

Contents

Introduction to the Second Addendum	1
1. Recent trends and emerging issues from significant events	2
1.1. Snapshot of recent statistics and trends	2
1.2. Emerging issues for children arising out of significant events since 2016	2
2. Recent developments in international and European law and policy	4
2.1. EU law and policy relating to children in migration	4
2.2. CoE law and policy relating to children in migration	6
2.3. CRC and CMW authoritative guidance relating to children in migration	8
2.4. OSCE policy developments and recommendations concerning children in migration	8
2.5. International Private Law	9
3. Along the pathway of children on the move: practical resources, studies and tools which support responses to children on the move	10
3.1. Access to territory and procedures	10
3.2. Identification and age assessment	11
3.3. Documentation, legal identity and risk of statelessness	11
3.4. Risk of children going missing / Disappearances	12
3.5. Risk of abduction and illegal adoption	12
3.6. Ageing out and transitioning to adulthood	12
3.7. Child-friendly information and support from interpreters and cultural mediators	13
3.8. Guardianship for unaccompanied and separated children	13
3.9. Free legal aid and quality legal assistance	13
3.10. Data protection and data exchange	13
3.11. Consular protection and assistance	15
3.12. Transnational procedures and cross-border cooperation	16
Endnotes	20

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Introduction to the Second Addendum

In 2016 the Council of the Baltic Sea States published [Guidelines Promoting the Human Rights and the Best Interests of the Child in Transnational Child Protection Cases](#). The Guidelines address the situations of children on the move, who are at any stage of their migration at risk of violence, abuse and exploitation, including in the context of trafficking. They are directed at professionals and officials working with and for children on the move in the fields of childcare, protection and social welfare, immigration and asylum, law enforcement and the judiciary, healthcare and education. They describe standards and obligations under international and European law that ensure children's safety and well-being regardless of their national origin or immigration status. Case management and care planning for children on the move are central to the Guidelines.

The Guidelines discuss transnational cooperation step-by-step from the initial identification of a child and relevant assessments through to the identification and implementation of a durable solution, including the possibility of return. The [first Addendum](#) to the Guidelines was published in December of 2016.

Since the publication of the Guidelines and first Addendum, there have been important developments in Europe and, notably, new challenges in this field. This new second Addendum aims to provide an update in this regard and should be read alongside the Guidelines. This second Addendum focuses on developments since 2016, complements the previous Addendum and illustrates areas where the Guidelines may need to be revisited [1]. It enables policy makers and practitioners to continue to work with key elements of the Guidelines, whilst being aware of important new developments.

This Addendum takes note of the current context for children on the move in terms of highlighting new trends observed, indicating recent international and European legal and policy developments. It points to practical resources and provides reflections on what lies ahead in this dynamic and fast-evolving setting. This Addendum explains recent developments that are relevant to all children on the move, including children within families as well as children travelling unaccompanied or separated from their families.

What you'll find in each section



Section 1 provides an update on the current context and issues

that have emerged since the publication of the first Addendum in 2016. In particular, it highlights some of the challenges and dynamics that have arisen, including because of the COVID-19 pandemic and as a consequence of the escalation of Russian hostilities in Ukraine since February 2022. It also provides a snapshot of statistics and trends in the way transnational child protection cases may arise, and responses to them.



Section 2 summarises significant legal and policy developments

that are now shaping the international and European landscape. They reflect on ongoing processes, such as the reform of the Common European Asylum System, which will affect key questions in cases involving children, such as access to protection and available safeguards for children. They also reflect developments in European child rights measures, including measures that have the potential to strengthen the ability of actors to work together to protect children. These new commitments may also provide impetus for progress at the national level.



Section 3 highlights illustrative examples of new resources and tools

which support policymakers and practitioners better to respond to the situation for children on the move.

1. Recent trends and emerging issues from significant events

Since 2016 and as of the time of writing, there are notable new trends in relation to children on the move in Europe. Certain issues have emerged as of particular interest to cases involving children, triggered by significant events in recent years. State responses, procedures typically applied and options practitioners have to assist children on the move have all been shaped by these trends and events and will continue to be, in this dynamic and fast-changing setting.

1.1. Snapshot of recent statistics and trends

At the end of 2021, it was estimated that 89.3 million persons were forcibly displaced worldwide, out of which 41% or an estimated 36.5 million were children [2].

Within Europe, the exact numbers of children on the move are not easily available. Children on the move, whether travelling with their parents, unaccompanied or separated, arrive in Europe for a variety of diverse reasons.

According to Eurostat, in 2021, 166,760 first-time asylum applicants were children, representing 31.2% of the total number of first-time asylum applicants recorded in the EU. In 2021, 23,255 unaccompanied children applied for asylum in Europe. 93% of them were boys and their main states of origin were Afghanistan followed by Syria and then Bangladesh. Austria followed by Germany, Bulgaria, Greece and Belgium received the most applications. Of the 5,070 unaccompanied children granted status in 2021, 48% were granted subsidiary protection, 34% asylum and 18% humanitarian protection [3].

Continuing hostilities and the Russian invasion of Ukraine in February 2022 have led to the largest refugee movements in Europe since World War II. As of 13 December 2022, UNHCR reports that 7,846,130 individual refugees from Ukraine have been recorded across Europe [4], and a large part of this group is children traveling with family members, unaccompanied, separated or within groups of children evacuated from alternative care in Ukraine.

Within Europe, there is also an observed trend of unaccompanied and separated children, who are not seeking international protection, who migrate for a very diverse range of reasons, including family reunification, education or economic opportunities. This includes children who may be moving from country to country within Europe, and living outside of any formal reception

or care system with limited or no access to services.

At the same time, the number of children trafficked into and within Europe is thought to have increased since 2016. Comprehensive data is difficult to compile, as many children remain under the radar of any authorities. Sexual exploitation remains the most prevalent form of exploitation in identified trafficked persons, but many have also been exploited in forced labour and criminal activity and forced begging. The majority of identified trafficked persons are non-EU nationals but trafficked persons from central and south-eastern Europe are less commonly detected than in the past [5]. Almost every fourth victim of trafficking in the EU is a child [6]. During the pandemic, many traffickers moved to a new business model of online recruitment and exploitation of victims [7]. This was not just for the purposes of sexual exploitation but included labour exploitation, forced begging, forced or child marriages and illegal adoption. Children are at particular risk of falling victim to trafficking online, as frequent users of social media.

1.2. Emerging issues for children arising out of significant events since 2016

Brexit

On January 31, 2020, Brexit took place, finally concluding the UK's withdrawal from the EU and creating new external borders between Britain and the EU. However, the Northern Ireland Protocol left Northern Ireland within the EU for the purposes of the movement of goods and some other purposes. At the time of writing, negotiations between the EU and UK in relation to how this will operate continues. There is also no indication that the EU and the UK will negotiate new arrangements to replace the application of the Dublin Regulation (including its provisions on family reunification with family members in the UK) and to safeguard human rights in relation to border crossing attempts in the English Channel.

Effects of COVID-19 pandemic

The global COVID-19 pandemic which erupted in early 2020 created a major change in migration patterns, with the introduction of bans on movements between countries both within the EU and across the globe. This led to significant difficulties for transnational child protection cases, given the inability of children to move or be moved. COVID-19 also disrupted service provision and face-to-face support for migrant children and increased their risk of harm [8]. On a positive note, increased digitalisation, often prompted by COVID-19, has had some benefits for those seeking asylum [9]. It also has the potential to ensure that a wider range of professionals and public services are aware of the particular needs of individual migrant children. In some places, the use of remote technology also meant that child protection services and training could be extended to more geographically remote areas [10].

Evacuations from Afghanistan

The withdrawal from Afghanistan by US and its allied troops in August 2021 led to the evacuation of Afghan children to European countries. Others were assisted to flee to neighbouring countries, with some pledges of resettlement to Europe and other countries. Many were unaccompanied, some were in groups of children, others separated from their parents/family. Many cases of family reunification remain pending. Afghanistan has since found itself on the brink of economic and social collapse, likely to result in increased movement of Afghans [11].

Belarus Border with the EU

During the Summer and Autumn of 2021, Belarusian authorities were believed to be attracting individuals from Iraqi Kurdistan and other parts of Asia and from Africa to Belarus, as a route into the EU, by providing them with tourist visas and instructions about how to enter the EU, in particular neighbouring Poland and Lithuania. The authorities in Belarus did not permit these individuals to leave the border area between these countries, if their attempts to enter the EU were unsuccessful. Many children, with or without their families, were trapped at the border in very poor conditions and at risk from the actions of border guards [12].

Relocation Schemes

At various moments since December 2016, there have been relocations of unaccompanied asylum seeking children and persons in vulnerable situations in particular from the Greek islands to several other EU Member States [13]. This has been achieved at first under the mandatory EU relocation scheme adopted in 2015 and then through a voluntary EU scheme. Relocations subsequently occurred on a bilateral basis through Member States pledging places in a scheme supported by the European Commission.

Increasing reports of pushbacks at the border

There are also increasing reports of pushbacks at land and sea borders between Greece and Turkey and between Italy and Libya which have focused attention on the need for child-centred and child-sensitive procedures at borders [14].

Ukraine emergency response

The situation at the Southern borders of the EU was effectively eclipsed in March 2022 by the biggest refugee movement in Europe since World War II caused by the February 2022 Russian invasion of Ukraine. Although visa liberalisation between Ukraine and the EU means that Ukrainian nationals are not typically stopped at the border for migration control purposes, there is a need to identify children at risk both at the border and after they cross-borders, and to improve the registration of arrivals for the purpose of applying protection instruments. More generally, the [EU Temporary Protection Directive](#) was activated for the first time

in March 2022 and provides eligible persons fleeing Ukraine, including children, with access to immediate temporary protection. This temporary protection is available under the EU measures until March 2024, and potentially can be extended for a further year. Some of the children fleeing from Ukraine may separately be entitled to individual refugee status, protection from child trafficking or another national protection status. Neighbouring countries have been working to put in place systems of registration, appropriate guardianship arrangements, measures to support access to education and the labour market. They will need to ensure best interests procedures to identify the right durable solution for each child is determined and supported, be that return or reintegration, should this be safe and in the best interests of the child, or local integration or family reunification in other countries.

2. Recent developments in international and European law and policy

Since December 2016, there have been many changes (or proposals for changes still under negotiation) to the European and international law and policy landscape which could have an impact on transnational child protection in relation to children on the move. These arise in the areas of asylum and migration, child-friendly justice, and children's rights. The role of child protection measures and actors in addressing the needs of children on the move, including in procedures involving them, as covered in the Guidance, is also increasingly in focus in EU law and policy.

This section provides a window into the way in which the European legal and policy architecture is being adapted and, in some parts, reshaped. It briefly describes issues being addressed in new or proposed law and policy to assist policymakers and practitioners in anticipating potential features of future procedures and practice.

For the purposes of this Addendum, we highlight key instruments of interest, including those under negotiation, grouped by the bodies from which they emanate, including the EU, the Council of Europe, the UN Committee on the Rights of the Child, the Organisation for Security and Cooperation in Europe (OSCE) and the Hague Conference on Private International Law.

2.1. EU law and policy relating to children in migration

EU Asylum and Migration Measures

Of major significance for cases involving children in migration is the "[Commission Communication on the protection of children in migration](#)" published by the European Commission in April 2017, prompted by the dramatic increase in arrivals of children in 2015 and 2016. The Communication sets out a series of actions to be taken, or be better implemented, by the EU and its Member States with the support of the relevant EU agencies. It took a comprehensive approach to children in migration, covering both children travelling within families and those that are unaccompanied or separated (regardless of their reasons for being in Europe) and covering all the key issues that they face from identification to durable solutions. In particular, in relation to access to status determination, it

emphasised that "*appropriate safeguards must be applied to all children present on the territory of the European Union, including at all stages of the asylum and return procedures*". It also noted that "*Member States should establish procedures and processes to help identify durable solutions on an individual basis, and clearly set out the roles and duties of those involved in that assessment, in order to avoid that children are left for prolonged periods of time in limbo as regards their legal status*". Since its adoption the Commission, and subsequently the European Migration Network, have published reports sharing developments at EU level and national level in relation to its recommendations for progress [15].

More broadly, the reform of the Common European Asylum System has continued to be a priority issue on the EU agenda, with protracted negotiations on Commission proposals for legislative change to EU instruments concerning, inter alia, international protection, EU external border measures and return. Negotiating positions on these proposals proved somewhat polarised amongst the Member States, even as the ongoing circumstances of refugees and migrant persons, including children, such as the conditions at hotspots on the Greek islands, recorded pushback incidents at the EU external borders, and continuing hazardous crossings of the Mediterranean, highlighted the need for progress in respect of human rights.

In September 2020, the European Commission published the new Pact on Migration and Asylum which sought, inter alia, to introduce new momentum to the negotiations, through amended proposals. In particular, the Pact stated that it would bring about a comprehensive approach to migration and asylum, building on progress made to date on the reform, whilst introducing new procedures and operational measures. These included proposals to introduce new procedures at the border, which include pre-entry screening, an asylum procedure and, where applicable, a swift return procedure. The Pact also proposed a new common legal framework, the Asylum and Migration Management Regulation, to bring about a more integrated approach for asylum and migration policy. It includes a new solidarity mechanism between EU Member States, focusing on either relocation or return sponsorship. Specifically, in relation to children, the Pact emphasised that "the reform... is an opportunity to strengthen safeguards and protection standards under EU law for migrant children" and it contains a number of provisions intended to achieve this. Consequently, the Pact has the potential to affect transnational child protection cases significantly and the proposals triggered much discussion on the manner in which the proposed procedures would apply to children and the scope of the safeguards proposed. These proposals remain under negotiation at the time of writing.

Of note within the reform has been the negotiation and/or application of new mandates for the EU agencies. The European Border and Coast Guard Agency (formerly known as Frontex), and the EU Agency for Asylum

(formerly EASO), both assume new tasks, encompassing operational roles in some contexts. These clearly have an impact on transnational child protection cases and will likely entail the development of further resources in this regard in the future. During the period, EASO/EUAA in particular has continued to publish a range of guidance of particular relevance to children and has facilitated exchange of experience through its Vulnerability Experts Network [16].

Within the EU, at several points during the period, temporary internal border controls were introduced by some States for reasons such as the situation at the external borders, secondary movements, perceived terrorist threats and also to a significant degree because of COVID-19. Under the new Pact, on 14 December 2021, the Commission published a proposal to address internal EU border crossing. One of the proposed new mechanisms would permit Member States and their police forces to apprehend irregular migrants at internal borders and push them back to the EU state from which they are believed to have travelled. Such a measure may have an adverse impact on the many unaccompanied and separated children on the move across Europe, in particular, if it is not proposed to have any individual risk or other assessment before individuals are returned [17].

In parallel, the EU Commission published a [proposal to address situations of instrumentalisation in the field of migration and asylum](#). This was designed to combat what was perceived to be action by Belarus to unlawfully facilitate irregular migration into Poland and Lithuania during the Summer and Autumn of 2021. The EU believes that Belarus is using existing migratory flows from Asia and elsewhere as a tool for political purposes, to destabilise the EU and its Member States.

The mass movements of refugees from Ukraine (made up in significant part by children) led to a decision by EU Member States to trigger the application of the Temporary Protection Directive [18]. The Commission also published guidance to facilitate border crossings between Ukraine and the EU [19] as well as a Communication welcoming those fleeing war in Ukraine [20].

The EU Council announced the [10-Point Plan](#): For stronger European coordination on welcoming people fleeing the war from Ukraine, amongst which at the time of writing were anticipated Standard Operating Procedures (SOPs) on transfers of children between Member States. The Commission established a Solidarity Platform to exchange information and coordinate on reception and responses among Member States. It noted the role of the European Strategy on the Rights of the Child in providing a comprehensive framework for the protection and the fulfilment of the rights of the child [21]. The Council issued a Political Statement on the protection of displaced children from Ukraine in the context of Russia's war of aggression against Ukraine. It recalled the rights of the child and applicable laws and underlined Europe's commitment to child protection in terms of reception and access to national child protection services.

It also encouraged cooperation with Ukraine in the context of voluntary return "upon cessation of martial law on its territory, upon cessation of temporary protection, or, if a safe and dignified return and access to education are possible, prior to its termination conditioned upon the return being in the best interest of the child" [22].

EU Anti-Trafficking Efforts

On 14 April 2021 the European Commission adopted an [EU Strategy on Combatting Trafficking in Human Beings for 2021–2025](#). This should be read in conjunction with the [EU Strategy on the Rights of the Child](#) and the [EU Strategy on Victims' Rights \(2020-2025\)](#). It underlines that unaccompanied migrant children are particularly vulnerable to trafficking. It also notes that children from Roma communities are especially vulnerable to exploitation and trafficking due to several socio-economic factors such as multi-dimensional poverty, anti-gypsyism, social exclusion and discrimination. The Strategy highlights the need for early identification of children who may have been trafficked [23] and the need to involve civil society in this process and to provide training in the rights of children to professionals at borders. It also acknowledges the need for the speedy appointment of guardians, effective free legal aid and national structures and cooperation including national referral mechanisms [24].

As noted above, in response to the war in Ukraine, the EU Commission activated the [Temporary Protection Directive](#). Initially agreed in 2001, it predates the EU Anti-Trafficking Directive but the [operational guidance](#) referred to the Anti-trafficking Directive and also alerted Member States to the risks of trafficking to which children from foster care and institutions would be exposed. Subsequently, the EU Solidarity Platform presented a [Common Anti-Trafficking Plan](#) to address the risks of trafficking in human beings and support potential victims amongst those fleeing the war in Ukraine. Although specific to the war in Ukraine, it provides useful guidance for any crisis situation, where children may become vulnerable to traffickers seeking to exploit them for financial gain and have to wait weeks, or even months, to be identified as having been trafficked. The Plan also recognises that children may be vulnerable to sexual exploitation and the exploitation of their labour, including through forced begging and criminal exploitation. The Plan highlights the role of the EU Network of National Rapporteurs and Equivalent Mechanisms and the EU Civil Society Platform. Europol has deployed teams to border states where the threat of trafficking is seen to be the highest [25]. Eurojust has also taken a number of actions in response to the war, that will also potentially benefit other children who may have been trafficked [26]. Several other EU agencies work together to combat trafficking [27]. EU Anti-trafficking action sits parallel to its renewed Action Plan against migrant smuggling (2021-2025), as migrant children smuggled into Europe often become vulnerable to exploitation by human traffickers during their journeys or after their arrival.

EU Civil Justice Measures - Brussels II bis recast

The [Brussels II bis recast Regulation \(Reg. \(EU\) 2019/1111\)](#) was adopted by the European Council on 25 June 2019 and was adopted by all EU Member States, apart from Denmark, on 1 August 2022. Some of its key changes apply to children and could affect children on the move and, in particular, in certain situations of transfers between EU Member States. Article 21 obliges Member States to provide children, who are capable of forming their own views, with a genuine and effective opportunity to express their views in proceedings relating to parental responsibility, within the framework of their national laws. Children will be able to do so either directly or through a representative or an appropriate body. Courts must also give due weight to the views of a child in accordance with their age or maturity. Article 82 introduces clearer provisions for a child being placed in another Member State. For example, where it is proposed to place a child in another Member State with a family member, apart from a parent, with a foster family or in an institution, the consent of the Central Authority in that Member State must be obtained before any order is made. A consultation procedure will also have to be organised between the two relevant Central Authorities prior to the placement. In September 2022, the new [Practice Guide on the application of the Brussels II bis Regulation](#) was published by the European Commission.

EU Criminal Justice

Given that children in migration may become involved in criminal proceedings as victims, suspects or accused, it is also useful to take stock of developments in EU law beyond those specifically arising in the field of asylum and migration and, in particular, those arising in the field of criminal justice.

An important EU legislative instrument has come into effect at national level since December 2016, namely the [Procedural Safeguards Directive](#). Similar to the earlier Directives on child sexual abuse, combatting trafficking and on victims' rights respectively, the Procedural Safeguards Directive requires Member States to put in place special safeguards for children who are suspects or accused in criminal investigations. These include rights to information, support, and assistance as well as individual assessments of their circumstances, adapted procedures during interviews, the use of trained professionals and access to services.

The new EU strategies in the field of child sexual abuse [28] and of victims' rights [29] are intended to offer better frameworks to respond in a comprehensive way to the increasing threat of child sexual abuse, both in its online and offline forms, and to ensure that all victims of all crime, no matter where in the EU or in what circumstances the crime took place, can fully rely on their rights. They also anticipate the possible revision of EU instruments on sexual abuse and victims' rights specifically. The Commission also anticipates introducing a proposal for a new legislative instrument

dedicated to the transfer of criminal proceedings between Member States, which may require specific safeguards in cases involving children, and may have a particular application in cases of children on the move.

EU focus on integrated child protection systems

Another significant EU policy development included the publication of the [EU Strategy on the Rights of the Child \(2021-2024\)](#), which was adopted in April 2021. The Strategy provides a comprehensive, overarching policy framework bringing together financial and policy tools to strengthen the rights of the child. It commits to forty new concrete actions to strengthen the protection of children, both within and outside the EU. These are articulated around the following thematic priority areas: (1) Child participation in political and democratic life (2) Social-economic inclusion, health and education (3) Combating violence against children and ensuring child protection (4) Child-friendly justice (5) Digital and information society and (6) the global dimension.

The Strategy emphasises that every child, no matter their age, gender, sexual orientation, migration background or other ground of distinction, should have access to all of their rights. Some actions are more targeted to specific vulnerabilities of particular children, including children in migration, who may be facing additional challenges. Accordingly, the Strategy, as a whole, applies to children on the move and complements and reaffirms the Commission Communication on protection of children in migration. As part of the strategy, the European Commission plans to present an initiative aimed at supporting the development and strengthening of integrated child protection systems, which will encourage all relevant authorities and services to better work together in a system that puts children at the centre. The Fourteenth EU Annual Child Rights Forum had a focus on this issue and anticipates further consultation with the Commission on this issue [30].

2.2. CoE law and policy relating to children in migration

Council of Europe Action Plans

On 19 May 2017 the Committee of Ministers of the Council of Europe adopted the [Action Plan on Protecting Refugee and Migrant Children in Europe \(2017-2019\)](#). This Action Plan had a special focus on unaccompanied children and three key pillars for action:

- Ensuring access to rights and child-friendly procedures
- Providing effective protection
- Enhancing refugee and migrant children's integration

The implementation of the Action Plan resulted in a [wide range of standards, guidelines and tools](#) for improving child-centred procedures including: guidelines on

guardianship; guidelines on age assessment; a handbook for frontline professionals on providing child-friendly information; a report on promoting child-friendly approaches; new training materials; and a review of the implementation of the life projects recommendation (CM/Rec (2007)9).

On 5 May 2021, the Committee of Ministers of the Council of Europe adopted the [Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe \(2021-2025\)](#) to increase cooperation among member states to protect the most vulnerable persons. The new Action Plan is based on four pillars:

- ⊙ Human rights: ensuring protection and promoting safeguards (by identifying and responding to vulnerability);
- ⊙ Human rights and rule of law: ensuring access to law and justice;
- ⊙ Human rights and democracy: fostering democratic participation and enhancing inclusion;
- ⊙ Transversal support: enhancing cooperation between migration and asylum authorities in Council of Europe member States.

CoE Strategy for the Rights of the Child (2022-2027)

A new Council of Europe Strategy for the Rights of the Child includes a number of general actions relevant to the fulfilment of the rights of children in migration as well as a number of actions specifically addressing issues concerning children in migration. This includes for example action to strengthen mechanisms and cooperation for the timely identification and referral of these children, and by ending immigration detention of children by, inter alia, promoting family and community-based care solutions. It also includes action to promote child-friendly approaches in migration procedures, including by strengthening access to legal representation and guardianship, information and participation as well as effective remedies. The Strategy also mentions undertaking a follow-up to the [Recommendation CM/Rec\(2019\)11 of the Committee of Ministers on effective guardianship for unaccompanied and separated children in the context of migration](#).

CoE Anti-Trafficking

The Group of Experts on Action Against Trafficking in Human Beings (“GRETA”) is responsible for monitoring how states are implementing the [CETS 197 - Council of Europe Convention on Action against Trafficking in Human Beings](#). They do so through a programme of country visits and reports and also general and thematic reports, such as a [Compilation of good practices in addressing trafficking in human beings for the purposes of labour exploitation](#). In the course of the second evaluation round, GRETA paid particular attention to measures taken to address the vulnerability of children to trafficking. As reported in the [9th General Report on GRETA's activities](#) in 2020, the great majority of State Parties continue to have important gaps in the identification of, and assistance to, child victims of



The **Council of Europe (CoE)** advances respect for human rights through a strategic “triangle” of standard setting, monitoring and cooperation. This approach establishes mutual links between developing legally binding standards which are monitored by independent mechanisms and supplemented by cooperation and support activities. In 2016 the mandate of the [Special Representative on Migration and Refugees](#) was established in response to the humanitarian crisis in order to provide immediate assistance and support to Member States concerned, by complementing activities of other relevant CoE bodies and by co-ordinating CoE action with its partners. This [mandate](#) has been renewed and the Special Representative has played a central role in the development and implementation of the CoE Action Plans in this field.

trafficking. The report provides a summary of GRETA’s findings and key recommendations to Parties to the [CoE Convention on Action against Trafficking in Human Beings](#).

The Lanzarote Committee protecting children affected by the refugee crisis

In March 2016, the Council of Europe’s Secretary General called for a [series of priority actions to protect children affected by the refugee crisis](#). In this context, the Lanzarote Committee launched an [urgent monitoring round](#) to focus on how Parties to the Lanzarote Convention are protecting children affected by the refugee crisis from sexual exploitation and sexual abuse. This effort resulted in a [Special Report](#) covering the situation in 41 countries. The Special Report draws on replies from the Parties to the Lanzarote Convention and other stakeholders to a focused questionnaire, which sought to map the Parties’ responses to the increased risks of sexual violence that confronts children affected by the refugee crisis. Information was sought on four broad topics: 1) Data; 2) Prevention; 3) Protection; and 4) Cooperation. The Lanzarote Committee also published a [Checklist on Protection of children affected by the refugee crisis from sexual exploitation and sexual abuse: States’ main obligations under the Lanzarote Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse](#). Information on the follow-up monitoring and compliance procedure, which assesses to what extent governments are implementing the key recommendations, is available here.

Articles 20 and 21 of the Council of Europe’s 2012 Lanzarote Convention on Protection of Children against

sexual exploitation and sexual abuse have become increasingly relevant in the context of the increase in on-line sexual exploitation of children, that was exacerbated by the Covid 19 restrictions on movement [31].

2.3. CRC and CMW authoritative guidance relating to children in migration

In November 2017, the Committee on the Rights of the Child (UNCRC) and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (UNCMW) issued two joint general comments [on the general principles regarding the human rights of children in the context of international migration](#) (CMW/C/GC/3-CRC/C/GC/22) and on the [State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#) (CMW/C/GC/4-CRC/C/GC/23). General Comments set out the Committees' authoritative interpretation of human rights treaty provisions. General Comments often aim to clarify the reporting duties of State parties with respect to specific provisions and to suggest approaches to implementing treaty provisions.

The joint general comment on general principles aims to provide authoritative guidance on legislative, policy and other appropriate measures that should be taken to ensure full compliance with the obligations under the Conventions to fully protect the rights of children in the context of international migration.

The Optional Protocol to the Convention on the Rights of the Child on a communications procedure ("OP3") came into force in April 2014 and in December 2022 there are more than 90 individual communications pending for the Committee to review [32].

The vast majority of the communications concern children in migration. In particular, the Committee has shared its views regarding how States could better respect CRC principles such as the best interests of the child and the rights to be heard as well as how safeguards should be applied in procedures such as [age assessment](#) and decision making on returns.

2.4. OSCE policy developments and recommendations concerning children in migration

Anti-trafficking efforts

The Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings holds expert round tables and publishes guidance on child trafficking [33]. The OSCE Office for Democratic Institutions and Human Rights also published its [National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook – Second Edition](#). This new handbook contains specific, mainly procedural, provisions relating to children, who may have been trafficked.

OSCE ODIHR report and webinar on regularisation mechanisms

In November 2021, the OSCE ODIHR and PICUM organised a [webinar](#) to bring together migration experts, policymakers and civil society representatives to discuss good practices and lessons learnt from various approaches to migrant regularisation across the OSCE region. The webinar included a presentation of the ODIHR-commissioned report [Regularization of Migrants in an Irregular Situation in the OSCE Region: Recent Developments, Points for Discussion and Recommendations](#). The report includes examples of child-specific and child-rights based regularisation mechanisms. The [webinar report](#) provides more details on the presentations, good practices and recommendations.

OSCE ODIHR expert meeting migrant children's rights in return procedures

In December 2020, OSCE ODIHR organised an expert meeting entitled [Migrant Children's Rights in Regional Processes: What Next after the Chişinău Agreement?](#) At a regional level, the [2002 Chişinău Agreement on the Return of Minor Children to Their Country of Origin](#) regulates the return and repatriation of migrant children. The meeting was organised to fulfil several objectives including to discuss the principles underpinning the decisions and procedures concerning the return of migrant children.

The [meeting report](#) summarises the presentations and discussion. It also outlines key conclusions and recommendations addressing the following priority areas for action:

- ⊙ Respect and fulfil the guiding principles of the UN Convention on the Rights of the Child
- ⊙ Establish and carry out individual best interests procedures to identify and apply a comprehensive, secure and sustainable solution for every child
- ⊙ Foster and further develop interagency multidisciplinary cross-border approaches led by child protection authorities to provide protection and implement solutions



OP3 currently has 48 States Parties (as of 24 May 2022) including three Member States of the CBSS (Denmark, Finland and Germany). The Optional Protocol sets out three mechanisms: the individual communications procedure, the inter-State communications procedure and the inquiry procedure. For more information on the procedures see: <https://opic.childrightsconnect.org>

- ⊙ End child and family immigration detention and the criminalization of child migrants
- ⊙ Promote and contribute to regular regional exchanges of good practices to raise awareness and encourage progress
- ⊙ Advance legislative and policy reform efforts at the national level to protect children's rights and engage in international cooperation to develop bilateral and regional agreements to protect children's rights in return decisions and readmission procedures.

2.5. International Private Law

There is a growing focus on the role of international private law instruments as applied in cases concerning children on the move, especially since significant numbers of unaccompanied and separated children have been fleeing Ukraine. In particular, the [1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children](#) has become more prominent in relation to legal jurisdictions, the status of internationally displaced children and measures that can be taken to protect them both in the receiving state and if they are transferred between Contracting States.

The Convention has traditionally been used in cases involving issues of parental responsibility when members of a family are living in different non-EU Convention states and there are disputes about the custody of children or when children are, or may need to be, placed in state care. The evacuation of unaccompanied and separated children and children who are orphans or deprived of parental care may lead to it being applied more widely in the EU as Ukraine is not a party to Brussels IIA. See also [HCCH Preliminary document on the Application of the 1996 Child Protection Convention to unaccompanied and separated children](#), published in 2020, that provides guidance and explanations as regards its application.



3. Along the pathway of children on the move: practical resources, studies and tools which support responses to children on the move

Along their pathways, children, and actors responding to their situation encounter a range of issues and challenges. This section provides illustrative examples of significant recent practical resources, studies and tools that can support response to their situation from the moment of access to territory to finding durable solutions.

3.1. Access to territory and procedures

As noted above, the most recent and significant development in relation to border crossing and access to procedures has arisen out of the situation in Ukraine.

The profiles of children arriving from Ukraine are more diverse and challenging than those more usually identified within groups of children entering the EU alone. Not only do they include orphans, but also children who have been deprived of parental care, who may have been trafficked or who may be stateless. These include children who previously lived in institutions and residential care as children deprived of parental care due to poverty, abuse or the absence of a parent as well as children who may have been incarcerated as juvenile offenders. Children with disabilities have also been voluntarily placed in alternative care settings to ensure the necessary care and support to meet their special needs. Some of these children have special needs, that may be severe and complex. In addition, they may have faced discrimination as part of Roma or other minority communities. Finally, some children who have fled Ukraine are asylum seekers from third countries or part of sports groups who have left Ukraine for training or safety purposes.

Many of these children are travelling with adults assigned to them in Ukraine but whose legal status, responsibilities and duties may not be recognised or apply in EU Member States and where legislation or practice may require the appointment of a national or additional guardian. The implications arising from this situation are currently a matter of wide debate.

Access to procedures will differ and to some extent will apply according to whether a child has claimed asylum, may have been trafficked or has been displaced

- ⦿ The Commission published responses to [frequently asked questions](#) "Unaccompanied and separated children fleeing Ukraine – in relation to registration, reception and care".*
- ⦿ UNICEF and Child Circle are undertaking an in-depth study of the legal provisions affecting access to legal protection, care and custodial arrangements in countries bordering Ukraine or receiving high numbers of unaccompanied children. Read more [here](#).
- ⦿ The EUAA and the Fundamental Rights Agency are developing practical tools for guardians and the topic of the first booklet in this series is Temporary Protection. Once published it will be available on the agencies' respective websites. See also other resources on Ukraine on their websites, including EUAA's leaflet on child-friendly [information](#) on temporary protection.

*) [FAQs.UAMs and separated children.TPD_en_1.pdf\(europa.eu\)](#)



from Ukraine. But in all cases some groups of children are likely to face more obstacles to gaining access to appropriate protection procedures due to there being insufficient methods in place to identify their special needs. This may be case when their identity and needs are not immediately obvious, for example, when they are victims of torture, are lesbian, gay, transgender or intersex, have needs arising from an illness or disability or are from minority groups. There will also be children who are reluctant to disclose their history or circumstances due to trauma, shame, lack of trust, limited cognitive abilities or fear. Procedures at borders and later on should take this into account.

Children from Roma have historically been overlooked in border and other procedures. This has been cast into sharper focus as children and their families are displaced from Ukraine. Members of the LGBTQ+ community are also facing discrimination in states to which they have been forced to flee.

At the same time, refugees who are not from Ukraine are being detained and denied access to protection systems.



Noteworthy ECtHR jurisprudence and views of the Committee on the Rights of the Child

- ⊙ ECtHR -- Darboe and Camara v. Italy <https://hudoc.echr.coe.int/fre?i=002-13747>
- ⊙ Age assessment and the presumption of minority as a prerequisite for effective human rights protection of asylum seekers: a discussion of Darboe and Camara v Italy <https://strasbourgobservers.com/2022/10/04/age-assessment-and-the-presumption-of-minority-as-a-prerequisite-for-effective-human-rights-protection-of-asylum-seekers-a-discussion-of-darboe-and-camara-v-italy%E2%82%AC/>
- ⊙ Spain's age assessment procedures violate migrant children's rights, UN committee finds <https://www.ohchr.org/en/press-releases/2020/10/spains-age-assessment-procedures-violate-migrant-childrens-rights-un>

3.2. Identification and age assessment

In December 2022, the Council of Europe Committee of Ministers adopted a new [Recommendation to member States on human rights principles and guidelines on age assessment in the context of migration](#). The Recommendation underlines that “age assessment should not take place as a matter of routine but only following a referral by a competent authority, when there are reasonable doubts about the age of a person and the assessment of their age is necessary to determine the person's rights and the applicable procedures.” Furthermore, the margin of error applicable to each element of the age assessment procedure should be recorded and each element given due weight according to the scientific validity of the results. The margin of error should be applied in favour of the individual concerned.

This topic is addressed by the Committee on the Rights of the Child has addressed in its authoritative guidance (General Comment No 6 and recent joint General Comments together with the Committee on the rights of migrant workers) as well as in its views in response to communications on individual cases.

In 2018, the EU Agency for Asylum published a [Practical Guide on Age Assessment](#). In order to support national authorities in the safeguarding of the principle of the best interests of the child, the Practical Guide:

- ⊙ analyses the impact of age assessment on the applicant and the motivation for such an assessment;
- ⊙ offers guidance on the application of the necessary safeguards in the assessment process;
- ⊙ describes how to implement the assessment process using a holistic and multidisciplinary approach;
- ⊙ provides a model for a workflow highlighting a gradual process and use of methods to prevent unnecessary examinations;
- ⊙ explores new methods used to assess an applicant's age, the latest developments in the methods already in use and the potential impact of each method on the rights of the applicant;
- ⊙ provides key recommendations to address practical challenges that might appear prior to, after and at different stages of the process;
- ⊙ contains a set of tools and reference documents to complement the information provided in the practical guide, including a glossary, a compilation of legal framework and policy-guidance documents, practical tools for ensuring the best interests of the child, and an updated overview of the methods and procedural safeguards in use in the EU+ territory.

The Council of Europe has also recently published additional resources on age assessment:

- ⊙ Age Assessment for Children in Migration: [A Human Rights Base Approach – A Guide for Policy Makers](#) <https://rm.coe.int/ageassessmentchildrenmigration/168099529f>
- ⊙ Leaflet: Your Rights in Age Assessment Procedures <https://rm.coe.int/ageassessmentchildrenmigration-cf-leaflet-web-eng/1680a2608b>

3.3. Documentation, legal identity and risk of statelessness

Every child has the right to a nationality and this is often the gateway to accessing other rights. At the end of 2018, UNHCR estimated there were over 399,000 stateless persons in the European Union and Norway. The European Migration Network has noted that some unaccompanied children lack documentation and face issues with establishing their legal identity and nationality. This may be a serious barrier to securing a durable solution for a child in line with their best interests. There are also serious risks for a migrant child, who is ageing out of the care system without documentation and proof of their nationality. If a child's nationality is unknown or they are believed to be stateless, they should receive legal assistance to apply for recognition as stateless when possible and to take action to acquire a nationality. Notably, the Council of Europe has recently committed to work on child-sensitive procedures for statelessness determination [34].



For further reading on statelessness and every child's right to nationality

- ⊙ [EMN Inform: Statelessness in the European Union \(2020\)](#)
- ⊙ <https://statelessjourneys.org>
- ⊙ <https://index.statelessness.eu>
- ⊙ <http://www.syrianationality.org>
- ⊙ <https://www.unhcr.org/ibelong/>
- ⊙ <https://www.unhcr.org/ibelong/unicef-unhcr-coalition-child-right-nationality/>
- ⊙ <https://www.coe.int/en/web/cdcj/statelessness>

3.4. Risk of children going missing / Disappearances

The issue of unaccompanied or trafficked children going missing from care in Europe continues to be of concern in many countries, with efforts continuing to improve national and transnational cooperation on this issue. Missing Children Europe's project AMINA provides insights and resources in relation to this issue: <http://aminameanssafe.eu>

3.5. Risk of abduction and illegal adoption

In times of conflict and international displacement children may be at risk of abduction by an estranged parent or by other adults. The [1980 Hague Convention on the Civil Aspects of International Child Abduction](#) applies in the CBSS states and also Ukraine and a number of other third countries. The HCCH provides useful relevant country information, see [information relating to Ukraine](#).

CBSS Member States have also brought into force the [1993 Hague convention on Protection of Children and Cooperation in Respect of Intercountry Adoption](#). It establishes central and competent authorities to liaise between a child's country of origin and the individual member state and ensure that any adoption meets the requirements of the Convention. A number of other states, including Ukraine, are not members of the 1993 Convention and, in these cases, the 1993 Convention does not apply. A legal adoption can only take place under the national law of the child's state of origin. This is the case even if some preliminary steps have been taken in the adoption process. The Ukrainian government and the Permanent Bureau of the Hague Conference have made it clear that no intercountry adoption can take place until hostilities have ceased in Ukraine [35].

3.6. Ageing out and transitioning to adulthood

Transnational best interests procedures may need to assess and compare which options are available for a child in the host country and in their country of origin or habitual residence. Particularly for unaccompanied and separated children, this may also include an assessment of which supports are available for integration and, in particular, for transition to adulthood and aftercare, as this will impact on the child's prospects for fulfilling their rights in the long-term and for securing a durable solution.

[Recommendation CM/Rec\(2019\)4 of the Committee of Ministers to member States on supporting young refugees in transition to adulthood](#) from the CoE Committee of Ministers aims to safeguard the rights and opportunities of young refugees in transition to adulthood (with a focus on young people having reached the age of 18 who arrived in Europe as children and who have applied for refugee status or for subsidiary protection under European Union or national legislation). The recommendation outlines actions that States can take to ensure access to education, accommodation, employment and health care services as well as to facilitate social inclusion and reduce risks of exposure to violence, exploitation and abuse, including gender-based violence and discrimination. The recommendation also recognises and explains how States can support youth work to better assist young refugees in the transition to adulthood, furthering their inclusion in society and in accessing their rights.

The new [EU Action Plan on Integration and Inclusion 2021-2027](#) acknowledges that: "the transition into adulthood and from school to work can be particularly challenging for recently arrived migrant children, in

Supporting children's transition to adulthood – noteworthy practices and recommendations



- ⊙ OXFAM report 2021 – [Teach Us for What is Coming: The transition into adulthood of foreign unaccompanied minors in Europe](#). The report hones in on five issues: the right to stay in the EU, housing, access to information on rights, employment and education, and guardianship schemes in five European countries (France, Greece, Ireland, Italy and the Netherlands).
- ⊙ PICUM report 2022 – [Turning 18 and undocumented: Supporting children in their transition into adulthood](#) - focus on Belgium, Germany, Greece, Spain, Sweden, and the UK
- ⊙ EU FRA [Integration of young refugees in the EU: good practices and challenges](#)

particular, unaccompanied young people, not least because support measures often stop when a child reaches 18 years of age. Preparing for such a transition in advance – through supporting their educational achievement, including them in vocational education and training and in the Youth Guarantee, and providing coaching and mentoring – can be particularly effective.” Therefore, Member States are encouraged to develop support programmes that are specific to unaccompanied minors who arrive past the age of compulsory schooling and programmes for unaccompanied minors on the transition to adulthood.



CoE resources on child-friendly approaches and provision of child-friendly information

[*How to convey child-friendly information to children in migration - A handbook for frontline professionals \(2019\)*](#)

Full of practical tips, examples of promising practice and questions children might have about their rights, this handbook provides guidance and food for thought for professionals and volunteers on how to talk to unaccompanied, separated and accompanied children in migration about their rights and the procedures affecting them. This handbook unpacks ways and methods to communicate about current standards and children’s rights and how to improve practice by ensuring children access understandable information that helps them on their journey. Developed by the Children’s Rights Division to reinforce access to rights and child-friendly procedures, this work was co-authored by practitioners who work with children in migration in Council of Europe member states and integrates recommendations made by children during consultations that took place in five member states.

[*Promoting child-friendly approaches in the area of migration — Standards, guidance and current practices \(2019\)*](#)

This compilation brings together international and European standards on child-friendly practices in the context of migration, with real-life illustrations of the kinds of initiatives, programmes and procedures that serve to implement these standards. Its purpose is to share existing knowledge on how migration-related processes can integrate a child-friendly approach. It addresses a wide range of issues, including the standards that must be applied to the child’s registration and age determination, the child’s treatment in the migration decision-making process and measures that promote their rights to protection, family care and education.

3.7. Child-friendly information and support from interpreters and cultural mediators

The need to provide unaccompanied children with the necessary tools to participate in both child protection, migration and criminal proceedings has increased over the years and useful tools are now available [36]. The appropriate use of interpreters and cultural mediators is particularly important.

3.8. Guardianship for unaccompanied and separated children

There have been a range of regional resources developed to support guardianship for unaccompanied children including [Recommendations](#) and an [Explanatory Memorandum](#) on the issue from the Council of Europe as well as an [update](#) from the Fundamental Rights Agency on its report on Guardianship Systems in Europe. New resources for training are also under development by the Fundamental Rights Agency and the EUAA. The EU has also co-funded the European Guardianship Network (EGN), with Nidos in the Netherlands. The EGN aims to promote guardianship and improve guardianship services for unaccompanied and separated children in the EU Member States by exchanging good practices, expertise and other relevant information and sharing ideas and cooperation on common challenges and cross-border work. Its members include organisations providing guardianship as well as State partners, EU agencies and UN agencies. See further here.

3.9. Free legal aid and quality legal assistance

Free quality legal assistance is a central safeguard for the protection of children on the move. It should be available to all children on the move for all relevant procedures affecting them. In this regard, best interests procedures should be established or improved and made justiciable.

3.10. Data protection and data exchange

A child’s personal data is protected by Article 8 of the EU Charter of Fundamental Rights and Article 7 of the Charter protects their private and family life rights. Any exchange and use of personal data is also protected by the [General Data Protection Regulation \(GDPR\), EU 2016/679](#) and the [Data Protection Directive for Police and Criminal Justice Authorities, EU 2016/680](#) [37]. Information for children about the use of their data



Free quality legal assistance and strategic litigation

In January 2021, Kids in Need of Defense (KIND) and Child Circle published their joint report [Advancing Protection for Unaccompanied Children in Europe by Strengthening Legal Assistance](#), which aims to raise awareness of the importance of free quality legal assistance for unaccompanied children by outlining the key features of quality legal assistance and highlighting good practices in this field. The report provides concrete recommendations regarding how quality legal assistance should be actively facilitated and supported by authorities in both restricted settings and in complex procedures, namely at borders and in transnational procedures involving transfers of children between countries.

SPECIALISED TRAINING AND RESOURCES FOR LAWYERS WORKING WITH CHILDREN ON THE MOVE:

UPRIGHTS Project, Upholding Legal Rights for Unaccompanied Children 2016-2019

ECRE and Forum réfugiés – Cosi
<https://www.ecre.org/our-work/the-rights-of-refugee-children/>

Including training materials:

- ⊙ [Training Manual](#)
- ⊙ [Module 1 – Key Concepts and Guiding Principles](#)
- ⊙ [Module 2 – Fundamental Procedural Rights](#)
- ⊙ [Module 3 – The Rights to Family Reunification](#)
- ⊙ [Module 4 – Access to International Human Rights Mechanisms](#)
- ⊙ [Module 5 – Ensuring a Child-friendly Approach](#)

FAIR (Fostering Access to Immigrant children’s Rights) project - March 2016-March 2018

Training materials available at:
<https://www.icj.org/training-materials-on-access-to-justice-for-migrant-children/>

The materials include the following training modules:

- ⊙ [0. Guiding principles and definitions](#)
- ⊙ [I. Access to fair procedures including the right to be heard and to participate in proceedings](#)
- ⊙ [II. Access to justice in detention](#)
- ⊙ [III. Access to justice for economic, social and cultural rights](#)
- ⊙ [IV. Access to justice in the protection of their right to private and family life](#)
- ⊙ [V. Redress through international human rights bodies and mechanisms](#)
- ⊙ [VI. Practical handbook for lawyers when representing a child](#)

ICJ FAIR PLUS – 2018- 2021

Training materials available at:
<https://www.icj.org/europe-training-materials-on-access-to-justice-for-migrants/>

- ⊙ [Module 0-Access to Justice](#)
- ⊙ [Module 1-Fair Asylum Procedures and Effective Remedy](#)
- ⊙ [Module 2-Access to Justice for Migrants in Detention](#)
- ⊙ [Module 3-Access to justice for Economic, Social and Cultural Rights](#)
- ⊙ [Module 4-Access to Justice in the Protection of Migrant’s Rights to Family Life](#)
- ⊙ [Module 5-Access to Justice for Migrant Children](#)

Council of Europe – HELP training course on the rights of refugee and migrant children

The preparation of the [course](#) was completed by the Council of Europe Programme on Human Rights Education for Legal Professionals (HELP) in June 2018 and a [Training of trainers](#) session was held on 23-24 May 2018. The course has been launched in the [United Kingdom](#) (13 November 2018), [Spain](#) (23 November 2018), [Greece](#) (10 December 2018). Its launch in Italy and Turkey is scheduled for early 2019. The course is planned to be translated into Arabic, Azerbaijani, French, Greek, Italian, Spanish and Turkish.

The course consists of the following training modules:

- ⊙ rights of refugee and migrant children
- ⊙ child-friendly procedures access to social services (e.g., health, education, employment)
- ⊙ family reunification
- ⊙ age assessment and guardianship
- ⊙ and alternatives to detention.

[Access on HELP E-learning platform](#)

Case law databases and blogs with commentary and analysis

- ⊙ [EU FRA case law database](#)
- ⊙ [European Database of Asylum Law](#)
- ⊙ [EU Immigration and Asylum Law and Policy Blog](#)
- ⊙ [University of Leiden Child Rights Observatory](#)
- ⊙ [CRIN Legal Library](#)



and how data stored about them may be accessed or changed should be provided in a manner which is appropriate to their age [38]. There will be times when an assessment of their best interests may indicate that data about them should be shared without their consent [39]. In any event, a child's guardian should be involved in data protection measures including decisions concerning the sharing and use of the child's data due to the child's lack of legal capacity [40].

Recent CBSS research [41] indicated that, even at a national level, there was limited data-sharing between different ministries and services which may lead to a failure to identify that a child had been trafficked and to them going missing. This was often due to a failure to establish a multi-agency system that met GDPR standards. The need to do this at a transnational level has been recognised in the context of the increased incidents of on-line child trafficking [42].

But there are also growing concerns expressed by NGOs in the field that data protection procedures do not address the use of data collection as part of a more coercive and intrusive method for controlling the movement of migrants and, in particular, undocumented migrants [43]. There are similar concerns expressed by NGOs about the increasing use of artificial intelligence in mapping border crossings [44].

3.11. Consular protection and assistance

The current Guidelines Promoting the Human Rights and the Best Interests of the Child in Transnational Child Protection Cases [45] recognise the role that could be played by the consular authorities of the State of which a child is a national when they are in a Baltic Sea State and in need of support and assistance and lack legal capacity due to their age. In particular, it noted that Article 5(h) of the [1963 Vienna Convention on Consular Relations](#) requires consular officers to safeguard the interests of children, particularly when a guardian needs to be appointed.

In practice, until the recent invasion of Ukraine, very few consular officials had sought to exercise this role in any consistent and comprehensive manner but had relied on the migration and child protection authorities of the state of destination to play the determining role. The Ukrainian government has taken a very different approach and has sought to establish memoranda of understanding with some individual states, such as Lithuania. This is partly because the Convention requires consular authorities to act within the limits of the laws and regulations of the individual receiving state.

The current guidelines also recognise that Article 37b of the Convention requires a state of destination to inform consular officials without delay if the appointment of a guardian in that state appears to be in the child's interests. This duty of disclosure does not prevent such a guardian being appointed and in many cases in the past it was merely an administrative





Resources on relocation

- ⊙ EU FRA [Practical Guidance Infographic](#)
- ⊙ UNICEF, UNHCR, IOM – [Minimum Child Protection Standards for Identification of Unaccompanied and Separated Children to be Relocated from Greece to other countries in the EU](#)
- ⊙ IOM and UNICEF - [Principles and Approaches to Guide the Relocation and Integration of UAC from Greece to other EU Member States](#)
- ⊙ [Stepping Stones to Safety: Strengthening Key Procedural Safeguards for Unaccompanied Children in Transnational Procedures within the EU](#) – a report outlining five key areas for progress, published by Child Circle/KIND Europe following a consultation with a range of involved stakeholders to explore challenges and opportunities to strengthen the work of legal assistance providers and guardians involved supporting children in transnational procedures.
- ⊙ Child Circle and Missing Children Europe - [Key recommendations for EU action concerning the ongoing initiative to relocate unaccompanied children from Greece](#)
- ⊙ EU FRA – [Relocating unaccompanied children: applying good practices to future schemes](#)
- ⊙ Webinar: [Relocation of Unaccompanied Children from the Greek Islands: Experiences, Guidance, Tools for Best Practice](#) - Hosted by Child Circle, Missing Children Europe, Oxfam & Refugee Rights Europe
- ⊙ Webinar: [Promoting Child-centred Relocation of Children in the EU](#), Now and in the Future - Hosted by Child Circle & Missing Children Europe

act. However, the unfolding circumstances of children fleeing from Ukraine has highlighted how such information sharing can potentially protect a child from abuse and child trafficking and assist in locating a child who has gone missing and enhance the possibilities of family reunion.

Article 5 (i) of the Convention is also likely to have more application in relation to children from Ukraine due to the pro-active nature of the Ukrainian government's concern for its nationals who are children. This article requires consular officials to arrange for appropriate representation before tribunals and other authorities where a child may need to obtain provisional measures for the preservation of their rights and interests. In international family cases, it is also not unknown for consular officials to intervene in child abduction cases, for example. They may also intervene if an adoption is being applied for which does not comply with adoption law in the State of the child's nationality or where a parent has been previously found to be unable to protect their own child in that State.

3.12. Transnational procedures and cross-border cooperation

The individual circumstances of children in migration vary greatly, as do their pathways to a comprehensive, durable solution in line with their best interests. Transnational procedures are often an important step towards securing protection and family reunification and towards stability and fulfilment of their rights. In many cases, transnational procedures and cross-border cooperation will be essential to the assessment of which option is in the best interests of the child and to securing a comprehensive, durable solution for the child concerned. Such procedures will often prioritise the safety of the child and their right to family life. There are a wide range of relevant developments in this field.

Legal pathways to protection

- ⊙ **Relocation within Europe:** The European Commission has set up a Solidarity Platform to share information among EU Member States and agencies regarding reception capacity, the number of persons enjoying Temporary Protection and additional support needs.
- ⊙ **Air transfers from Moldova to other European countries:** Under the EU Solidarity Platform, UNHCR and IOM coordinate with the EU for the transportation of refugees who have expressed interest to travel from Moldova to the EU Member States. EU air transfer from Moldova serves as a responsibility-sharing mechanism. Under this initiative, vulnerable refugees who have specific needs, friends, or family links, can register for screening and assistance with UNHCR. All refugees referred for relocation under the EU solidarity platform must fit at least one vulnerability category,

some of which include: a disability or serious medical condition; single parent with 3 or more children; expectant mothers; and older persons at risk. For example, the [Finnish government has pledged](#) to receive 30 unaccompanied minors from Moldova. The actors involved follow Standard Operating Procedures for decision making and implementation of such transfers. Such SOPs and all actions concerning children should take the best interests of the individual child as a primary consideration.

- ⊙ **Refugee resettlement:** While some EU Member States have prioritised engaging in relocation efforts in recent years, other European countries have remained committed to resettlement, including pledges to resettle unaccompanied refugee children.



Case study example: Sweden's commitment to resettling unaccompanied children

For example, in the Baltic Sea region, Sweden has notably continued to relocate hundreds of unaccompanied and separated children in recent years. See for example the annual [report](#): Unaccompanied children consisted of about 7 percent of all transfers in 2020, which is an increase with 2 percentage points compared to 2019. Unaccompanied children mainly originated from Eritrea (107 children), followed by DRC (34 children) and Sudan (34 children).

[UNHCR Resettlement Handbook](#) – country profile: “When a child is submitted for resettlement without its parents, a Best Interests Determination should be conducted. In order to allow for a child accompanied by only one parent to resettle to Sweden, any custody or guardianship issues should be cleared and a signed consent form - when possible - be collected from the absent parent/s. If circumstances are such that a consent form cannot be presented although thorough efforts have been made, the Swedish Migration Agency will decide on a case by case basis whether resettlement of the child can be justified.”

“The state grant for each refugee resettled in a municipality is expected to suffice for all costs paid by the municipality during the introductory period. An additional grant is available for elderly or disabled persons and for unaccompanied minors. For unaccompanied minors the municipality is to provide sheltered accommodation and additional support.”

Best interests procedures and comprehensive solutions

Since the publication of the CBSS Guidelines and first Addendum, further practical guidance has been published regarding the best interests procedures including the identification and implementation of comprehensive solutions. In 2017, the International Social Service published [Children on the Move: From protection towards a quality sustainable solution - A practical guide](#). In September 2019, UNICEF, the UN Human Rights Office, the International Organisation for Migration, Save the Children, the Platform for International Cooperation on Undocumented Migrants, the European Council for Refugees and Exiles and Child Circle published [Guidance to Respect Children Rights in Return Policies and Practices](#). This document provides guidance for state authorities on the design and implementation of return procedures that are child rights compliant. In particular, it sets out concrete measures necessary to ensure respect for the rights of every child, including children in families, when implementing return legislation and policy in Europe, in line with international law obligations, in particular the UN Convention on the Rights of the Child (CRC), the EU Charter of Fundamental Rights, and the EU Return Directive where applicable. UNHCR published the updated version of its [Best Interests Procedure Guidelines: Assessing and Determining the Best Interests of the Child](#) in May 2021.

Transnational Referral Mechanisms for children who may have been trafficked

The current CBSS Transnational Referral Mechanism (TRM) [46] will be further developed within the current two-year Promise TRM Project, which started in April 2022. It will draw on the EU Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms [47] and previous studies [48]. It will also build on the importance given to transnational and multidisciplinary procedures in the [EU Strategy on Combatting Trafficking in Human Beings \(2021-2025\)](#) and [Common Anti-Trafficking Plan](#) to address the risks of trafficking in human beings and support potential victims among those fleeing the war in Ukraine. The TRM will take account of children who have been trafficked both internationally and within the EU, so as to meet the needs of Roma and other EU children moving within Europe [49] and address the particular needs of children who may have been trafficked. The viability of TRMs also depends, in part, on the existence of fully functioning National Referral Mechanisms and there are continuing concerns about whether this is consistent across the EU [50].

Repatriation of children from camps in Syria

Around 4,000 individuals left Europe to enlist with ISIL forces and fight with them in Syria and Iraq. A number of children were born to these individuals and acquired their European nationalities or, potentially,

their residence status. Member States have adopted different policies in relation to whether they are willing to repatriate these children and what services they will provide for them if they do return[51]. The legal position facing these children is summarised in European States' Obligations to Repatriate the Children Detained in Camps in Northeast Syria[52]. Many of the issues relating to these children are similar to any other child who is subject to transnational movement and who attract the responsibilities of consular authorities. But states will also face other challenges, relating to the criminal prosecution of the parent with which they have returned and the need for specialist youth care facilities and enhanced assessments of other family members and their ability to care for them.

Assessment and recognition of Kafalah care arrangements abroad

Kafalah is a child protection measure in countries whose legal systems are based on or influenced by Islamic law (Sharia). Its effects vary greatly from one country to the next. Child protection actors and courts in European countries may be involved in assessments concerning kafalah care arrangements that were made for the child in another country. These assessments and decisions (e.g. whether to recognise the kafalah arrangement in the European host country) will usually require transnational cooperation and may affect the child's residence status and the possibilities for the child to grow up in a stable care arrangement and to exercise all of their rights.

Case Law: ECtHR calls on France to re-examine requests for repatriation



In the case of H.F. and Others v. France the Court held that there had been a violation of the right to enter the territory of the State of which he or she is a national. The case concerned unsuccessful requests by the applicants for the repatriation by the French authorities of their respective daughters and grandchildren, who are being held in the al-Hol camp in north-eastern Syria run by the Syrian Democratic Forces. The Court concluded that the examination of the requests for repatriation made by the applicants on behalf of their family members had not been surrounded by appropriate safeguards against arbitrariness and that there had been a violation of Article 3 § 2 of Protocol No. 4. The Court added that in executing the judgment the French Government would be expected to promptly re-examine the applicants' requests and, in doing so, afford them appropriate safeguards against any arbitrariness.

Resource on Kafala and cross-border practices:



In 2020, International Social Service published the study: KAFALAH – Preliminary analysis of national and cross-border practices. Part I of the study details the recognition of kafalah as an alternative care measure for children deprived of their family environment as specifically mentioned in Article 20 of the UN Convention on the Rights of the Child (1989) and included as a child protection measure in the Hague Child Protection Convention (1996) and the UN Guidelines on the Alternative Care of Children (2009). Part I then continues analysing the various forms, structures and functions of kafalah, comparing it to other protection measures such as adoption. Part II provides an extensive and detailed overview of the implementation of kafalah and analogous institutions in countries whose legal system is based on or inspired by Sharia law, with in-depth studies on several countries. Part III addresses the recognition of kafalah and analogous institutions in "receiving States" and concludes with a comprehensive analysis of the treatment of kafalah in several receiving States including selected countries in the CBSS region: Denmark, Germany and Norway. Part III concludes with a summary of positive trends as well as common challenges regarding kafalah in receiving States, during the four different stages of (1) the pre-placement process; (2) the decision to establish a Kafalah; (3) the transfer of the child and immigration considerations; and (4) the treatment of the kafalah in the receiving State and post-placement considerations.



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