
Anti-Trafficking Directive (2011/36/EU)		Guardian and/or representative	Article 14
<b>European Union instruments</b>			
Reception Conditions Directive (2013/33/EU)		Representative	Article 24 (1)
Asylum Procedures Directive (2013/32/EU)		Representative	Article 25 (1) (a)
Qualification Directive (2011/95/EU)		Legal guardian/ representative	Article 31 (1) (As soon as possible after granting international protection)
Dublin Regulation (EU) No. 604/2013		Representative	Article 6 (2)
Victims' Directive (2012/29/EU)		Guardian Special/legal representative	–
Sexual exploitation of children Directive (2011/98/EU)		Special/legal representative	–

## Promising practice

### Developing child protection hotlines

The Czech Republic's Authority of the Social and Legal Protection of Children, the country's guardianship authority, has set up a telephone hotline so it can be reached outside working hours.

In cases involving child victims of trafficking, police authorities are required to have a guardian or an authority employee present when they interview a child. Employees of the authority, in such cases, automatically fulfil the function of guardian until a court assigns this position officially.

*Source: Czech Republic, Ministry of the Interior (Ministerstvo vnitra České republiky) (2011), Child trafficking: Recommendations for methods of public authorities (Obchodování s dětmi – doporučení pro postup orgánů veřejné správy), Prague, Odbor bezpečnostní politiky, available at: [www.mvcr.cz/clanek/boj-proti-obchodovani-s-detmi.aspx](http://www.mvcr.cz/clanek/boj-proti-obchodovani-s-detmi.aspx)*

Where, for practical reasons, a permanent guardian cannot be assigned swiftly to a child, provision should be made for the appointment of a person who temporarily carries out the guardian's tasks.

This could be the case, for example, when the age of an undocumented child – and therefore the need for a guardian – is disputed and the authorities are carrying out an age assessment. The [Anti-Trafficking Directive \(2011/36/EU\)](#) explicitly sets out that where the age of a person subject to trafficking is uncertain, and there are reasons to believe that the child is less than 18 years of age, that person should be presumed to be a child and receive immediate assistance, support and protection (Recital 22). In such a situation, a guardian or temporary guardian should be appointed (see also [Section 10.1. on age assessment](#)).

In principle, no decision affecting the child should be taken before a guardian is appointed, except for immediate measures required to ensure the child's safety and cater for his or her basic needs. In particular, protective measures should be introduced to avoid the child's disappearance while waiting for a guardian's appointment and between the guardian's appointment and the first actual in-person contact between the guardian and the child.

Authorities should allow guardians sufficient time to meet and prepare the child before procedures are initiated and decisions taken. The timeframes should be laid down in official guidelines.

The responsibility to ensure that such temporary measures are taken rests with the authority which has identified the child or to which domestic law has given this task.

The transfer of responsibility for the child from the authority which identified the child as a victim, such as law enforcement, to the guardianship service should be documented.

## **Provide the child with information**

The guardianship authority should provide the child with relevant information about the guardian in a language and a manner that the child understands based on the child's age, maturity and developing capacities.

Gender and cultural considerations should also be taken into account when informing the child. The particular situation and needs of children with disabilities, including intellectual and mental disabilities, should be addressed.

The information provided should include information on what will happen to the child after a guardian is assigned, the role and function of the guardian and the rights and duties of the child.

To facilitate this, the guardianship authorities should develop child-friendly materials, which other bodies and entities can also use.

The guardianship authority should be responsible, upon appointment of the guardian, for providing all relevant information on guardianship arrangements to the child and particularly for informing the child of when, where, how and to whom he or she can report complaints against the guardian, abuse and misconduct or any violation of his or her rights. Such information should be provided in oral and/or written form in a child-friendly way and in a language that the child understands (see also [Section 3.2](#)).

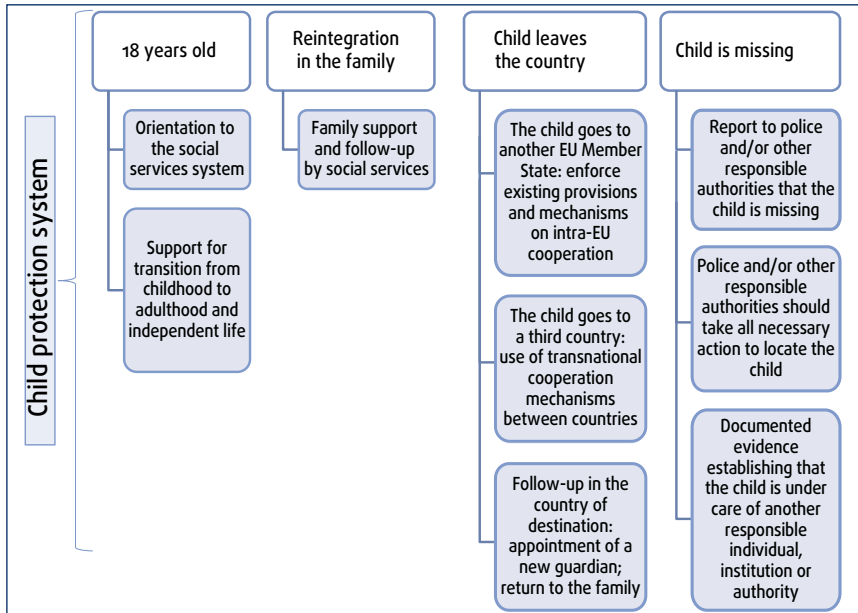
### **4.3. When does guardianship end?**

The guardianship arrangement must last until a durable solution in the best interests of the child is identified and implemented or until the child reaches the age of majority (see Figure 7). In the process of identifying a durable solution, reunification of the child with his or her parents and reintegration in the family should in principle be examined, when in the best interests of the child.

If the child wishes to move to another EU Member State, but does not join his or her family, the guardianship functions should in principle continue to be exercised in the Member State to which she or he moves.

This can be facilitated by establishing cooperation mechanisms between guardianship services in different EU Member States. This is an element to be reflected in the national or transnational referral mechanisms envisaged in the *EU Strategy towards the Eradication of Trafficking in Human Beings*. The guardian should coordinate any action related to family reunification, including family assessment, also in cases where the family of the child resides in another country.

**Figure 7: When does guardianship end?**



Source: FRA, 2014

If the child goes missing, the guardian should immediately report this to the responsible authorities and remain in contact with missing children services, including, where applicable, 116 000 hotlines for missing children (see also Section 6.1). If a child under guardianship goes missing, the guardian retains responsibility for the child until there is documented evidence that the child is under the care of another responsible individual, institution or authority. A court decision should always be required to end the guardianship relation.



Guardians should be entitled to compensation for the time they spend reporting a missing child to police and/or any other relevant authorities that national law provides for, and for the time spent checking that authorities do all within their power to locate the child. Such compensation entitlements should be in place until the child is located or guardianship is formally terminated.

Review procedures, standards and safeguards ensuring the best interests of the child should be the same as those applied in child protection systems for all children in alternative care.

Particularly for unaccompanied children subject to migration law, care provisions, legal entitlements, legal options and perspectives might change significantly from the moment they turn 18 years old. It is very important that children be well prepared to pass from childhood to adulthood and receive the necessary support to do so (see also Figure 13).

Although guardianship might end when a child reaches the age of majority, EU Member States should, given the vulnerability of these young people, consider making support and assistance available beyond the age of 18, to facilitate the child's transition to adulthood.

If guardianship services and care arrangements are available for child nationals of a Member State above the age of 18, these should also be available for children from other countries, and in particular for victims of trafficking. For child victims of trafficking, trust is the key element in the process of rehabilitation and finding a durable solution. It may necessitate, in some cases, longer guardian involvement.

Upon reaching 18 years of age, as long as they are present in the host EU Member State, victims of trafficking

The need to ensure a more transparent and informed transition to adulthood is pointed out in a research study on European states' practices to address the challenges unaccompanied and separated asylum-seeking and refugee children face when they turn 18.

Source: UNHCR and Council of Europe (2014), Unaccompanied and separated asylum-seeking and refugee children turning eighteen: What to celebrate?, available at: [www.refworld.org/DOCID/53281A864.HTML](http://www.refworld.org/DOCID/53281A864.HTML)

The Parliamentary Assembly of the Council of Europe (PACE), taking into account the specific situation of unaccompanied young migrants who are reaching adulthood, and bearing in mind the best interests' of the child, recommends to member States establishing a transition category, between the ages of 18 and 25. During this period, young migrants should continue to receive support for an independent life, with guaranteed access to welfare assistance and housing, to education and health services and to information on the relevant administrative procedure.

Source: Council of Europe, Parliamentary Assembly, Committee on Migration, Refugees and Displaced Persons (Report | Doc. 13505 | 23 April 2014), Migrant children: What rights at 18?, available at: <http://website-pace.net/documents/19863/168397/20140313-MigrantRights18-EN.pdf/ea190a6e-1794-4d30-b153-8c18dc95669f>  
<http://assembly.coe.int/nw/xml/xfref/Xref-XM-L2HTML-en.asp?fileid=20589&lang=en>

should continue to have access to appropriate victim support services in line with the [Victims' Directive](#) (2012/29/EU). This means that the individual should have access to rehabilitation services, psychological and medical assistance if necessary, legal representation and free legal assistance in the judicial proceedings for their entire duration. Such services should be provided in the same circumstances and at the same level as for victims of crime who are nationals of the Member State concerned.

If children have been separated from their parents for reasons of abuse or neglect, the capacity and willingness of the parents to represent the child's best interests must be assessed on a regular basis. Whenever new evidence emerges suggesting that return to the family would be in the best interests of the child, the guardian together with the competent child protection authorities should support and monitor that return. The review procedures, standards and safeguards ensuring the best interests of the child should be the same as those applied in child protection systems for all children in alternative care.

#### 4.4. When should a guardian be changed?

To ensure continuity and build on the trust established between the child and the guardian, a guardian should normally not be changed once he or she is assigned to a child, unless the case's circumstances make this unavoidable.

The [Reception Conditions Directive](#) (2013/33/EU) in Article 24 (1) provides that, "in order to ensure the child's well-being and social development [...], the person acting as representative shall be changed only when necessary". It further provides that "regular assessments shall be made by the appropriate authorities, including as regards the availability of the necessary means for representing the unaccompanied minor".

Temporary guardians appointed as part of preliminary measures for a child's protection, should, when possible, also be assigned as 'permanent' guardians.

To ensure the child the necessary stability in his or her life and development, the child should not be unnecessarily or routinely transferred to another part of the country, unless the child's safety or best interests require a transfer.

If the child has complained of misconduct by the guardian, changing the guardian should be considered as an option. A change should be provided for explicitly in law, and take place immediately, if the guardian is under investigation for severe violations of child's rights, e.g. abuse or inappropriate behaviour.

In addition, the guardianship authority should review each individual case at regular intervals, at least once a year. Any such assessment must take the child's views into consideration. The guardianship authority should provide guidelines and criteria for such regular assessments. Reviews of guardianship arrangements must be documented. When relevant, the situation of the family should also be assessed with a view to reuniting the child with his or her parents (see [Section 4.2](#)).





## Part II – Guardian’s tasks

As described in [Section 1 of the Introduction](#), the guardian is responsible for safeguarding the best interests of the child, ensuring the child’s overall well-being and exercising legal representation for the child to complement his or her limited legal capacity. The next five chapters describe these core tasks in more detail. They also incorporate cross-cutting tasks, such as holding authorities accountable for decisions affecting the child and intervening if the child’s welfare is in danger (Figure 8).

The majority of EU Member States do not precisely define a guardian’s tasks in law.

*FRA, 2014, Child victims of trafficking: overview of guardianship systems in the European Union (forthcoming)*

The guardian’s rights and duties should be defined in domestic law or policy documents and, where necessary, further clarified in official guidelines. Table 4 indicates international and European legal sources that describe the tasks of guardians or legal representatives.

**Table 4: The tasks of the guardian as reflected in European and international legal sources**

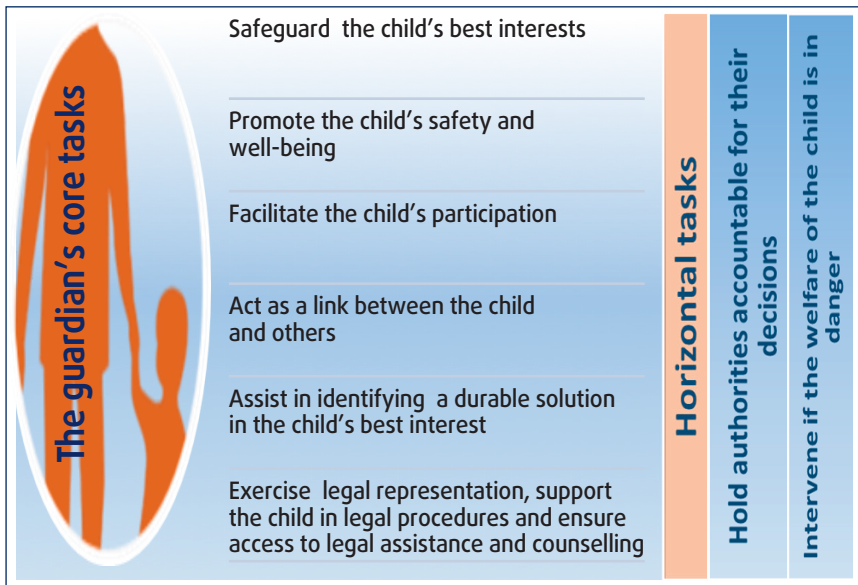
United Nations and Council of Europe instruments and European Union Directives	Terminology	Functions and tasks of appointed person						
		Safeguard best interests of the child	Ensure child's well-being and adequate care	Exercise representation	Accompany the child in proceedings (be present at the interview, inform and prepare the child)	Help identify and implement durable solution	Act as link - coordinator role	Family links and family tracing
UN Committee on the Rights of the Child, General Comment No. 6 CRC/GC/2005/6	Guardian/ Legal representative	Paragraph 33	Paragraph 33	Paragraph 33	Paragraph 33 Paragraph 72	Paragraph 90	Paragraph 33	-
UN Alternative care guidelines A/HRC/11/L.13	Legal guardian/ Recognised responsible adult	Paragraph 101 Paragraph 103	Paragraph 104 (a)	Paragraph 104 (b)	-	Paragraph 104 (c)	Paragraph 104 (d)	Paragraph 104 (e) Paragraph 104 (g)
2005 Council of Europe Convention on Action against Trafficking in Human Beings	Legal guardian	Article 10 (4) (a)	-	-	-	-	-	Article 10 (4) (c)
Anti-Trafficking Directive (2011/36/EU)	Guardian / Representative	Article 13 Preamble, Recital 23	-	Article 14 (2)	-	-	-	-
Reception Conditions Directive (2013/33/EU)	Representative	Article 2 (j) Article 24 (1)	Article 23 Article 24 (1)	Article 2 (j)	Article 24 (1) (be present in interviews)	-	-	-
Asylum Procedures Directive (2013/32/EU)	Representative	Article 2 (n) Article 25 (1) (a)		Article 2 (n) Article 7 (3)	Article 25 (1) (b)	-	-	-
Qualification Directive (2011/95/EU)	Legal guardian/ Representative	Article 31 (4) Preamble, Recital 18	Article 31 (1)	Article 31 (1)	-	-	-	-
Dublin Regulation (EU) No. 604/2013	Representative	Article 6 (2)	-	Article 6 (2)	-	-	-	-
Victims' Directive (2012/29/EU)	Guardian Special/ legal representative	-	-	Article 24 (b)	Article 20 (c)	-	-	-
Sexual exploitation of children Directive (2011/92/EU)	Special/ legal representative	-	-	Article 20 (1)	Article 20 (f)	-	-	-

The four core principles of the CRC (see Figure 3) must guide the guardian in all aspects of his or her work throughout the assignment. In the absence of the parents, or if they are precluded from exercising parental responsibility, the guardian is given the duty of safeguarding and promoting the child’s well-being. Each time a decision is taken affecting the child, the guardian’s role is to promote the option which is in the **best interests of the child**. The guardian must ensure that the child’s views are heard and given due weight. The guardian must inform the child and consult with him or her on all aspects of the guardian’s work, taking into consideration the child’s maturity and developing capacities.

“The frequency and quality of contact between guardians and children varied. A significant number of children were satisfied and wanted a more personal relationship with their guardian – an issue that adult respondents also thought was important for a child’s well-being”.

*Source: FRA (2010), Separated, asylum-seeking children in European Union Member States, Comparative report, p. 9, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/1692-SEPAC-comparative-report\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1692-SEPAC-comparative-report_EN.pdf)*

**Figure 8: The guardian’s core tasks**



Source: FRA, 2014

## Creating and maintaining a trustful relationship with the child

A relationship of trust between the guardian and the child is an essential precondition for an effective guardianship. Without trust, the guardian will not be able to ascertain the child's wishes and feelings, making it difficult to promote the child's best interests.

The guardian should communicate with the child in a child-friendly way, showing cultural sensitivity and adopting a gender-sensitive approach. Although many factors have an impact on whether trust is built or not, the following four are particularly significant:

- respecting the views of the child;
- treating the child with respect and dignity;
- being available for and accessible to the child;
- respecting confidentiality.

Frequent contact and accessibility of the guardian are necessary elements in building a relationship of trust with the child.

Guardians who work with child victims of trafficking should be aware of the effect that the experience of trafficking can have on children's behaviour and of the consequences of trauma. Individuals suffering from trauma often have memory problems, for example, and are unable to recall details of events, or they may recall different information over time. This does not mean that the child is lying or does not trust the guardian. The guardian should raise awareness of these aspects with the other professionals working with the child.

Emotional care of the child is a basic need, which the guardian should not disregard. Appointed guardians must be supported in performing their roles, including providing this emotional care, in particular by ensuring that their workload and the number of cases assigned to them allow them sufficient time to spend with the child and build a personal relationship with him or her (see also [Section 3.6](#)).



The *Core standards for guardians of separated children in Europe* provide guidance on the role and responsibilities of the guardian (standards 1–6), the relationship with the child (standards 7–9) and the guardian’s professional knowledge and competences (standard 10). They have been developed in consultation with separated children, guardians and other experts, such as foster parents, lawyers and social workers. Core standard number 8 lists a number of indicators for a positive relationship built on mutual trust, openness and confidentiality. According to it, the guardian:

- A) knows the child personally;
- B) keeps all information about and from the child confidential unless it is necessary to disclose it to keep the child or another child safe, and informs the child, when possible, about a confidentiality breach;
- C) does not judge the child’s reasons for exile or allow this to affect his or her relationship with the child;
- D) is always honest with the child and keeps his or her promises;
- E) gives clear information about his or her role and limitations in a way that the child understands and can recall;
- F) demonstrates to the child that he or she works from the heart, really caring for and feeling responsible for the child;
- G) makes it clear to the child that a child who disappears is always welcome to contact the guardian;
- H) pays attention to verbal, non-verbal and emotional communication;
- I) is empathetic towards the child and gives moral and emotional support.

*Source: Defence for Children – ECPAT The Netherlands (2011), Core standards for guardians of separated children in Europe, Leiden, Defence for Children – ECPAT The Netherlands, available at: <http://www.corestandardsforguardians.eu/>*

## Confidentiality

The guardian will learn details of the child’s private life, which he or she must treat confidentially. Communication with the child should take place in a confidential setting and should fully respect the child’s dignity and privacy rights.

Confidentiality is an important element in the child’s relationship with the guardian. The child’s right to privacy should be protected by law. The code of conduct for guardians should cover the implications of the principle of confidentiality (see also [Section 3.2](#)). The guardian should be able to decide when and under what conditions it could be in the best interests of the child to pass certain information on to other relevant actors and agencies.

Confidentiality is also a requisite for the child's safety, particularly for child victims of trafficking or unaccompanied children seeking international protection. Information about a child victim must not be disclosed if it could endanger the child or the child's family members (see also [Section 6.3](#)). The consent of the child victim must be sought, in an age-appropriate manner, before sensitive information is disclosed, taking into consideration the child's maturity and developing capacities.

## 5. Safeguarding the best interests of the child

The Committee on the Rights of the Child, with its [General comment No. 14 \(2013\)](#) on *The right of the child to have his or her best interests taken as a primary consideration* (Article 3, paragraph 1) provides a framework for assessing and determining the child's best interests. The committee notes that "an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."

Source: *UN Committee on the Rights of the Child (2013), General Comment No. 14, 29 May 2013, CRC/C/GC/14*

Safeguarding the best interests of the child must guide the guardian's work and actions.

The best interests of the child are a dynamic concept, aiming to ensure the child's holistic development by promoting the full and effective enjoyment of all CRC-recognised rights. The guardian is called on to assess the child's best interests on a daily basis,

whenever decisions affecting the child are taken. These might include, for example, decisions about the child's accommodation, safety, education, healthcare, leisure activities and legal representation.

The guardian shall hold public authorities accountable for any decisions affecting the child and ensure respect for the principle of the best interest as a primary consideration as required by [Article 3 of the CRC](#) throughout the decision-making processes. The guardian must hold public authorities accountable. He or she must intervene if the welfare of the child is in danger and challenge, within the limits of his or her authority, any decision that is deemed to be contrary to and/or does not promote the child's best interests.

## Assessment and determination of the child’s best interests

The child’s best interests shall be assessed in a child-sensitive manner, taking due account of the child’s age and maturity, as well as the child’s views, needs and concerns. In its 2013 General Comment No. 14, the Committee on the Rights of the Child lists the elements that need to be taken into account when assessing the child’s best interests:

- the child’s views;
- the child’s identity;
- preservation of the family environment and maintaining relations;
- the care, protection and safety of the child;
- a situation of vulnerability;
- the child’s right to health;
- the child’s right to education.

The committee also provides guidance on how to balance these elements. Preserving the family environment, for example, may conflict with the need to protect the child from the risk of parental violence or abuse. In such situations, the elements will have to be weighed against each other to find a solution that is in the child’s best interests.

In addition to such regular assessments of the child’s best interests, national law may require a formal best-interests determination may be required under national law for decisions affecting the life of a child, such as the identification of a durable solution. Such determination should be done by a multi-disciplinary team following strict procedural safeguards. EU law also provides guidance to Member States when assessing the child’s best interests. Article 24 (2) of the [Reception Conditions Directive](#) (2013/33/EU), provides that “in assessing the best interests of the child, Member States shall in particular take due account of the following factors:

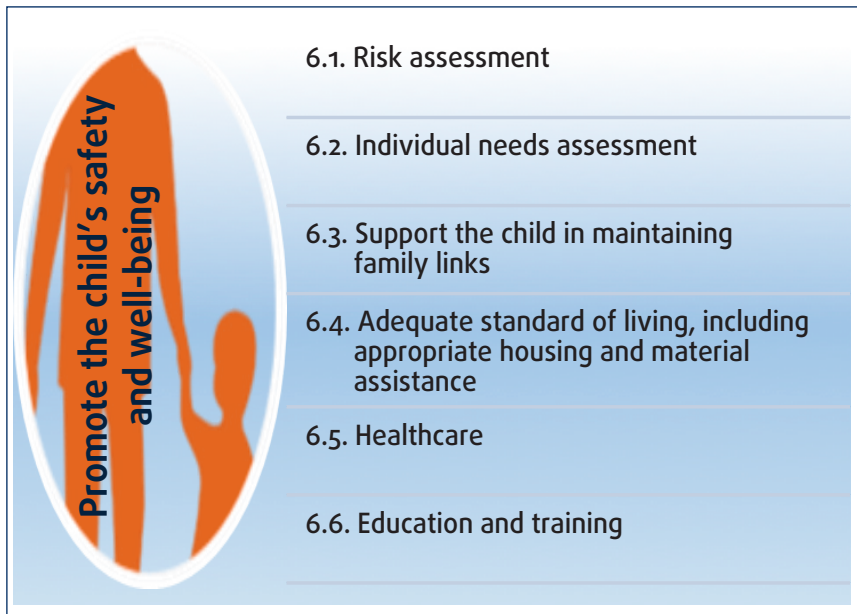
- (a) family reunification possibilities;
- (b) the minor’s well-being and social development, taking into particular consideration the minor’s background;
- (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
- (d) the views of the minor in accordance with his or her age and maturity.”

The guardian must participate in such formal best-interests determinations to make sure that the child's best interests are a primary consideration in all decision-making processes and that the right of the child to be heard is respected, as required by Article 12 of the CRC.

## 6. Promoting the child's safety and well-being

Promoting the child's well-being requires the guardian to ensure that the child's legal, social, health, psychological, material and educational needs are met (Figure 9). Children deprived of their parental environment, and child victims of trafficking in particular, have very often experienced violence and suffer from trauma. Exposure to violence increases a child's risk of further victimisation and an accumulation of violent experiences. Ensuring child safety and protection of child victims should be prioritised to avoid further victimisation and reduce the risk of re-trafficking.

**Figure 9: Promoting the child's safety and well-being**



Source: FRA, 2014

## 6.1. Risk assessment

The competent child protection authorities should assess the risk of abuse, violence and exploitation for each individual child under care and decide on appropriate protection measures. Such risk assessments should also be conducted for unaccompanied children when competent authorities are deciding on a durable solution for the child. This is to ensure that the proposed solution is in the child’s best interests and does not put the child at any risk of exploitation, abuse or violation of his or her rights. In addition, a risk assessment should always be conducted for child victims of trafficking, to provide adequate protection and ensure the safety of the child, so that they are not trafficked again or further exploited and abused.

Pursuant to [Article 12](#) of the [Anti-Trafficking Directive \(2011/36/EU\)](#), victims of human trafficking, including child victims, have the right to appropriate protection measures based on an individual risk assessment.

Such an assessment should be timely and aim to identify those measures which are required to protect the child from retaliation, intimidation and the risk of being trafficked again. The risk assessment should be regularly updated until a durable solution is found for the child. The risk assessment should be conducted by a multidisciplinary team of professionals including representatives of child protection authorities and health and social service providers.

The guardian must ensure that the competent authorities undertake an individual risk assessment for each child victim of trafficking. The guardian should always be consulted on specific protection measures to be adopted and be able to provide suggestions and recommendations. While not directly responsible for the protection measures taken, the guardian nevertheless has an important role to play (Figure 10).

**Figure 10: Risk assessment and the role of the guardian**



Source: FRA

### Checklist: Possible actions by the guardian in relation to the child’s safety

- ✓ Inform the child about existing protection measures that could be taken.
- ✓ Request a risk assessment for the child.
- ✓ Actively participate in the risk assessment process along with representatives of other relevant authorities, law enforcement officials and the child’s legal representative.
- ✓ Regularly assess the risk that the child may go missing from care.
- ✓ Ensure that the views of the child are heard and given due weight depending on age and maturity.
- ✓ Inform the relevant authorities when new information is available related to the child’s safety which might require changes to the protection measures applied.
- ✓ Request that the risk assessment be reviewed and documented if new information surfaces which may require different or additional measures.
- ✓ Ensure that the relevant authorities are notified without delay of any disappearance of a child and that efforts are made to find the child.
- ✓ When victims are third-country nationals, regularly remind all authorities involved not to share information on the child’s status as a victim of trafficking with the authorities in the country of origin before the risk assessment is finalised.

### Access to victim support services

The guardian should advocate that child victims of trafficking be given access to confidential victim support services as established under [Articles 8 and 9](#) of the [Victims’ Directive \(2012/29/EU\)](#).

### Checklist: Possible actions by the guardian in relation to victim support services

- ✓ Facilitate access to appropriate and safe accommodation for child victims in need of a safe place because of an imminent risk of secondary and repeat victimisation, intimidation or retaliation.
- ✓ Provide information about support networks available to the child; information should be provided in a child-friendly manner in a language that the child understands, orally and in writing.
- ✓ Facilitate access to helpline services.
- ✓ Facilitate access to targeted and integrated support for victims with specific needs, including victims of sexual violence, victims with disabilities and victims of gender-based violence, such as trauma support and counselling.

“Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim” ([Article 8](#) of the [Victims’ Directive \(2012/29/EU\)](#)). EU Member States should ensure that, under certain conditions, victim support services are also available to the child’s family members, if they are in the (receiving) country.

The family should be assessed to ensure that they are not accomplices or otherwise involved in the trafficking, and do not pose a risk to the child.

In addition, [Article 18](#) of the [Victims’ Directive \(2012/29/EU\)](#) provides that Member States shall ensure protection of “victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members”.

### Placement in safe houses

Restrictions on the child’s freedom of movement should be proportional and follow on from the results of the risk assessment. They should always be confirmed by judicial authorities. The guardian should also check that intrusive safety measures, such as frequent changes in place of residence or severe restrictions to the child’s freedom of movement, are taken only when deemed absolutely necessary to protect the child’s safety. When the victim is placed in a ‘safe house’ where exit and entry



is controlled, mitigating measures should be taken to ensure that the child is not in a detention-like regime. Depending on the security risks, such measures could include regular outings with the guardian, social workers or volunteers. The guardian should have unimpeded access to a child hosted in a closed facility and the child should have unimpeded access to the guardian. Unimpeded access to legal assistance and access to appropriate treatment and rehabilitation services should also be safeguarded.

If a child is placed in a safe house where restrictions of movement are applied, decisions should be reviewed by judicial authorities every month, to ensure that the placement is absolutely necessary for the safety of the child and is limited to the minimum time necessary (CRC, Article 25 and ECHR, Article 5).

## Missing children

A European Commission study found that some authorities implemented a waiting period before following up on disappearances of certain categories of children, in particular unaccompanied children.

*Source: European Commission (2013), Missing children in the European Union: Mapping, data collection and statistics, available at: [http://ec.europa.eu/justice/fundamental-rights/files/missing\\_children\\_study\\_2013\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/missing_children_study_2013_en.pdf)*

All children on EU territory have the right to protection. Disappearances should be acted upon on the same basis for all categories of children.

Accommodation facilities should have a system to ensure missing children are recorded, along with details about their nationality, migration status and, where available, the circumstances of their disappearance. This system should also require facilities to notify the guardian and other appropriate bodies as soon as the disappearance is detected, without delay and within a maximum of 24 hours. Accommodation facilities should be held accountable if they fail to report on time.

Likewise, upon learning his or her assigned child is missing, the guardian must immediately contact the police and/or any other relevant authorities as provided for in national law. Guardians must be held accountable for failure to do so. Guardians should see that authorities take all necessary action and put into effect all available means and procedures to locate the missing child. The authorities must cooperate with the competent law enforcement agency and, where applicable, the 116 000 hotline for missing children, and possibly launch a SIS II Article 32 alert. Once a missing child is found, the guardian must be actively involved in appropriate follow-up, to prevent the child’s repeat disappearance.

## Promising practice

### Drawing up a care plan

Irish legislation sets out the requirements for a child's care plan – a written plan, agreed and drawn up in consultation with the child and those involved in his or her care. The care plan should reflect the child's individual needs, both now and in future. It establishes short-, medium- and long-term goals for the child and identifies the services required to attain these goals. The care plan also addresses the assessment of a durable solution. The Irish legislation includes arrangements for the plan's review.

*Source: Ireland (1995), Child Care (Placement of Children in Foster Care) Regulations 1995 (SI No. 260 of 1995), Regulation 11*

## 6.2. Individual needs assessment

Guidance on individual care plans is contained in Recommendation CM/Rec (2007)9 of the Council of Europe Committee of Ministers to Member States on life projects for unaccompanied migrant minors. Life projects pursue the social integration of children, their personal and cultural development, and their needs for housing, health, education and vocational training and employment.

*Source: Council of Europe Committee of Ministers, Rec (2007)9, 12 July 2007*

Child victims are entitled to assistance and support that takes into account their special circumstances, according to the [Anti-Trafficking Directive](#) (2011/36/EU) ([Article 14](#)) and the [Victims' Directive](#) (2012/29/EU) ([Article 22](#)). To make sure that the appropriate forms of assistance and support are provided, a needs assessment is necessary. The purpose of the needs

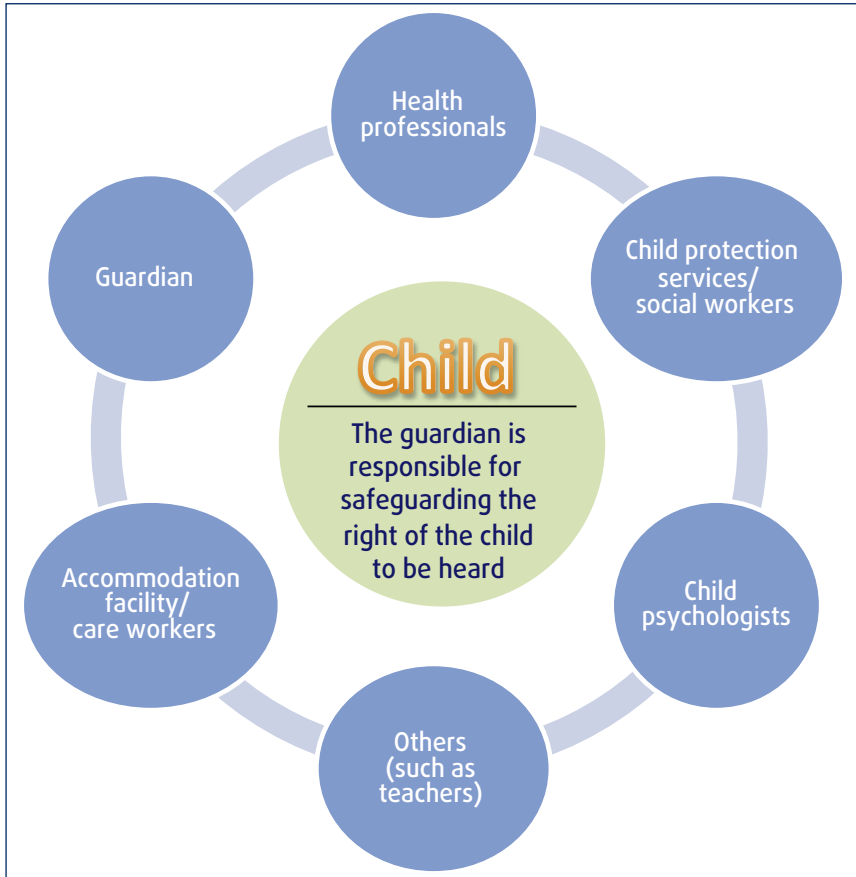
assessment is to define which support measures are in the best interests of the child. An assessment of special needs is also required for asylum-seeking children under [Article 22 of the Reception Conditions Directive](#) (2013/33/EU), [Article 24 of the Asylum Procedures Directive](#) (2013/32/EU) and for refugees and beneficiaries of subsidiary protection under [Article 31 of the Qualification Directive](#) (2011/95/EU).

The needs assessment should be carried out by a multidisciplinary team in cooperation with the guardian and with the participation of others, including health professionals, child psychologists and care workers. Based on the needs assessment, the guardian should draw up an individual plan for the child.

The plan should take into account possible traumatising experiences to which the child may have been exposed. It should give due weight to the child's views. The child should be involved in drawing up the plan, depending on age and maturity. It is the guardian's task to facilitate child participation by providing adequate information

to the child and ensuring that the child’s views are heard and are given due weight. In any event, the plan should be discussed with the child, and his or her agreement should be sought. Various players need to be involved, as illustrated in Figure 11.

**Figure 11: The needs assessment and the guardian’s role**



Source: FRA, 2014

Although an assessment of the child’s needs will need to start from the moment a guardian is assigned, the individual plan for the child should be drawn up only after the guardian has a good understanding of the child’s needs and wishes. The plan should be reviewed and adjusted at regular intervals.

An individual plan should include at least the following core elements:

- accommodation arrangements;
- safety and protection measures;
- relationship with the parents;
- social and psychological counselling and access to mental health services;
- healthcare provision and medical treatment;
- legal counselling and legal representation;
- education, including language training;
- migration status and international protection needs.

### **6.3. Support the child in maintaining family links**

The family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children. The right of the child to family life should be fully protected. Preventing family separation and preserving family unity are important components of the child protection system. In cases of separation, the child has the right to maintain direct contacts and personal relations with his or her parents and family members, except when this is contrary to the child's best interests ([CRC Article 9 \(3\)](#)).

Child victims of trafficking may have been separated from their families before they were trafficked, i.e. because of migration, or possibly as a result of being trafficked.

Guardians acting in the best interests of the child should assist the child in tracing the family, when the child wishes it, and in establishing or maintaining contacts with family members. Before efforts are made to restore contact, institutions should assess parental capacity, to ensure that the parents will not put the child at risk and that there was no parental involvement in the initial trafficking of the child.

Family tracing is an integral part of searching for a durable solution. It should be carried out irrespective of any measures to assess return of the child to the country of origin.

### Checklist: Possible actions by the guardian in relation to family tracing

- ✓ Encourage family tracing to take place, as soon as possible following identification, and with the child’s consent.
- ✓ Note that family tracing (restoring family contacts) should *not* take place when there are serious grounds to believe that restoring family links might endanger the child or family members.
- ✓ Based on the particular situation of each child, assist the child in family tracing and/or establishing and maintaining communication and links with his or her family where this is found to be in the child’s best interests.
- ✓ Cooperate with the respective public authorities and possibly also seek the assistance of relevant organisations and authorities, e.g. the International Organization for Migration or the Red Cross.
- ✓ After successful family tracing, and before family reunification and return, ensure that a risk assessment is conducted to assess the suitability of the parents and/or other family members to care for the child and represent her or his interests.
- ✓ In any efforts to trace or reunite families, act in the child’s best interests and respect any requirements laid down in law.

## 6.4. Adequate standard of living, including appropriate housing and material assistance

Article 27 of the [CRC](#) states that “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”. The convention sets forth the obligation of Member States to safeguard the child’s well-being and to provide adequate care and support to all children who are deprived of their family environment, including unaccompanied children, and in particular to those who have suffered from abuse (Article 19 and Article 20). In addition, Article 24 of the [EU Charter on Fundamental Rights](#) provides that children must have the right to such protection and care as is necessary for their well-being.

Care and assistance must respect the child’s cultural identity, origin, gender and age. They should not expose the child to safety risks. Moreover, adequate, specialised assistance should be provided to children with special needs, for example if they have disabilities or severe trauma.

The [Anti-Trafficking Directive](#) (2011/36/EU) and the [Victims' Directive](#) (2012/29/EU) contain a number of provisions regarding the right of victims of trafficking, children included, to assistance and support. Similarly, the [Reception Conditions Directive](#) (2013/33/EU) and the [Qualification Directive](#) (2011/95/EU) oblige EU Member States to provide adequate support, including accommodation, to unaccompanied children. Support given to child victims of trafficking includes the provision of adequate and safe housing which should promote recovery from the trafficking experience. Although it is not the guardian's role to provide housing to the child, he or she should be involved and take a number of actions.

### Checklist: Possible actions by the guardian in relation to accommodation and material assistance

- ✓ Verify that accommodation and residential care arrangements are adequate for the child's physical, mental, spiritual, moral and social development; the guardian should report any issues to be addressed to those providing housing to the child; involvement and consultation with cultural mediators should be provided, where appropriate.
- ✓ Provide the child with information on his or her rights and duties in relation to the accommodation facilities and make sure that the child is aware of those rights and of how to lodge a complaint.
- ✓ Make sure that the child is informed about the rights and duties of the personnel and the care givers in accommodation facilities, and that the child is able to distinguish his or her role and responsibilities from those of the guardian.
- ✓ Promote the child's access to leisure activities, including play and recreational activities appropriate to his or her age, maturity and interests. Such activities should be offered within the accommodation facilities or in the community when appropriate, and should aim to facilitate the child's communication and interactions with peers and the local community.

For more information, consult the General Assembly (2010), Resolution 64/142, *Guidelines for the alternative care of children*, 24 February 2010, A/RES/64/142, p. 19, which is available at: [www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf).

In ensuring adequate living conditions, the guardian should visit the child in the place where he or she is staying and consult with the child in a confidential setting. The guardian should follow up on any alleged violation of, complaint about or breach observed of the child's rights.

## 6.5. Healthcare

The [CRC](#), in Article 24, lays down that all children have the right to the enjoyment of the highest attainable standard of health, and Article 39 obliges states to take appropriate measures to promote physical and psychological recovery and social reintegration of children who have suffered from abuse. Recovery and reintegration must take place in an environment which fosters the health, self-respect and dignity of the child.

General Comment No. 13 of the UN Committee on the Rights of the Child offers comprehensive guidance on the protection of children from all forms of violence.

The [Anti-Trafficking Directive](#) (2011/36/EU) in [Article 11](#) acknowledges the vulnerability of victims and stipulates that all victims of trafficking are entitled to necessary medical treatment including psychological assistance. Under Article 19 of the [Reception Conditions Directive](#) (2013/33/EU), asylum seekers are entitled to necessary healthcare whereas, under Article 30 of the [Qualification Directive](#) (2011/95/EU), recognised refugees and those with subsidiary protection are entitled to equal access to healthcare as the Member State’s own nationals.

Child victims of trafficking may suffer from serious physical or psychological trauma, depression or other mental health issues including post-traumatic stress disorders, as a result of past abusive experiences. This may be particularly the case for victims who were trafficked by a person they trusted.

Special consideration should be given to healthcare issues that are gender-specific or related to the type of exploitation experienced, such as:

- reproductive health issues for girl victims;
- voluntary testing and confidential counselling for transmittable diseases for children trafficked for sexual exploitation;
- drug and/or alcohol addiction.

The role of the guardian is to provide relevant information to children, to facilitate the child’s access to medical services and to provide support when important decisions need to be taken.

### Checklist: Possible actions by the guardian in relation to healthcare

- ✓ Ensure that child victims are provided with the necessary health card or other document which entitles the child to access healthcare services.
- ✓ Refer the child to the relevant medical service, make appointments, accompany the child, make sure that the child keeps track of his or her appointments and follow-up checks, and make sure that the child understands the information received.
- ✓ Alert the healthcare provider to the need to provide appropriate and child-friendly information to the child in a language he or she understands, when relevant.
- ✓ Give, or assist the child in giving, informed consent before exams are made or treatment is initiated when required by domestic law.
- ✓ Ensure that children do not undergo unnecessary medical examinations.
- ✓ Ensure that a specialist assesses the child's psycho-social needs and, if necessary, initiates treatment.
- ✓ Request healthcare providers to pay particular attention to gender and cultural considerations, including, for example, by enabling girls to be seen by a female doctor if they prefer, or by ensuring that food during hospitalisation is culturally appropriate.
- ✓ Facilitate adequate interpretation services.

When children are victims of trafficking, particular consideration should be given to their need for psychological support and access to rehabilitation services. Guardians must ensure that the child receives appropriate care and treatment and has access to mental health services when required. Guardians should support the child during therapy, fully respecting medical ethical codes.

Children with disabilities require special protection ([Article 23](#) of the [CRC](#)). Disability can be the result of exploitation and trafficking but can also be a risk factor for being trafficked. The particular situation of children with disabilities should be taken into consideration by guardians and all other actors involved in the identification and protection of victims. Victim support services and child protection services should ensure adequate support to children with disabilities. When appropriate, specialised assistance should be provided through cooperation with other specialised services and organisations.



## 6.6. Education and training

The right to education for all children is provided for in **Article 28** of the **CRC**. The **EU Charter of Fundamental Rights** in **Article 14** also provides that everyone shall enjoy the right to education. For child victims of trafficking, **Article 14** of the **Anti-Trafficking Directive** (2011/36/EU) explicitly provides for access to education and so does the EU asylum *acquis* (**Reception Conditions Directive** (2013/33/EU), Article 14 and **Qualification Directive** (2011/95/EU) Article 27). In respecting the right of a child to education, EU Member States should consider ensuring access for all children beyond the mandatory schooling age and beyond the provisions of compulsory education.

Access to vocational and continuing training should also be safeguarded for all children. FRA research has found that many children wanted training courses but often could not pursue them. Such training could be particularly useful for third-country nationals who may eventually return to their countries of origin.

*Source: FRA (2010), Separated, asylum-seeking children in European Union Member States, Comparative report, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/1692-SEPAC-comparative-report\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1692-SEPAC-comparative-report_EN.pdf)*

School enrolment should take place following any necessary recovery period for the child and in consultation with the child. Children should have access to language courses, where appropriate.

Guardians should collect information on the child’s past educational experience, provide the child with appropriate information on available educational opportunities and programmes, and then develop, in consultation with the child, a personal educational plan. This specific plan should form part of the broader individual plan drawn up for the child.

The guardian should ensure that the child receives all necessary psychological and educational support for his or her integration into the school environment and to overcome any learning difficulties resulting from post-traumatic disorder or from a longer school absence.

### **Checklist: Possible actions by the guardian in relation to education**

- ✓ Take all actions required for the child's successful registration and enrolment in school or other educational institution, based on the education plan.
- ✓ Contact the school staff frequently and request information on the child's progress and his or her behaviour at school.
- ✓ Attend school meetings and parent-teacher meetings.
- ✓ Discuss challenges and concerns with the child's teachers.
- ✓ Consult the child on her or his educational plan and possible challenges that she or he faces and, when needed, arrange adequate support in cooperation with other entities, for example NGOs providing language courses or support classes.

## **7. Facilitating child participation**

The right of the child to be heard and have his or her views given due weight is enshrined in [Article 12](#) of the [CRC](#). Respect for the principle of the best interests of the child requires that authorities take the child's views into consideration whenever they take decisions affecting the child.

As the person responsible for safeguarding the best interests of the child, the guardian must help the child participate in all decision-making processes affecting him or her, ensuring that the decision-making authorities respect the child's right to be heard and that his or her views are given due weight.

When necessary, the guardian should speak on behalf of the child and communicate the child's views. This requires that the guardian systematically consult with the child.

To help strengthen the child's participation, the guardian should assist the child to form his or her own views by keeping him or her adequately informed of all relevant aspects, taking into consideration the child's age and maturity.

### **How should the child be informed?**

The guardian must keep the child informed of his or her rights and duties as well as on the proceedings in which the child might be involved. Furthermore, the guardian must provide appropriate direction and guidance in the exercise by the child of his

or her rights under the CRC, including the right to be heard. This should be done in a manner consistent with the child’s developing capacities.

### Promising practice

#### Enlisting cultural mediators

The Italian municipality of Naples introduced in 2007 a special registry of volunteer tutors with different cultural and ethnic backgrounds to act as cultural and linguistic mediators. The use of cultural and linguistic mediators is a great support to the work of guardians and aids children’s social integration.

*Source: FRA research (2013)*

The guardian should speak to the child in a confidential setting (see also the introduction to Part II).

To participate appropriately, the child must have received adequate information. That is a prerequisite to:

- fulfilling the right of the child to participate fully in all proceedings and decision-making processes and have his or her views heard and be given due weight;
- ensuring that the child’s best interests are fully represented and respected;
- promoting the child’s well-being;
- creating a relationship of trust and mutual understanding and respect with the child.

Information should be provided in a child-friendly way. To be effective, it should be given in oral and/or written form, depending on what is most appropriate, and should be provided in a language that the child understands, taking into consideration the child’s age, maturity and developing capacities. The guardian should make sure that the child understands and can recall the information provided. Gender and cultural considerations should also be taken into account when informing the child. The use of cultural mediators may be invaluable and should be encouraged where appropriate.

The UN Committee on the Rights of the Child in its General Comment No. 12 provides guidance on the effective implementation of the right of the child to be heard.

The EU Commission developed *The EU rights of victims of trafficking in human beings*, which provides an overview of those rights based on the Charter of Fundamental Rights of the European Union, EU directives, framework decisions and European Court of Human Rights case law. The 2013 publication is available in all EU languages.

For child victims of trafficking, the [Anti-Trafficking Directive \(2011/36/EU\)](#) and the [Victims' Directive \(2012/29/EU\)](#) stipulate the victims' right to information. The [Victims' Directive \(2012/29/EU\)](#) in [Article 4 \(1\)](#) stipulates that all victims of crime are entitled to information, without unnecessary delay, from their first contact with the competent authorities (such as the police or judicial authorities). Information should be provided in a language the victim understands, otherwise it is not effective ([Victims' Directive \(2012/29/EU\) Article 3 \(1\) and 3 \(2\)](#)). EU law provides a comprehensive list of information that victims of crime, child victims of human trafficking included, should receive ([Victims' Directive \(2012/29/EU\) Article 4 \(1\)](#)).

In the context of trafficking, guardians, as well as other professionals working with child victims, must fully respect the right of the child to be heard but should keep in mind that the child might be under the influence of the trafficker. It is necessary to gain an understanding of the extent to which the trafficker still controls the child psychologically or otherwise. In such cases, there might be a need for objective and expert advice that can place the child's evidence in the appropriate context, to ensure the child's safety and protection.

## 8. Acting as a link between the child and others

To fulfil his or her tasks and ensure that the child's legal, social, health, psychological, material and educational needs are appropriately covered, the guardian must act as a link between the child and the specialist agencies and individuals who are responsible for providing the continuum of care the child requires. It further requires him or her to respect, and argue for, the child's right to be heard, and to facilitate the child's participation in all decisions affecting the child.

The guardian replaces biological parents or other persons holding parental responsibilities. He or she is the reference person for the child and the link between the child and specialists who provide care and assistance to the child. The guardian should facilitate the child's contact and communication with other professionals as well as

monitor their actions to ensure that the services they provide meet the child’s best interests. Figure 12 shows the types of actors the guardian should interact with.

**Figure 12: The guardian acting as a link between various actors**



Source: FRA, 2014

## Promising practice

### Identifying a durable solution: the guardian's role

Under Belgian law, the guardian submits to the authorities a written opinion on a durable solution in the best interests of the child. He or she also communicates any changes in the child's situation that could have an effect on the durable solution to the Minors' Bureau of the Entry and Residence Directorate.

Migration authorities have the final say but guardians can appeal against their decision if they consider it to be contrary to the best interests of the child.

*Sources: Belgium, Circular Letter of 15 September 2005, in force since 7 October 2005; Guardianship Act of 24 December 2002, in force since 29 January 2004*

## 9. Helping identify a durable solution in the best interests of the child

This chapter deals with unaccompanied children who are outside their country of origin. In addition to addressing the child's immediate needs, a long-term plan is necessary for every child under care. For unaccompanied children who are outside their country of origin, a longer-term plan means finding a 'durable solution' that will be in the best interests of the child. Examples of possible durable solutions are local integration in the receiving country, reintegration in the child's country of origin and placement with family members in a third country. If children are outside their country of origin and their family members are still in the home country, a decision needs to be made whether return to the child's parents or integration into the host society would be in the best interests of the child.

The Anti-Trafficking Directive (2011/36/EU) states (Recital 23) that:

*"A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of other status in accordance with national law of the Member States".*

Moreover, Article 14 (1) of the [Anti-Trafficking Directive](#) (2011/36/EU), in line with Articles 3 and 12 of the CRC, emphasises the principle of child participation and lays down that “with a view to finding a durable solution for the child respective authorities should take into account the child’s views, needs and concerns”.

A durable solution should ensure that the child’s rights are protected in the future. Such a solution should take into consideration the immediate needs of the child but also address developmental considerations. One key component is to ensure that the child is able to develop into adulthood in an environment in which his or her rights and needs as defined by the CRC are safeguarded and which protects him or her from serious harm and persecution. A decision or plan that merely provides for the child to be supported until the age of 18 is not a durable solution. Nor would it be appropriate to unduly delay a decision on the child’s right to international protection until he or she turns 18.

Durable solution decisions have a major impact on the child. The decision-making procedure should, therefore, have the appropriate safeguards, and the decisions should be taken by a multi-disciplinary team involving all relevant authorities and giving the child’s views due weight according to his or her age and maturity. Such a process entails the weighing of different factors as listed in [Chapter 5](#), and is often referred to as a ‘best interests determination’. The reasons behind the decision must be specified and the decision itself must be documented in the child’s personal file.

The guardian should actively contribute to the determination process, making sure that the views of the child are adequately heard and considered in line with General Comment No. 14 of the Committee on the Rights of the Child.

When determining the best interests of the child, authorities should always seek

Guidance on how to find a durable solution for an unaccompanied child who is outside his or her country of origin can be found in UN Committee on the Rights of the Child (2005), General Comment No. 6, *Treatment of unaccompanied and separated children outside their country of origin*, paragraphs 79–94, 1 September 2005, CRC/GC/2005/6, available at: [http://tb.ohchr.org/default.aspx?Symbol=\\_CRC/GC/2005/6](http://tb.ohchr.org/default.aspx?Symbol=_CRC/GC/2005/6)

Respecting the right of the child to express his or her own views and ensuring appropriate legal representation of the child are two key procedural safeguards set forth in General Comment No. 14 (2013) for the best interest assessment and determination process. It states that “a vital element of the process is communicating with children to facilitate meaningful child participation and identify their best interests. Such communication should include informing children about the process and possible sustainable solutions and services, as well as collecting information from children and seeking their views” (Article 3, paragraph 1).

Source: UN Committee on the Rights of the Child (2013), General Comment No. 14, on the right of the child to have his or her best interests taken as a primary consideration, available at: [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf)

the views and the opinion of the guardian to ensure both respect for the best interests principle and proper representation of the child's views in the process of identifying a durable solution. The guardian's position and role in such proceedings should be reinforced by reflecting it in national legislation or official guidelines, which should establish the right and duty of the guardian to submit a written report on the matter.

## 9.1. Repatriation and return

The UNHCR guidelines on determining the child's best interests (2008) and the field handbook for implementing these guidelines (2011) provide comprehensive guidance to responsible authorities and practitioners involved in decision making. They explain how to apply the best interests' principle in practice, when identifying and implementing durable solutions for unaccompanied children.

Sources: UNHCR (2008), UNHCR guidelines on determining the best interests of the child, May 2008, available at: [www.refworld.org/docid/48480c342.html](http://www.refworld.org/docid/48480c342.html); UNHCR and International Rescue Committee (IRC) (2011), Field handbook for the implementation of UNHCR BID guidelines, available at: [www.refworld.org/pdfid/4e4a57d02.pdf](http://www.refworld.org/pdfid/4e4a57d02.pdf)

Return of the child to the country of origin should in principle be arranged only if it is in the best interests of the child. It must be in accordance with the principle of non-*refoulement*, which prohibits return to torture, persecution or other serious harm.

The [Anti-Trafficking Directive \(2011/36/EU\)](#) states that, if a victim has been trafficked outside his or her country of origin, return might be one of the possible options, but not the only

one (Recital 23). Article 16 (2) of the Directive provides that Member States "shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child". The [Anti-Trafficking Strategy](#) further notes in Priority A, Action 3, 'Protection of child victims of trafficking', that Member States "should ensure where return is deemed to be in the child's best interest, the safe and sustainable return of children to the country of origin, in and outside the EU, and prevent them from being re-trafficked".

[Article 10](#) of the [Return Directive \(2008/115/EC\)](#) requires that, "before deciding to issue a return decision in respect of an unaccompanied child, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child." It also requires that an unaccompanied child be returned to a member of his or her family, given a nominated guardian or sent to adequate reception facilities.

The Committee on the Rights of the Child lists specific criteria that should always be taken into consideration in procedures determining the child's best interests when assessing possibilities of return.

Source: UN Committee on the Rights of the Child, *General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6, paragraph 84*



Generally, the interests of an unaccompanied child are best met when the child can return to his or her family. However, safety considerations, including the risk of being trafficked again, may outweigh the benefits of **family reunification**. To determine if family reunification is in the best interests of the child, different factors must be assessed and balanced, including the child’s views. The factors to balance are the same as those listed in [Chapter 5](#) on assessing best interests.

When, following due process, family reunification in the country of origin has been considered to be in the best interests of the child, the guardian shall assist the **voluntary return** process. After having obtained the child’s consent, the guardian may establish direct contact with the child’s family members as well as with relevant entities both in the receiving country as well as in the country of origin, to prepare for the child’s return.

Only a few EU Member States specify a role under law for the guardian in identifying a durable solution. In most Member States, however, guardians, acting as legal representatives of the child, have the right to appeal against a return decision, when they deem it not to be in the best interests of the child.

*Source: FRA, 2014, Child victims of trafficking: overview of guardianship systems in the European Union (forthcoming)*

The guardian should be a first point of contact for authorities intending to issue a **return decision** to an unaccompanied child. They should contact and consult with the guardian, and give due consideration to his or her views on what is in the best interests of the child. To determine whether or not return is in the best interests of a child, good practice includes undertaking a best interests determination as described above. The guardian could trigger the process by requesting competent national authorities to obtain and examine information from the child’s country of origin.

It is also important to ensure that the competent authorities conduct a family and social assessment as a precondition for taking an informed decision on whether or not repatriation and family reunification would be in the child’s best interests.

### Checklist: Possible actions by the guardian in relation to repatriation

- ✓ Approach the authorities taking a return decision and ask to be consulted.
- ✓ Share conclusions on whether or not return is in the best interests of the child and request that due consideration be given to his or her views.
- ✓ Advocate that a child be returned to his or her country of origin only when it is in the child's best interests.
- ✓ Advocate for voluntary over forced return, and request time to prepare the child if return is considered to be in his or her best interests.
- ✓ Request that no return decision be issued until the guardian's and the child's views are considered.
- ✓ If the authorities issue a return decision against the views of the guardian, request written explanations of why other considerations outweighed the best interests of the child.
- ✓ Request that a removal be suspended, if no authorities other than those enforcing return have been involved before taking a return decision. in line with Article 10 of the [Return Directive](#) (2008/115/EC).
- ✓ If the child is being returned but not to family members, discourage return until preparations for secure and concrete arrangements for care and custodial responsibilities are completed.
- ✓ Oversee the preparation and monitoring of an individual reintegration plan before and after the return.
- ✓ Provide information to the child on the situation in the country of origin upon his or her return and prepare the child for return.
- ✓ When it is considered necessary, and in consultation with the child, accompany the child during his or her return or make sure that other persons of trust will do so and that they meet with the family upon arrival.
- ✓ Promote the creation of a mechanism for monitoring and the provision of feedback on the child's post-return situation.
- ✓ Cooperate with international organisations, such as the International Organization for Migration or other institutions that implement voluntary return and reintegration programmes.

## 9.2. Integration in the receiving country

Another possible durable solution in the best interests of the child could be his or her integration into the receiving country, where he or she will not be at risk of abuse and exploitation.

Such a solution must include a safe pathway from childhood to adulthood. When integration is found to be in the child’s best interests, the child should be issued a stable residence permit. When he or she turns 18, and is therefore no longer entitled to support and accommodation or leave to remain in the state of destination, this permit will also ensure the child’s protection from prolonged detention, going missing or being vulnerable to trafficking networks.

Merely allowing a child to remain in a particular country until the age of 18 is not a meaningful or durable solution. It does not address the future needs of the child or take a long-term perspective. It does not ensure that the child’s rights are protected in the foreseeable future.

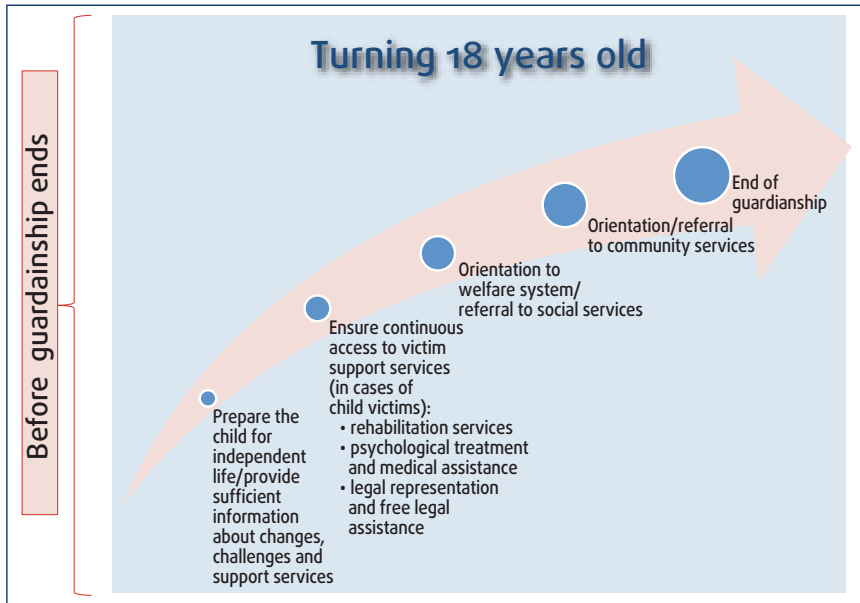
When integration in the receiving country is in the best interests of the child, guardians should insist that the child’s long-term needs be addressed. This will require the competent authorities to ensure that the child has a residence status in the country that allows him or her to stay lawfully after reaching the age of majority.

The guardian should support the child in his or her path from childhood to adulthood and prepare him or her for an independent life ([Figure 13](#); see also [Section 4.2](#)).

The guardian should provide adequate and honest information and must make the child aware of changes in residence status, rights and obligations, and protection entitlements when relevant.

The guardian should refer the child or young adult to social welfare services, create links with community services and in general assist the child in creating a social safety net that could support him or her and ensure a smooth transition to independent life.

Figure 13: Preparing the child to pass from childhood to adulthood



Source: FRA, 2014

“Where a minor involved in the implementation of his or her life project attains the age of majority and where he or she shows a serious commitment to their educational or vocational career and a determination to integrate in the host country, he or she should be issued with a temporary residence permit in order to complete the life project and for the time necessary to do so.”

Source: Council of Europe, Committee of Ministers (2007), Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, 12 July 2007, paragraph 26, available at: [www.coe.int/t/dg3/migration/archives/Source/Recommendations/Recommendation%20CM%20R.ec\\_2007\\_9\\_en.pdf](http://www.coe.int/t/dg3/migration/archives/Source/Recommendations/Recommendation%20CM%20R.ec_2007_9_en.pdf)

When integration into the host society is in the child’s best interests, the guardian should fully support that process, giving particular consideration to such issues as: education opportunities, language and vocational training courses available, healthcare provision and rehabilitation services, social contacts and bonds with the local community.

The guardian should develop an individual care plan in cooperation with the child, aiming to support the child in

developing his or her capacities and allowing him or her to acquire and strengthen the skills necessary to become independent, responsible and active in society. The concept of ‘life projects’, promoted by the Council of Europe, provides useful guidance in that regard. Life projects pursue the social integration of children, their personal

and cultural development and their needs in relation to housing, health, education and vocational training and employment.

The short- and long-term health consequences of violence against children and child maltreatment should not be underestimated. Child victims of trafficking and of other forms of violence and abuse are particularly vulnerable. This should be taken into consideration and guardians should ensure that the children have access to adequate support and rehabilitation services.

The guardian should provide adequate and honest information and support the child in growing out of care. In that regard, the guardian should advocate for young adults’ continued special assistance and support when appropriate, under the same conditions applied to young adults who are nationals of the receiving country.

## 10. Exercising legal representation and supporting the child in legal procedures

Children deprived of parental care may be involved in different legal procedures. This chapter describes the most common (other than return procedures, which are described in [Section 9.1](#)). The guardian has a role to play in these procedures, regardless of whether the child has been assigned a specific legal representative.

In general terms, the guardian must:

- inform the child of his or her right to legal advice and representation;
- ensure that a legal representative be appointed and free legal advice provided whenever the child is entitled to it;
- monitor the work of professionals providing legal assistance and representation;
- facilitate communication between the child and such professionals when necessary, including by taking steps to organise the presence of a qualified interpreter;
- where necessary, accompany the child and actively participate in interviews and hearings with the child.

In addition to such general tasks, the guardian may also play a more specific role which depends on the type of procedure and the individual child’s situation. The following sections describe the tasks of the guardian in particular administrative, civil and criminal procedures (Figure 14).

**Figure 14: Exercising legal representation, supporting the child in legal procedures and ensuring access to legal assistance and counselling**



Source: FRA, 2014

## 10.1. Age assessment procedures

The **Anti-Trafficking Directive** (2011/36/EU), in **Article 13 (2)**, sets forth the presumption of childhood, whereby “Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection”.

EASO notes that there is currently no method to identify an individual’s exact age. Age assessment methods should be respectful of individuals and their human dignity; there are concerns about the invasiveness and accuracy of certain methods in use. The consequences of age assessments are serious, since they could result in a child being treated as an adult, or an adult as a child. EASO further recommends that a guardian or a legal representative should be appointed prior to age assessment procedures.

Source: European Asylum Support Office (2014), EASO age assessment practice in Europe, available at: <http://easo.europa.eu/wp-content/uploads/EASO-Age-assessment-practice-in-Europe.pdf>

Traffickers may have provided victims with false documents or may have instructed child victims to state that they are adults or, conversely, told adult victims to say that they are children. Immigration or judicial authorities may

request that an age assessment be carried out. Authorities should initiate an age assessment determination process, not only when they dispute the age of the person concerned but also when there are reasons to believe that a person presenting him- or herself as an adult may be a child victim.

EU asylum law contains certain provisions in relation to the age assessment procedure of unaccompanied children. [Article 25 \(5\)](#) of the [Asylum Procedures Directive](#) lays down that the person concerned should be given the benefit of the doubt. The consent of the child and/or his/her representative’s consent to the age assessment procedure is a prerequisite ([Article 25 \(5\) \(b\)](#) of the [Asylum Procedures Directive](#)).

Before the age assessment procedure begins, the person who carries out a guardian’s tasks should be assigned to the individual claiming to be a child. Depending on the circumstances, this person may exercise these tasks only temporarily or be a more permanent guardian. The person should prepare the child for the assessment and should accompany and support the child throughout the entire process.

### Checklist: Possible actions by the guardian in relation to age assessment

- ✓ Check that there is a legitimate reason for the age assessment and request that children who are clearly underage not be subjected to such an assessment.
- ✓ Ensure that the child receives all relevant information about the age assessment procedure, including clear information about its purpose, the process and possible consequences; the information should be provided in a child-friendly manner and in a language the child understands.
- ✓ Ensure that the age assessment is conducted with the informed consent of the child and the guardian.
- ✓ Check that independent professionals with appropriate expertise who are familiar with the child’s ethnic and cultural background undertake the age assessment and conduct it in a safe, child- and gender-sensitive manner with due respect for the child’s dignity.
- ✓ In case doubt remains about the child’s age after the age assessment is completed, insist that a person be considered a child.
- ✓ Ensure that the outcome of the procedure is explained to the child in a child-friendly manner and in a language he or she understands.

- ✓ Request that the results of the assessment procedure be shared with the guardian and include these in the child's file.
- ✓ Review with the child the possibility of an appeal against the age assessment decision, in accordance with national legislation.
- ✓ With the child's agreement, be present during the age assessment procedure.

## 10.2. Procedures for residence permits

All child victims of trafficking without the right to stay in the host country do have the right to a **reflection period** during which they cannot be removed, according to [Article 6](#) of the [Trafficking Victims \(Residence Permits\) Directive \(2004/81/EC\)](#) and [Article 13](#) of the [Council of Europe Convention against Trafficking](#). All victims of trafficking are, unconditionally and irrespective of their residence status, entitled to this reflection period, which is designed to allow them time to recover, escape the influence of traffickers and take an informed decision on what to do, including whether or not to cooperate with the authorities in charge of prosecuting traffickers (see also [Anti-Trafficking Directive \(2011/36/EU\)](#), Recital 18).

The [Trafficking Victims \(Residence Permits\) Directive \(2004/81/EC\)](#) applies to all third-country nationals, although its application can be restricted to adults, as a few Member States have done. When applying the directive to children, Member States must respect the best interests of the child and, in the case of third-country nationals who are unaccompanied children, take, among other actions, "the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary, in compliance with national law" (Article 10 (3)).

[Article 8](#) of the [Trafficking Victims \(Residence Permits\) Directive \(2004/81/EC\)](#) requires EU Member States to issue a **residence permit** to victims of trafficking who cooperate with authorities, provided certain conditions are fulfilled. The permit must be valid for at least six months and be renewable. [Article 14](#) of the [Council of Europe Convention against Trafficking](#) provides that the competent authority can issue renewable residence permits to victims if it believes the victim's stay is necessary owing to their personal situation or for the purposes of criminal investigation. For child victims, it provides that the residence permit be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions (Article 14 (2)). Domestic law may also provide other avenues for issuing a residence permit to a child victim of trafficking.



Decisions on granting a reflection period or issuing a residence permit are normally taken by the immigration authorities often in consultation with the judiciary and/or authorities responsible for social affairs. The guardian should intervene with the immigration authorities, requesting that a permit be issued, when this is provided for in domestic law, and support the child in this regard.

### Checklist: Possible actions by the guardian in relation to residence permits

- ✓ Inform the child about his or her residence status and about existing options to regularise his or her stay.
- ✓ Check that the child victim has been adequately informed in a child-friendly manner, and in a language that he or she understands, about his or her right to a reflection period and of the possibility of a residence permit based on his or her status as a victim under EU and national law.
- ✓ Request that a legal representative be assigned to the child to advise and support the child and the guardian with expert advice on the legal procedures and issues involved and represent the child, when provided for in national law.
- ✓ Apply for the reflection period and/or residence permit on behalf of the child, assisted by a legal representative if necessary.
- ✓ Accompany the child and be present during the child’s interview with the immigration authorities to safeguard the child’s best interests and ensure that the child’s views are heard and given due weight.
- ✓ Throughout the process, help ensure the child has access to appropriate translation and interpretation services.

## 10.3. International protection procedures

Although not all victims of trafficking are in need of international protection, some victims may qualify for refugee or subsidiary protection status under the [Qualification Directive](#) (2011/95/EU).

The legal representative required by the EU asylum *acquis* is a person who carries out one of the tasks of a guardian

UNHCR has issued [guidelines](#) on the application of Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the status of refugees to victims of trafficking and persons at risk of being trafficked.

Source: UNHCR, Guidelines on International Protection No. 7: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the status of refugees to victims of trafficking and persons at risk of being trafficked, 7 April 2006, HCR/GIP/06/07, available at: [www.refworld.org/docid/443679fa4.html](http://www.refworld.org/docid/443679fa4.html)

as described in this handbook, namely legal representation. Preferably, this should be done by the child's guardian, if there is one, as he or she is typically most familiar with the child's situation. Given the complexity of asylum procedures, the guardian should request the support of an asylum law specialist, based on the domestic law procedures for legal aid in asylum cases.

**Article 25** of the **Asylum Procedures Directive** (2013/32/EU) requires that a child be represented in asylum procedures and includes a general description of such a representative's tasks.

**Checklist: Possible actions by the guardian or, in his or her absence, by the legal representative in relation to asylum**

- ✓ Inform the child about his or her right to seek asylum.
- ✓ Submit an asylum application on behalf of the child, or assist the child in submitting an application, if this is in the child's best interests.
- ✓ Seek the support of a qualified asylum lawyer, unless one has already been appointed, and keep track of the lawyer's actions, where appropriate.
- ✓ Facilitate communication between the child and the lawyer.
- ✓ Request that the child be provided with all relevant information on the asylum procedure and on his or her tasks and duties in a child-friendly and age-appropriate way.
- ✓ Request safe reception arrangements for the victim, which take into account the child's specific needs, including an exemption from mandatory places of accommodation when this would put the child's safety at risk.
- ✓ Accompany the child to the asylum interviews and support the lawyer, if necessary.
- ✓ Support and prepare the child, emotionally and psychologically, for the asylum interview(s) and make referral for any additional psychological counselling after the interview if necessary.
- ✓ Make sure that the child is given the opportunity to be heard and that his or her opinion and views are given due weight, and represent and argue for the child's best interests.
- ✓ Ensure that the child is provided with appropriate translations and has access to free interpretation services, when necessary.
- ✓ Ensure that an appeal against a negative asylum decision is submitted when it is in the best interests of the child, with a lawyer's expert support.

- ✓ Discuss the asylum decision with the child, explaining its relevance for the child’s future; when required, revise the child’s individual plan accordingly in consultation with the child. Ensure continuity of procedures when the child turns 18.

## Additional considerations for Dublin procedures

The EU asylum *acquis* provides for a mechanism, usually referred to as the Dublin procedure, to determine which EU Member State is responsible for examining an application for international protection.

**Article 6** of the **Dublin Regulation** (Regulation (EU) No. 604/2013), which deals with children, requires that primary consideration be given to the best interests of the child. Unaccompanied children must be assisted by a representative who has the necessary qualifications and expertise to promote those best interests at each step of the Dublin procedure.

### Checklist: Additional possible actions by the guardian or, in his or her absence, by the legal representative in relation to Dublin procedures

- ✓ Review the relevant documents contained in the child’s asylum file.
- ✓ Check to ensure that the asylum authorities are respecting all Dublin Regulation safeguards to protect unaccompanied children.
- ✓ Advocate for decisions guided by considerations relating to family unity, the child’s well-being and social development and the child’s safety as well as by the views of the child.
- ✓ Ensure that the child is appropriately informed and facilitate child participation.
- ✓ Facilitate contacts with family members, when requested by the child.
- ✓ Advocate against deprivation of liberty and request reception arrangements which are safe and take into account the specific needs of the child.
- ✓ Advocate for transfers to other EU Member States to be carried out in a child-friendly manner and accompany the child when circumstances require or advocate for a transfer taking place only when this is in the best interests of the child.

## 10.4. Compensation and restitution

**Article 17** of the **Anti-Trafficking Directive** (2011/36/EU) requires that victims of trafficking have access to existing schemes of compensation for victims of violent crimes. **Article 5 (2)** of the same directive provides for child victims' access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation. In addition, **Article 4 (1) (e)** of the **Victims' Directive** (2012/29/EU) provides that victims have the right to receive information, from the first contact with the competent authority, about their right to receive compensation and how and under what conditions they can access compensation.

### **Checklist: Possible actions by the guardian in relation to compensation claims**

- ✓ Provide information to the child on his or her right to claim compensation.
- ✓ Ensure that the child receives legal counselling and advice on the possibility of claiming compensation and on the particular legal procedures required by national law.
- ✓ If the child lodges a compensation claim, assist the child throughout the process, including collecting required documentation and requesting assistance from a qualified lawyer.
- ✓ Administer the compensation amounts the child receives.
- ✓ Ensure continuity of procedures if the child turns 18 during them.

## 10.5. Civil law procedures

In cases of child abuse and exploitation, including child trafficking, civil law procedures may be initiated if a parental assessment indicates that one or both parents are involved in the child's abuse and/or trafficking. Such procedures will decide if parents should be precluded from exercising their parental rights and the appointment of a guardian is needed.

Furthermore, if a child is deprived of the parental environment, when return or family reunification is not an option or has been found not to be in the child's best interests, relevant child protection authorities might initiate civil law procedures to place the child in residential institutions or with foster families, to support integration or to prevent risks. The guardian should participate fully and represent the child's best interests in such proceedings, ensuring that decisions are made in the best interests of the child and that the child's views are taken into consideration and given due weight in line with the child's age and maturity.

### Checklist: Possible actions by the guardian and/or the legal representative in the context of civil law procedures

- ✓ Inform the child about the procedures and the decision-making process.
- ✓ Inform the child about available options and explain to the child the possible outcomes of the proceedings.
- ✓ Ensure that the child has access to legal assistance.
- ✓ Ensure that the child is given the opportunity to exercise his or her rights to be heard and that due weight is given to his or her views.
- ✓ Prepare the child for the hearings and interviews with the relevant authorities and support him or her throughout the proceedings.
- ✓ Promote the child’s best interests in the decision-making process.
- ✓ In all cases, ensure that the child’s best interests are the paramount consideration, that all procedural safeguards were respected and that the child’s consent was sought.
- ✓ Be present at periodic reviews of placement processes.

## 10.6. Criminal proceedings

The [Victims’ Directive](#) (2012/29/EU) contains a number of provisions for the protection of victims of crimes (see in particular Article 24). Protection safeguards for children involved in criminal proceedings are also provided in the [Directive on combating the sexual abuse and sexual exploitation of children](#) (2011/92/EU). Both directives reflect standards set forth in the [Council of Europe Guidelines on child-friendly justice](#) (2010).

Trafficking in human beings is a serious criminal offence. Accordingly, the [Anti-Trafficking Directive](#) (2011/36/EU) sets forth a series of beneficial provisions for the protection of victims before, during and after criminal proceedings. Child victims of trafficking might be involved in criminal proceedings. The guardian must be prepared to support the child in this regard. The directive contains specific safeguards for victims of trafficking in criminal investigation and proceedings in general ([Article 12](#)) and of child victims in particular

In 2010, the Council of Europe adopted Guidelines on child-friendly justice intended to enhance children’s access to and treatment in the justice system. The issues covered include information, representation and participation rights, protection of privacy, safety, a multidisciplinary approach and training, safeguards at all stages of proceedings and deprivation of liberty.

*Council of Europe Guidelines on child friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, available at: [http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20\\_4\\_.pdf](http://www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf)*

(Article 15). Furthermore, Article 8 of the Anti-Trafficking Directive (2011/36/EU) sets out the principle of non-punishment of victims, whereby:

*“Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to trafficking.”*

Such provisions are particularly relevant for child victims trafficked for use in criminal activities.

Normally, the criminal justice system assigns the child victim a lawyer to provide him or her with legal advice and assistance. It is the guardian’s task to ensure that the child has access to legal assistance, in accordance with national legal provisions. If no lawyer is appointed, the guardian should ask the competent authorities to appoint one.

The guardian should, in close cooperation with the lawyer assigned to the child, argue for the child benefitting fully from the provisions set forth in the [Anti-Trafficking Directive](#) (2011/36/EU) and/or in domestic law and insist that the rights of the child as a victim, and as witness in criminal proceedings against the trafficker, be protected.

In criminal proceedings, the role of the guardian is mainly to support the child, as the lawyer will provide the core legal assistance.

### **Checklist: Possible actions by the guardian in relation to criminal proceedings**

- ✓ Ensure that the child has access to appropriate legal assistance: that a qualified lawyer is appointed without undue delay to provide legal advice and represent the child as required by national law.
- ✓ Help the child take an informed decision regarding participation and cooperation in criminal proceedings: make sure that the child victim is informed of security and safety issues and the risks involved, and has a clear understanding of them, before deciding whether or not to participate and testify in criminal proceedings against the suspected traffickers.

- ✓ Make sure that the child is fully aware of which entitlements to assistance and protection are conditional on his or her willingness to participate in criminal proceedings and which are not, and that he or she has the right to review cooperation with the justice system in the future.
- ✓ Encourage the child victim to make full use of the reflection period before deciding on the matter, if this is in the best interests of the child.
- ✓ Support the child to understand any communications received, including communications from the legal representative.
- ✓ Accompany the child and attend all interviews and hearings with him or her.
- ✓ Prepare the child emotionally and psychologically before interviews and hearings and make sure that he or she has a proper understanding of the proceedings and the outcome.
- ✓ Discuss with the child the outcome of the proceedings and court decisions and explain its relevance to the child’s particular situation and the future options and steps available.
- ✓ Ensure, in cooperation with the person providing legal assistance to the child, that the child is not prosecuted and/or penalties are not applied for criminal activities consequent upon the exploitation of the child, as stipulated in Article 8 of the *Anti-Trafficking Directive* (2011/36/EU).

Overall, the guardian should promote the best interests of the child as a primary consideration throughout the proceedings, and protect the child’s rights, to prevent secondary victimisation. To this end, the guardian should collaborate with the legal representative so that full use is made of all existing procedural safeguards.

“The guardian should have the right to refuse to give testimony about the child if he/she is called on to do so. Guardians should also be guided by the principle that they must ‘do no harm’ to the child for whom they are responsible, either by their actions or by any decisions they are involved in taking on the child’s behalf. It is important that police and prosecution services are aware of these stipulations and understand that they are not entitled to put a guardian under any pressure to take any action which the guardian considers to be against the best interest of the child”.

*Source: UNICEF (2008), Reference guide on protecting the rights of the child victims of trafficking in Europe, Geneva, p. 54, available at: [www.unicef.org/ceecis/UNICEF\\_Child\\_Trafficking\\_low.pdf](http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf)*

## 10.7. Police investigations

On all occasions and whenever a child is in contact with the law and is involved in judicial systems, including police investigations, EU Member States are encouraged to apply the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010).

Police investigation activities involving children, such as interrogations, hearings or searches, should not take place until the child has a guardian (even if temporary) and a lawyer or other qualified legal professional (when provided for by law). The same should apply to judicial investigation activities.



# Annex 1: Legal sources

EU instruments	
EU Charter of Fundamental Rights	Charter of Fundamental Rights of the European Union, OJ 2000 C 364, Vol. 43, 18 December 2000
Reception Conditions Directive (2013/33/EU)	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, OJ 2013 L 180, pp. 96–116
Asylum Procedures Directive (2013/32/EU)	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, OJ 2013 L 180, pp. 60–95
Dublin Regulation (EU) No. 604/2013	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, OJ L 180, 29 June 2013, pp. 31–59
Victims' Directive (2012/29/EU)	Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315, pp. 57–73
Qualification Directive (2011/95/EU)	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, OJ 2011 L 337, pp. 9–26
Directive on combating the sexual abuse and sexual exploitation of children (2011/92/EU)	Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ 2011 L 335, pp. 1–14
Anti-Trafficking Directive (2011/36/EU)	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 2011 L 101, pp. 1–11
Return Directive (2008/115/EC)	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, OJ 2008 L 348, pp. 98–107
Brussels II Regulation	The Council Regulation (EC) No. 2116/2004 of 2 December 2004 amending Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. 1347/2000, as regards treaties with the Holy See, OJ 2004 L 367, 14 December 2004, pp. 1–2
Directive on Residence Permits for Victims of Trafficking (2004/81/EC)	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 2004 L 261, pp. 19–23

Free Movement Directive (2004/38/EC)	Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ 2004 L 158, pp. 77–123
<b>International instruments</b>	
UN Convention on the Rights of the Child, United Nations	UN Convention on the Rights of the Child, United Nations, New York, 20 November 1989, Treaty Series, Vol. 1577, p. 3
Council of Europe Convention against Trafficking	Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 2005
1951 Convention relating to the Status of Refugees	1951 Refugee Convention, United Nations, Treaty Series, Vol. 189, p. 137
The Hague Convention 1993	Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption
The Hague Convention 1996	Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children
<b>Other non-binding legal sources</b>	
UNCRC General Comment No. 6	United Nations Committee on the Rights of the Child, General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6
UNCRC General Comment No. 12	United Nations Committee on the Rights of the Child, General Comment No. 12, The right of the child to be heard, 1 July 2009, CRC/C/GC/12
UNCRC General Comment No. 13	United Nations Committee on the Rights of the Child, General Comment No. 13, The right of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13
UNCRC General Comment No. 14	United Nations Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, 29 May 2013, CRC/C/GC/14
Resolution 64/142. Guidelines for the alternative care of children	General Assembly, Resolution 64/142, Guidelines for the alternative care of children, 24 February 2010, A/RES/64/142
Council of Europe, Guidelines on child-friendly justice	Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies) – edited version 31 May 2011
Council of Europe, Life projects for unaccompanied migrant minors	Council of Europe, Committee of Ministers, Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, 12 July 2007

## Annex 2: Selected literature

Council of Europe (2009), *Council of Europe's policy guidelines on integrated national strategies for the protection of children from violence*, Strasbourg, [www.coe.int/t/dg3/children/News/Guidelines/Adoption\\_guidelines\\_en.asp](http://www.coe.int/t/dg3/children/News/Guidelines/Adoption_guidelines_en.asp).

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*Guardianship for children deprived of parental care* aims to strengthen the protection of children, specifically addressing the particular needs of child victims of trafficking. The *EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016* recognises the importance of comprehensive child-sensitive protection systems, for which a robust guardianship system serves as a touchstone. Effective guardianship systems are key to preventing abuse, neglect and exploitation. Yet the roles, qualifications and competences of guardians vary from one Member State to another. This handbook, a joint publication of the European Commission and the European Union Agency for Fundamental Rights, is designed to help standardise guardianship practice, ensuring also that it is better equipped to deal with the specific needs of child victims of trafficking. It provides guidance and recommendations to EU Member States on strengthening their guardianship systems, setting forth the core principles, fundamental design and management of such systems. By promoting a shared understanding of the main features of a guardianship system, it aims to improve conditions for children under guardianship and promote respect for their fundamental rights.

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