

Stepping Stones to Safety

Strengthening Key Procedural Safeguards for Unaccompanied Children in Transnational Procedures within the EU

December 2021



KIND
KIDS IN NEED OF DEFENSE  EUROPE





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

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



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

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Additional acknowledgements

Additionally, we would like to express our appreciation and thanks to all who participated in the roundtable consultation process and/or who contributed to or provided feedback on the report: Alliance des Advocats pour les Droits de l'Homme (Loys Conseil); CAW Brabantia - Caritas International (Manou Ballyn); Child Circle (Nadine Finch); Council of Bars and Law Societies of Europe (Noemi Alarcon and Nathan Roesbeek); European Asylum Support Office (Maria Dapena Vilarino, Marion Jaillard, Carolina Marin, Nilde Robotti, Orsolya Santa); European Commission (Isabela Atanasiu, Ann Kristin Hahnsson, Valeria Setti); European Lawyers in Lesvos (Christina Voulimenea, Philip Worthington); Fundamental Rights Agency of the EU (Monica Gutierrez Arques); European Guardianship Network (Terry Smith, Liedewij de Ruijter de Wildt); International Organization for Migration (Anna Hardy, Daniel Redondo); Irish Refugee Council (Katie Mannion); Kids in Need of Defense (Lisa Frydman, Marieanne McKeown, Jennifer Podkul); METAdrasi (Mara Pagona, Lora Pappa); Nidos (Germa Lourens); Safe Passage France (Pascal Arthaud, Lucie Bichet); UNHCR (Georgia Chalkoutsaki, Alexander de Chalus, Caroline Dulin Brass, Argyroula Gkoutzidou, Sergii Lavrukhin, Stefan Maier, Rekha Menon, Theodora Tsovili); UNICEF (Laurent Chapuis).

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Key Terms

Comprehensive, secure and sustainable solution: is one that, to the greatest extent possible, caters to the long-term best interests and welfare of the child and is sustainable and secure from that perspective. The outcome should aim to ensure that the child is able to develop into adulthood, in an environment that will meet his or her needs and fulfil his or her rights as defined by the Convention on the Rights of the Child.

Legal assistance: Typically, may cover the provision of legal and procedural information, legal counselling or advice and/or legal representation.

Legal aid: A term for free legal assistance, either under state-run or project-based programmes. The scope of the legal assistance available for free may vary depending on the procedures involved.

Access to a lawyer: The ability to consult a lawyer.

Legal and procedural information: Information on the procedure and the individual's rights and entitlements in light of her/his particular circumstances.

Legal counselling/legal advice: The purpose of legal counselling/legal advice is to enable persons to be informed and to receive advice about the various possibilities open to them.

Legal counsellor/adviser: Legal counselling or legal advice should be provided by a person who has received appropriate legal training without necessarily being a lawyer (as set out in the recitals to the EU Anti-Trafficking Directive). This may include professionals in NGOs.

Legal representation: The term legal representation is broader than that of legal counselling. Legal representation typically involves providing legal assistance, speaking on behalf of the child and in line with his, her or their stated wishes, and legally representing them in written statements and in person before asylum or other legal procedures as provided in national law. It is typically undertaken by a lawyer.

Lawyer: A qualified legal professional who is registered or accredited with a professional body according to national regulations. This entails having passed relevant examinations to be officially recognised as a lawyer.

Legal assistance provider: This term is used here to encompass a person (a lawyer or other legal counsellor or adviser) who provides either legal counselling/advice or legal representation.

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. The term "legal representative" is also used in place of guardian in certain laws, but this should be distinguished from the role of legal counsellor/adviser or lawyer.

Unaccompanied child: a person under 18 years of age, who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.

This report is intended to advance the vision and practical engagement of the many authorities, agencies, organisations and professionals that are committed to assisting and protecting unaccompanied children. Without their efforts, these children may find themselves walking a tightrope alone across Europe when seeking family reunion or protection and assistance. Working together, we can put in place stepping stones to safety.

Introduction

Unaccompanied children seeking international protection in the European Union (EU) need safe and legal pathways between Member States in a number of circumstances, including to ensure family reunion or to reach protection and assistance through relocation from countries of first entry.

Indeed, transfers of asylum-seeking children to ensure their protection and assistance are a permanent feature of asylum and migration management in the EU, through the application of the Dublin Regulation and recurring relocation schemes between EU Member States as well as Associated Countries (Norway, Iceland, Switzerland and Liechtenstein). Rooted in the EU Treaty values of solidarity, responsibility sharing, fundamental rights and humanitarian action, transnational procedures can achieve a range of critical goals. They have the potential to provide stability and safety for the child and to help circumvent the risks children may face should they continue an unsafe journey within the EU on their own (including risks posed by trafficking networks). Moreover, by relieving countries of first entry of caseload pressure in receiving and assisting vulnerable groups, transnational procedures promote more effective border management within the EU. They also support national and local authorities in countries of destination because a planned arrival is easier for the authorities to prepare for and to manage, in comparison to spontaneous arrivals.

There is both an urgent need, and a real opportunity, to take concerted action to facilitate and improve these transnational procedures.

Current negotiations on EU law reform, recently issued EU policy strategies and ongoing practical action provide significant momentum for developments. Broadly speaking, EU policy makers have committed to ensuring better procedures for children in the [Communication on the protection of children in migration](#) and in the recent [Pact on Migration and Asylum](#). This includes putting in place a best interests procedure before the transfer of a child between EU Member States. Equally, the [EU Strategy on the Rights of the Child](#) also recognises the need to better fulfil the rights of children in migration and justice proceedings and proposes a number of initiatives in this field.

A range of stakeholders have been working to develop and apply transnational procedures involving children for many years. For example, significant efforts have been made to bring national authorities and international and EU agencies together to work collaboratively on the voluntary relocation of 1,065 unaccompanied children from Greece to twelve countries from April 2020 through 16th November 2021. Some organisations providing guardianship in Europe have invested intense efforts in both Dublin procedures and relocation schemes. Legal assistance providers have also grappled with the complexities of transnational procedures, including for family reunion purposes. At the same time, civil society around Europe has worked to stimulate and support relocation schemes.

In order to make progress with transnational procedures involving children, many different pieces of the puzzle must come together, nationally and across borders, involving a wide range of different actors. Better cooperation between authorities in different countries is essential. **An equally vital ingredient to successful outcomes is ensuring better information, support and assistance for children, in particular, through guardianship and access to free, quality legal assistance.**

This report focuses on strengthening these procedural safeguards for children. KIND Europe and Child Circle have been working to advance protection for unaccompanied children in Europe, with a special focus on strengthening legal assistance.

Our flagship report, *Advancing Protection for Unaccompanied Children in Europe, by Strengthening Legal Assistance*, published in January 2021, pointed to transnational procedures as “situations where unaccompanied children typically face severe risk, alongside significant difficulties, in terms of being able to access quality legal assistance.”

Throughout 2021, Child Circle and KIND Europe carried out a closer review and consultation with key stakeholders on transnational procedures for children, with the aim of:

- ➔ **Raising awareness of the need to strengthen key procedural safeguards** for children in transnational proceedings within the EU, in particular, by including a focus on the provision of legal assistance to unaccompanied children, which, together with guardianship, will help ensure proper best interests procedures;
- ➔ **Highlighting current challenges and good practices** in achieving these safeguards and exploring how they can be better operationalised in the context of existing and future transnational proceedings;
- ➔ **Considering what EU measures and actions by other stakeholders can best ensure that** guardians and legal assistance providers can work together nationally and cross border to support children on these sometimes-complex pathways.

During a regional roundtable in June 2021, we had a frank and constructive discussion with key stakeholders regarding the possible improvements to procedural safeguards which could make transnational proceedings involving unaccompanied children within the EU more child-centred, timely and successful in their outcomes. This report sets out the context, challenges and opportunities which we explored in the review and roundtable consultation. It also provides concrete and practical recommendations for improving the support and assistance provided to children. It identifies a range of measures and actions which can achieve both incremental improvements in practice in the short term and better systems in the longer term.

All persons who are subject to international protection procedures or return procedures should have legal assistance in all settings, including both normal and border procedures, at first instance and not only at the appeals stage. Unaccompanied children in particular need legal assistance from the first instance because of:

- Their particular vulnerability and need for protection, and ultimately to secure durable solutions;
- Their need for clear information and specialised assistance, without which they may not be in a position to articulate their legal claims;
- The potential complexity of their cases in terms of the several bodies of law potentially involved (parental responsibility, CRC, international protection, et al);
- The consideration of possible legal pathways for the child, including alternative national protection statuses, which might be relevant, alongside international protection claims.



Shining a light on transnational procedures involving unaccompanied children within the EU

What do we mean by transnational procedures? Which procedures are in focus?

Transnational procedures may lead to the transfer of an unaccompanied child from one EU Member State to another Member State, following the determination or reallocation of responsibility for that child (in terms of care and custodial responsibility and potentially status determination), when such a transfer is assessed to be in the best interests of the child.

Examples of such procedures include family tracing and family reunion and relocation under solidarity mechanisms within the EU. This report focuses in particular on transnational procedures between EU Member States for these purposes. However, our findings will also be relevant to other transnational procedures. These include assessments and procedures related to readmission procedures, including readmission of those whose international protection claim was denied. Other relevant procedures include identifying durable solutions for trafficked children, as well as the return and reintegration of children to countries outside the EU and resettlement into the EU. Moreover, following the 2021 evacuations and subsequent displacement of Afghans, the issues discussed are also relevant to transatlantic family reunification procedures, for example, in cases of Afghan family members who may be separated across the EU and in the United States (U.S.).

What EU measures are implicated?

The currently applicable EU measures include the Dublin Regulation, for family reunion procedures and for procedures supported by the Commission, EU agencies, international and non-governmental organisations under the voluntary relocation scheme. EU proposals for future rules on transfers and relocations between Member States of persons seeking international protection are under discussion in the [Proposed Regulation on Asylum and Migration Management](#), including obligations to undertake a best interests assessment prior to the transfer or relocation of a child between States and the involvement of the representative (guardian) of the child in such procedures. Further implementing regulations will be needed should the basic legislation be agreed upon.

Practical measures of EU support, such as the work of the European Asylum Support Office (EASO) and the Fundamental Rights Agency (FRA) (e.g., through guidance and operational activities) also have a significant impact on current and future practice. Recommendations and experience from international organisations and civil society are important to shaping future progress, as are projects to improve and support practice. (A resource paper, accompanying this report, contains links to useful materials.)

What is the significance of a transnational procedure for a child?

The decision whether or not to transfer a child to another country is a very significant step in the life of the child, which will likely have long-term and serious consequences for the child, inter alia, because:

- it may affect whether or not the child's right to family unity is fulfilled;
- it involves a transfer of care and custodial arrangements;
- it can affect the extent to which other rights of the child are fulfilled (e.g., support for special needs, access to health care and access to vocational training) as it may depend on the capacity of the Member States and the services available;
- it should follow an assessment of the vulnerabilities of the child, including any risks of trafficking, and identify necessary services to ensure a timely referral and support after transfer;
- in certain transnational procedures, such as in Dublin or relocation cases, the transfer of the child means that the receiving Member State has the legal obligation to examine their application for international protection;
- different national protection statuses exist across EU Member States and, therefore, the child may have different possibilities for durable solutions depending on the country of relocation selected;
- it may influence the development and future prospects of the child (e.g. in terms of identity, culture, language support, education and vocational training and possible pathways to permanent residency or citizenship).



PRACTICAL GUIDANCE FOR PROTECTING UNACCOMPANIED CHILDREN IN THE RELOCATION PROCESS



What steps should be involved?

Many measures of organisation are essential to ensure the success of such a transfer. Proper identification (including to exceptionally conduct age assessments as a last resort, when necessary and, in cases of reasonable doubt), and access to adequate reception conditions, education, healthcare and other services are necessary to address the situation of a child before, during and after a transfer. Appointment of a guardian and legal assistance provider should precede any interviews, assessments and decision making on potential transfers under transnational procedures. Practical measures of organisation are also important (including specific measures to ensure that the child is informed about and prepared for the transfer and that the child is properly supported with an integration plan post-transfer). The EU FRA outlines practical guidance for relocation schemes.

For FRA's full report on *Relocating unaccompanied children: applying good practices to future schemes*, see FRA's [website](#).

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Key procedural safeguards in decision making: the complementary roles of legal assistance providers and guardians in supporting the child

Many actors play a role in the different steps in transnational procedures. The authorities are the principal duty bearers and are responsible for making decisions and implementing them. Other actors play an operational role in supporting the process such as UN agencies, for example, the International Organization for Migration (IOM). Different kinds of professionals are sometimes involved, for example, social workers who may be involved in gathering necessary information to inform decision making procedures and in putting in place necessary support.

This report focuses largely on the role of legal assistance providers who provide legal services to the child and how the legal assistance provider and guardian together can best assist the child.

We believe that strengthening these procedural safeguards provides an important means to bolster the process as a whole, ensuring smoother national and cross-border case management and enabling the professionals working directly with children to assist them in securing comprehensive, secure and sustainable solutions.

In particular, this report explores the role of the guardian and legal assistance provider in terms of:

1. Supporting and assisting the child in the procedures and in particular the best interests procedure that should precede any decision on a potential transfer;
2. Ensuring continuity and stability of assistance and support for the child post-transfer, when a child will typically go through a status determination procedure in the receiving country.

Distinct and complementary roles of the guardian and the legal assistance providers

Independent support and assistance are important for the child from their first encounter, particularly in situations where they must interact with law enforcement officers. Many times, children must interact with immigration officers, which can remind them of episodes they have experienced on their journey and lead to re-traumatisation.

Alongside guardians, making quality legal assistance available at the earliest possible moment is important for both the child (and their guardian) and the State because it enhances the ability to assess vulnerabilities, identify the right procedural pathway, and ensure that the child's case is considered properly.

It is important to underline that the role of a guardian is distinct from a legal assistance provider. The guardian is present to support and assist the child, to safeguard their best interests and to exercise legal capacity on behalf of the child. Their involvement in procedures does not preclude the need for a legal assistance provider. Indeed, one of their tasks is precisely to support the child in accessing legal assistance.

The guardian and the legal assistance provider have complementary roles and should typically liaise closely to ensure that the child's best interests and wishes are properly represented in decision making procedures.

It is recommended that the child is provided with a legal assistance provider who is independent from the guardianship authority. The legal assistance provider informs the child of their legal rights and options, provides legal advice to the child, defends the rights of the child (e.g., right to fair procedure and to appeal), and ultimately represents the wishes of the child.

It is also worth underlining that the guardian should support the child in all circumstances and for all their needs, regardless of the legal merits of their case, which should be addressed separately by a legal assistance provider, both because of the expertise needed and to avoid the child's trust in the guardian being compromised by particular legal advice that the child does not welcome.

Profile of guardianship

A guardian is 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. 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.

The term legal representative is also used, in place of guardian in certain laws and some national systems, but this should be distinguished from the role of a legal assistance provider.

In line with the guidance from the EU FRA, the guardian's role is to:

- Safeguard the child's best interests
- Promote the child's safety and well-being
- Facilitate the child's participation (also by providing information to the child)
- Act as a link between the child and others
- Help to identify a durable solution in the child's best interests
- Exercise legal capacity, support the child in legal procedures and ensure access to legal assistance and counselling
- Hold authorities accountable for their actions
- Intervene if the welfare of the child is in danger.

Profile of legal assistance providers

Legal assistance may be undertaken by a legal adviser, and in some cases, a lawyer and, depending on the circumstances of the child and the proceedings concerned, it may involve:

- Providing legal advice and counseling to help the child and their guardian make informed decisions about procedures including when it comes to best interests procedure before the decision to transfer is taken
- Providing procedural information
- Explaining how procedural information is specifically applied to the child's situation
- Helping to gather information and evidence
- Legal representation - assisting the child to express their views and following their instructions in processes where lawyers may need to act, including support with any appeals procedures
- Safeguarding interests of the child in the procedure, including responding to problems and delays
- Assisting with any review or appeal
- Educating the child's guardian to be able to respond or seek referrals for the child (e.g., health and well-being during proceeding or the need to request a medical report or other evidence such as DNA).

The decision making process in focus: what elements are involved?

Recommendations for decision making on transfers of a child:

- An individual assessment of the child's circumstances should be carried out and all relevant information made available to the States and actors concerned while securing informed consent and respecting data protection measures in line with national laws.
- A best interests procedure should precede any decision to transfer a child. This procedure should ensure that the child's individual circumstances and their rights have been considered, that their views have been given due weight and that the best interests of the child have been assessed.
- Gathering the right information will often rely on liaising with actors and professionals in other countries. Acquiring documentation, DNA tests or other evidence of family links may all involve contact between those supporting the child and actors in other countries. Investigation of particular circumstances of relatives (as well as seeking their views and wishes), or availability of particular services, in other countries may also require such contacts.
- The views of the child should be considered fully and given due weight in accordance with their age and maturity. The views of the guardian should also be taken into consideration in decision making.
- In the event of a transfer decision being taken, the child and/or their guardian should give informed consent.
- The child should receive a written, reasoned decision from the State that is making the decision and this should be explained to the child by their legal assistance provider and guardian in a child-friendly manner.
- The child should have a right to appeal the decision and should be entitled to support from their guardian and legal assistance provider for such a review.
- It may be necessary for the child and the guardian to challenge decisions made by the authorities of the proposed receiving country with the support of the child's legal assistance provider, including in relation to certain aspects of the procedure, such as delays or rejections in family reunion cases.
- If there is an unreasonable delay in implementing the decision, when it is deemed to be in their best interests and with the consent of the child, the decision should be reviewed and reopened. A timely decision and case resolution are an important aspect of respecting the best interests of the child concerned.

Child-centred inter-agency case management

The involvement of the child's guardian and legal assistance provider is an essential element to ensure smooth case management between all actors in the different steps of the procedure.

Depending on the circumstances of the case, the legal assistance provided may be relatively straightforward and may consist largely of the provision of legal and procedural information. In more complicated cases, legal assistance will involve a more significant implication of a legal assistance provider.

For example, some cases may involve specialised questions of fact, law and procedure, including:

- issues arising from a lack of documentation, including difficulties establishing country of origin, confirming parentage and identifying nationality or statelessness;
- age assessment, which should only be carried out as a last resort in cases of reasonable doubt, using appropriate child-centred procedures. Relevant margins of error should be noted and the benefit of the doubt applied in favour of the individual concerned;
- assessment of family relationships, including evidentiary considerations for demonstrating family links, and in some cases with wider familial relationships outside the core family members (i.e., beyond parents and siblings) be taken into account;
- consideration of the circumstances of relatives (including as may be necessary those who do not fall within the narrow legal definition of family members), their views on possible family reunion and whether they are able to meet the standard for taking care of the child;

- where the child is not being transferred to the care of a family member or relative, consideration of available alternative care and custodial conditions in light of the individual circumstances including the age, agency and special needs of the child; and
- any specific safeguards in relation to care and custodial arrangements within transfers, taking into consideration the particular circumstances including age, the child's evolving capacity, agency and any special needs of the child.

Guardians and legal assistance providers need to liaise closely with each other and other actors to support and assist the child throughout the proceedings, including by ensuring that the child understands the process. Good case management systems to ensure this occurs smoothly are vital to the success of best interests procedures.

Transnational cooperation between guardians and legal assistance providers

Deciding on a transfer of the child from one Member State to another, and implementing a transfer found to be in the best interests of the child, should also be supported by transnational cooperation between the guardians and legal assistance providers in the two EU Member States involved.

This cooperation should help ensure that adequate information on the current circumstances of the child and the situation to which the child is going is exchanged between actors who are supporting the child in procedures in both countries, according to data protection requirements. This should happen both before and after the transfer. It enables actors to be able to quickly collect the necessary documents and certificates for the process, as well as to better assess the real environment (e.g., potential reception conditions in country of transfer) and the best interests of the child in a more holistic way.

Best interests procedure

When considering the best interests of the child, the guardians and the legal assistance providers in different countries may need to consider elements that could influence the determination of and possibilities for a durable solution if the child is relocated. For example, it may be important to consider the possible implications related to the application of the principle of safe country of origin when the child is seeking international protection in the country of transfer. Equally, it is important to advise the child of what might happen in the event that their international protection claim is rejected post transfer. Transnational liaison between guardians and legal assistance providers will be important given that the availability, requirements for and content of national protection statuses will vary depending on the country to which a child is transferred.

Post the decision

Moreover, after a decision to transfer, it is also crucial to ensure continuity of support and assistance to the child with subsequent status determination procedures. This should involve sharing information on the child's case between the guardians and the legal assistance providers in the two countries, with the child's consent. Such cooperation between guardians and legal assistance providers may help, inter alia, to avoid unnecessary (and potentially traumatising) repetition of interviews and information gathering for the purposes of determining durable solutions, whether the child has been transferred or not. For example, assessments from the best interests procedure during a transnational procedure should be taken into consideration in an appropriate way when undertaking the subsequent status determination or durable solution procedure.

Review of a decision

In some cases, the child will need support from their guardian and legal assistance provider to challenge decisions made by the authorities of the proposed receiving country, including in relation to certain aspects of the procedure, such as delays or rejection of a claim for family reunion. The child will need access to legal assistance in the proposed receiving country. In such circumstances, guardians should assist and should coordinate with the legal assistance provider.



Addressing challenges and identifying opportunities: Five areas for progress

In the review and consultation, roundtable participants examined why a situation sometimes goes wrong in current transnational processes and what challenges currently exist to ensuring child-centred processes.

We also identified some good practices that can inspire improvements and identified opportunities for achieving progress. As indicated in the resources paper accompanying this report, we drew from reports and recommendations, including the 2020 FRA publication.

Learning from past relocation experiences and applying good practices to future schemes

Based on information EU FRA collected in 10 EU Member States, its recent publication [Relocating unaccompanied children: applying good practices to future schemes](#) (May 2020) aims to help national authorities to support the relocation of unaccompanied children by taking measures that are fully rights compliant and practically feasible. The FRA stresses the importance of free legal information, assistance and representation to the child and to the guardian “to ensure their understanding of the different procedures and to assess the best legal pathway for the child.” Legal assistance may also be necessary to ensure access to an effective remedy and respect for the child’s fundamental rights.

We propose five key areas where we see particular challenges and the need for the following actions:

1. **Ensure a clear entitlement in the law to safeguards in transnational proceedings and put in place transparent decision making procedures**
2. **Enhance the quality of assistance, in particular, by increasing specialised knowledge**
3. **Improve the ability of legal assistance providers and guardians to work together and with others in order to ensure a child-centred approach in complex, inter-agency settings**
4. **Enable guardians and legal assistance providers to better cooperate across borders**
5. **Increase the availability of guardians and legal assistance through better resource management**



1. Ensure a clear entitlement in the law to safeguards in transnational proceedings and put in place transparent decision making procedures

Entitlement to guardianship and legal assistance

It is important to ensure access to guardianship and quality legal assistance from the earliest possible moment and, in particular, in relation to complex procedures that will have a significant impact on the child's future such as decisions regarding family reunion or relocation.

In relation to the involvement of actors supporting the children, it is welcome that the Dublin Implementing Regulation provides that, "The authorities carrying out the process of establishing the Member State responsible for examining the application of an unaccompanied minor *shall involve the representative referred to in Article 6(2) of Regulation (EU) No 604/2013 in this process to the greatest extent possible.*" It is also welcome that Article 13 of the EU Pact's proposal for a Regulation on Asylum and Migration Management makes provisions for specific guarantees for children including that the best interests will be a primary consideration and that the representative of an unaccompanied child shall be involved in the process of establishing the Member State responsible under the Regulation.

Although the increased involvement of guardians in procedures involving children (such as age assessment, Dublin, relocation, status determination and return procedures under EU law) is vital, guardians should not be the sole actors involved. Rather EU law and policy should ensure that the guardian supports the child in accessing and benefiting from free quality legal assistance.

Practitioners underline the need for frontloading legal assistance and access to a specialised lawyer in assisting unaccompanied children in their procedural pathways. The failure by a child to understand what they need to prove or the basis upon which they are entitled to international protection or family reunion at the earliest stage may later reflect poorly on their credibility.

The acute need for legal assistance is borne out by the fact that the burden of proof in these procedures sometimes lies on the child. This need is further aggravated by sometimes cumbersome evidentiary requirements and administrative hurdles in Dublin cases, with practitioners noting that this situation is getting worse. For example, despite the fact that the current Dublin rules render a DNA test essentially a matter of last resort, in practice, some Member States typically insist on this stringent requirement. It is notable that the recent proposals of the Commission seek to alleviate these evidentiary requirements (so that DNA evidence or original documentation is not required).

The need for children to receive support from legal assistance providers as early as possible and certainly before any procedures begin is all the clearer when we recognise that guardianship systems vary greatly from country to country. In some countries, reliance on volunteers can expand capacity of guardianship systems, but they must be well trained and supported. An under-resourced, under-experienced, under-skilled guardian clearly is not in a position to assist a child generally, let alone to provide adequate and specialised support to the child at crucial stages in complex procedures. Moreover, the guardian is unlikely to have the legal expertise to spot additional rights that could be at risk, depending on how a case may be resolved, or to identify other legal options for the child, in both the country in which they are present and in the country of potential relocation. Consequently, the safeguard of access to a legal assistance provider when engaging in transnational procedures is all the more important and can in fact also reinforce or strengthen guardianship when the legal assistance provider and guardian can work together.

Although currently EU law provides an entitlement to legal assistance only at appeal stages of international protection proceedings (with provision of legal procedural information at earlier stages), the proposed revision of the EU Asylum Procedures Regulation proposed providing legal assistance at first instance. This entitlement should be maintained and applied to the crucial stage of a child planning their procedural pathway, through family reunion or relocation procedures.

EU law should also provide that States promote and facilitate continuity and stability of the guardianship and provision of legal assistance to unaccompanied children in transnational procedures. The reform of the Common European Asylum System (CEAS) should incorporate this obligation. The practical dimension of transnational cooperation between guardians and legal assistance providers across countries is examined further under point 4 below.

Transparency and clarity of transnational decision making procedures

Moreover, to date, EU law obligations and standard operating procedures in relation to Dublin procedures and recent relocation schemes tend to comprise general obligations and have not provided sufficient clarity or transparency as to the decision making processes. This can impede guardians and legal assistance providers in supporting and assisting the child.

For example, Article 12(1) Dublin III Implementing Regulation provides that, “...cooperation between the competent authorities in the Member States, in particular the authorities or courts responsible for the protection of minors, shall be facilitated and the necessary steps taken to ensure that those authorities can decide, with full knowledge of the facts, on the ability of the adult or adults concerned to take charge of the minor in a way which serves his best interests. Options now available in the field of cooperation on judicial and civil matters shall be taken account of in this connection.” This broad provision leaves room for uncertainty as to the decision making steps involved in Dublin procedures.

In the recent relocations from Greece, inter-agency Standard Operating Procedures (SOPs) were rapidly negotiated and put in place, with the involvement of the Commission, EU and UN agencies and some Greek stakeholders. Unfortunately, the SOPs were not the subject of wide consultation (for example, with civil society organisations in the potential countries of relocation), nor published and made available broadly once finalised. Moreover, the input of all relevant actors, in both sending and receiving countries, to ensure that proper procedures are in place in both countries would have proven valuable, not least because there are practical differences between the national legal systems in relation to the procedures connected with the transfers.

Developing Model Standard Operating Procedures

UN agencies have worked together on joint principles for identification and relocation of children (see further in our resources paper), all of which underline the need for information, assistance and support for children. These interagency standards and principles informed the preparation of joint *Standard Operating Procedures for Voluntary Relocation from Greece of unaccompanied and accompanied minors with severe medical conditions or other vulnerabilities* (Internal document, May 2020), which has been used to guide stakeholders involved in the recent relocation process.

Civil society has also provided recommendations on the need for transparent and clear decision making procedures, see Missing Children and Child Circle paper, [Keeping the Best Interests of the Child at the Heart of Relocation](#).

Roundtable participants agreed that more exchange of good practice is needed to inform on-going relocation efforts. In this regard, it would also be important to consult directly with children and youth who have been relocated to better understand their experiences and to seek their advice on ways the process could be improved in the near future.

Committee on the Rights of the Child - General Comment No 6 on Treatment of Unaccompanied and Separated Children Outside their Country of Origin

“In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.”

Ensuring children receive written and reasoned decisions in transnational procedures

In relation to Dublin, practitioners observed a lack of written decisions explaining the assessments or the legal arguments and reasoning behind the decision and how it was reached. In relation to the recent relocation scheme, in some cases, the best interests assessments appear to have been undertaken too quickly. A number of difficulties were observed by a guardian in one receiving state, including the fact that a child was relocated there, when they had family members in another EU country, suggesting that there was not a full assessment of the possible application of Dublin family reunion procedures, nor of the circumstances and views of the child. To date, in some cases, when children's claims to international protection were rejected by the authorities in the country of relocation, the children appeared unaware that such an outcome was a possibility and unsure as to the procedural options that might arise afterwards.

Access to reviews and appeals

Access to reviews and appeals should exist for children who are denied a possible transfer to a safer location in transnational procedures. Member States take different approaches as to whether and how an appeal can be made when a request for a transfer under Dublin is unsuccessful. Take charge requests may also be rejected because of time limits, even when a best interests assessment has determined that a child should be transferred to another country. Organisations in some Member States propose that family law courts (where they exist) may be important venues of appeal.

Proposed amendments to Dublin family reunion procedures by the Commission, currently under negotiation, should lead to improvements on some (but not all) of these issues. However, more is needed, and national practice could also contribute to improvements in the short term.

Creating a Framework for Comprehensive Solutions

In this report and in our Advancing Protection report, we set out short- and mid-term recommendations for change. Moreover, we also share our long-term vision of a ***single legal framework which would provide uniform guarantees for all unaccompanied children, and access to a status determination pathway leading to a durable solution, based on the individual circumstances of the child and their best interests.*** This status determination pathway would ensure:

- ✓ Access to qualified legal assistance providers, as well as an independent guardian, for all unaccompanied children.
- ✓ Access to qualified legal assistance providers, as well as an independent guardian, for all unaccompanied children.
- ✓ An examination of whether an international protection claim should be made, or whether other procedures should apply to examine the circumstances of the child.

KIND Europe and Child Circle have underlined limitations to the Commission's proposals in our *Advancing Protection* report.

For example, the Commission proposes a rule whereby unaccompanied children will be transferred back to the EU Member State where they first lodged an application for international protection for the determination of their claim, unless it is not in their best interests.

This proposal is clearly directed at deterring secondary movements by children. Apart from the fact that secondary movement may undermine migration management measures, it is also clear that independent movements may indeed in some cases jeopardise the child's safety. However, the best way to deter secondary movements is to provide a child with adequate information, support and assistance in the first country, while ensuring any claims they may have are transferred to another country and examined swiftly.

Moreover, it is clear that a procedure to examine the best interests of the child should precede all transfers and should be rooted in the individual circumstances of the child. This proposal appears to diminish this safeguard, by creating an assumption that the child should be returned, or at least by transferring the burden of proof to the child in demonstrating their best interests. In fact, there is no lesser need in these cases for a full assessment of the child's individual circumstances and the care and custodial arrangements, as well as potential legal pathways or durable solutions, which may await them in another country.

There are a number of circumstances that could point to the child's best interests being precisely to stay in the country in which they are presently located and for that country to examine their international protection claim. Any risks that arise in transferring a child back to the country where they first made an application must be examined carefully on a case-by-case basis and must be actively considered by decision makers.

- ✓ Robust best interests procedures, which are rooted in multidisciplinary inter-agency case management processes and which identify a durable solution for the child.
- ✓ Assessments, again rooted in best interests procedures, to determine whether and how care and custodial responsibility arrangements should be transferred to another country (for example, in family reunion cases).

Milestone for the Way Forward: Comprehensive Solutions Framework

“EU Member States should develop a Comprehensive Solutions Framework which regularises all possible comprehensive solutions and the different procedures in a regional protocol/ SOP. For example, harmonised European SOPs for the processing of family reunification have to be developed or revised. The EASO network of national Dublin Units has to be strengthened and the coordination institutionalized, for example through exchange programmes or more systematic deployments of receiving country staff/liaison officers (e.g. as the UK Dubs programme has demonstrated), or having one dedicated international or European agency coordinating the network and the processing of family reunification.” – UNHCR, UNICEF and International Rescue Committee, *The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe*.



2. Enhance the quality of assistance, in particular, by increasing specialised knowledge

Guardians and legal assistance providers must have the specialised knowledge, required skills and appropriate attitude to properly support the child in these often complicated transnational procedures.

Experience shows that the involvement of dedicated and trained lawyers and guardians, with experience and knowledge, typically contributes to proper decision making, and can ensure family reunion or relocation occurs, when it is found to be in the best interests of the child. Examples of good practice in ensuring specialised knowledge are available, as highlighted in the box below.

In contrast, significant problems may arise without training on specific procedures. When a child is advised by a legal assistance provider without the proper skills and competences (including knowledge of age assessment, family reunion, voluntary relocation and durable solutions procedures as well as cross cultural awareness), this may cause manifest difficulties in procedures. For example, this was the case in Greece, as the non-governmental organisation (NGO) METAdrasi noted, when families in other countries engaged private lawyers, who were not properly trained to specialise in these procedures and who were not supervised, for family reunion cases.

Focus on improving qualifications and specialised knowledge

The need to develop and carry out specialised trainings for guardians and legal assistance providers was stressed by several roundtable participants.

In this regard, EU FRA is currently developing a training manual on guardianship to complement the *Handbook on Guardianship for children deprived of parental care*, which FRA prepared together with the European Commission in 2014. The European Guardianship Network is an important partner in reviewing and piloting the manual, which should be finalised in early 2022. The training materials cover support for the child from arrival to durable solution including transnational procedures that may lead to the transfer or relocation of the child.

continued:

The European Guardianship Network has also notably prioritised training and exploring models for cross border working between guardianship services in their *Workplan September 2020 – August 2025*.

These initiatives present an opportunity to further elaborate on the role of guardians in transnational procedures and to promote effective collaboration with legal assistance providers.

Similarly, the Council of Bars and Law Societies of Europe (CCBE) together with National Bars regularly support training programs for lawyers, including on legal assistance in asylum and migration law matters or on children's rights, organised by the European Lawyers Foundation (ELF) or under the Council of Europe's HELP programme.



3. Improve the ability of legal assistance providers and guardians to work together and with others in order to ensure a child-centred approach in complex, inter-agency settings

Practitioners identified a number of challenges encountered in the proper preparation of the case, such as late deadlines for interviews or information requests coming at the last minute. Moreover, ultimately, the lack of information provided to the child before a transfer can contribute to onward movements after transfer. This experience demonstrates the need for better case management procedures and practices to allow guardians, lawyers and authorities properly to identify the appropriate procedures and manage their respective responsibilities. Such procedures would help avoid some of the present-day weaknesses in the system, such as failure to identify the proper procedures for a particular child, insufficient information and engagement with the child, and insufficient accountability in decision making.

Improving case management would require establishing case management protocols and providing for data sharing where appropriate and in line with the child's informed consent, privacy obligations and data protection standards.

Multidisciplinary approaches to inter-agency case management

As part of the *EU Strategy on the Rights of the Child*, the European Commission will present an initiative aimed at supporting the development and strengthening of integrated child protection systems, which will encourage all relevant authorities and service providers to better work together in a system that puts the child at the centre. This provides an opportunity to support States and stakeholders to strengthen inter-agency case management.

Inspiration can be drawn from case management procedures in the Barnahus model (www.barnahus.eu) which allow for the coordination of criminal justice and child protection proceedings in cases involving child victims of violence. Barnahus have case management systems, underpinned by data protection protocols, to facilitate case planning and the safeguards that are put in place when interviewing children.

Guidance and standards which address the cooperation between lawyers and guardians (or child advocates in the U.S. context) such as the American Bar Association's [*Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States*](#) are also practical tools to promote better practices and to inform inter-agency case management.

Joint training can also support better case management. The UpRights project, co-funded by the EU and led by European Council on Refugees and Exiles (ECRE), promoted training for both guardians and legal assistance providers, in recognition of their close collaboration in supporting children.



4. Enable guardians and legal assistance providers to better cooperate across borders

Currently, EU measures tend largely to focus on exchange of information between authorities in different countries, rather than on better enabling guardians and lawyers to access information or support in another country.

Best interests procedure

Actors supporting and representing the child's interests and views may struggle to get the necessary information to support the child properly and ensure an adequate best interests procedure. There may not be resources to consult with actors in other countries to get essential information, in particular in more complex cases.

It is clearly important that guardians and legal assistance providers are able to access sufficient information about the arrangements proposed for the child in another country in order to be able to provide proper input to the decision making process. During the roundtable, experience was shared from the Netherlands, about a case where ultimately the decision was taken not to reunite a child with a parent in another country following the guardian's assessment of the situation of the parent.

Regarding relocations, it was noted during the roundtable that whilst guardians should be involved in the best interests assessments, the guardians in Greece often had little information on care, protection and durable solutions in destination countries, thus limiting their understanding of the context to which a child would be relocated. Thus, although the best interests principle is acknowledged as a key element of the procedure, it is not being applied in an adequate way if the guardian cannot supply meaningful support.

Positive examples of transnational case management

There have also been some notable initiatives aimed at improving transnational networking between lawyers including through the work of Safe Passage around family reunion and the UK Dubs scheme. Since 2015 [Safe Passage](#) has been providing legal assistance to unaccompanied children in Europe to help them reunite with their family members. With a presence in Greece, France and the United Kingdom, their teams are able to support children to navigate complex transnational procedures. Additionally, Safe Passage also provides trainings to legal assistance providers, who are interested in learning more about current policies in the United Kingdom post-Brexit and in collaborating on transnational casework.

A U.S. example of good practice lies in KIND's work at the U.S.-Mexico border, where lawyers are working with Mexican guardians provided by State or local governments. One critical role of the lawyer is to provide children information about their right to reunify with family in the U.S. and to seek protection in the U.S. The children initially only receive two options - seek protection in Mexico or return to their country of origin, even if they have a close family member in the U.S. or if they feel unsafe in Mexico. KIND's lawyers can inform both the guardian and the child of the U.S. option, which impacts what the child may ask for and, therefore, may impact the best interests determination. The result may be that it is decided in the best interests determination that reunifying with a parent in the U.S. is in the best interests of the child. In the absence of information provided to the Mexican guardian about access to, and options for protection in the U.S., unaccompanied children may be erroneously informed that they cannot reunite with a parent or other close relative in the U.S., resulting in the return of children to their country only to embark on the migration route again, with the hope of reaching the U.S.

Post the decision

Experience also demonstrates that the process of properly preparing a child for the transfer will take time. A guardian in the sending country often finds it difficult to get in contact with guardianship authorities in the receiving country. As a result, the best interests of the child may ultimately be jeopardised. There is a clear need for better coordination, information exchange and support, to ensure that children receive more information before transfer. However, this can prove difficult given that national provisions for guardianship and legal assistance vary considerably. For example, guardians may not be appointed in a receiving country until after a child arrives, and in some countries, no lawyer will be appointed for first instance status determination procedures.

Nonetheless, experience also shows that proper coordination between guardians (for example, in the relocation of children from France, Italy and Greece to the UK under the [Dubs scheme](#)) can contribute greatly to the transfer. In the UK, such efforts included social workers engaging with the child by video ahead of the transfer.

KIND Mexico good practice

By involving a U.S. attorney in the procedure while the child is still in Mexico, safe planned arrival can be achieved with U.S. Customs and Border Protection (CBP), avoiding the need for a child to risk an unsafe journey in an effort to enter the U.S. KIND attorneys coordinate arrival of unaccompanied child clients with CBP in advance to ensure smooth processing of children and request any special accommodations needed.

In addition, being able to connect with the child and their family member while the child is still in Mexico means KIND lawyers can begin to prepare for their case in the U.S. Additionally, they can inform U.S. agencies responsible for the child's care needs upon arrival. They can work with the parent or close family in the U.S. to complete the application for reunification so the child can quickly reunify with their family following arrival. They can also begin to identify the range of potential immigration options for the child in the U.S. and advise the child, as well as ensure that they have a lawyer in the city in the U.S. where they will ultimately be sent. KIND lawyers can also begin to work with the lawyer in that city.

Preparing children for relocation from Greece

METAdrasi and IOM cooperated closely to prepare many children in Greece for the new circumstances in which they would find themselves in other EU countries when relocated. Many actions are taken by IOM and METAdrasi to prepare and accompany the children in the process, nonetheless challenges persist, given both the complications engendered by COVID-19, but also situations where insufficient information was available on the conditions to which children would be transferred.

Relevant information, including information on reception conditions, care arrangements, access to services and procedural information, should be more systematically available from all countries. General information in this regard is available to an extent, including from European Migration Network reports, but for this purpose could be made available in a different manner.

A platform providing access to such information across the EU would be a valuable resource to support the process, potentially drawing on experience from other EU websites providing comparative information across Europe, such as the [Re-open EU](#) and the [European e-Justice portal](#) which provide information on national justice systems. This would be useful both for guardians and lawyers, and could be made available in a child-friendly way to be shared with children before relocation or transfer. It could also draw on experience gained from apps such as the [Miniila](#) app developed by Missing Children Europe as part of their AMINA project, supported by the EU, H&M Foundation and European Programme for Integration and Migration (EPIM).

Reviewing a decision

In situations where a child may need to seek a review of a situation where another country does not take charge of their case following a Dublin application, it is not always obvious how to access legal assistance for the child in that country or to ensure coordination between their guardian and legal assistance provider in one country and a legal assistance provider in the other country if one is found. On the other hand, experience shows that where such coordination can be achieved, the failure to reunite families may be overturned, when a transfer would be in the best interests of the child concerned.

As in the context of case management nationally, challenges in transnational cooperation may arise from the need for case management protocols and the provision of data sharing when appropriate and in line with privacy obligations and data protection standards.

More generally, it may be useful to see what inspiration might be drawn from the rules governing cross border procedures and emerging good practices associated with the treatment of trafficked children within the EU as well as with the implementation of the [Brussels IIa Regulation](#) recast.

Examples of successful transnational coordination for the purpose of case review

When there are significant delays or unlawful decisions made on a child's case, Safe Passage engages in litigation to support the child to file appeals in the country where they are seeking family reunion. For example, ELIL and Safe Passage France have coordinated to provide assistance to an unaccompanied Afghan child, who was living in dire conditions on Lesbos, to seek family reunion with his brother who resides in France. The best interests assessment prepared in Greece resulted in the decision that a transfer to reunite with the brother in France would be in the child's best interests. However, the French authorities denied the request and, therefore, Safe Passage France has recently taken the case to the French Supreme Court.

EU Guidance for improving cross-border case management concerning children

The EU FRA has developed practical guidance to enhance interagency and transnational cooperation aiming to prevent child trafficking of EU children, ensure protection of child victims, find durable solutions and safeguard their rights under EU and international law. In 2019, FRA published its [Practical guide to enhance transnational cooperation: EU child victims of trafficking or in need of protection](#). The guide provides practical information to enhance national and transnational cooperation within the EU and outlines the support relevant EU agencies can provide, including for countering the impunity that fosters child trafficking. Professionals, such as law enforcement and judicial authorities, social workers, health professionals, child protection officers, guardians, judges, lawyers, or Central Authorities established under the Brussels IIa Regulation, but also authorities defining procedures and protocols, can benefit from this guidance.

Furthermore, the [EU Strategy on the Rights of the Child](#) refers to the fact that in 2022, the Commission will update the Practice Guide for the application of the Brussels IIa Regulation (Recast). In the area of justice, the Commission invites Member States "to enhance cooperation in cases with cross-border implications, to ensure full respect for the rights of the child."

The Dublin Network of authorities responsible for Dublin procedures facilitated and supported by EASO works successfully to exchange experience. Equally, the existence of European networks of professionals and/or professional bodies holds the potential for strengthening cross border networking for a range of purposes, from exchange of information, experience and good practice to facilitating connections in specific cases. Moreover, it would be useful to build connections between the different networks of authorities, guardianship organisations and professional bodies for lawyers to promote more transparent, efficient and child-centred processes.

Networks efforts to strengthen expertise and transnational case management

The European Guardianship Network (EGN) was established with the support of EU funding and is led by Nidos, the Dutch guardianship institution. EGN is comprised of members who deliver guardianship services, as well as partners from relevant government authorities and affiliated partners from UN and EU agencies. The *Communication on a New Pact on Migration and Asylum* underlines that EGN should be strengthened and play a stronger role in coordination, cooperation and capacity building for guardians. EGN is playing an important role facilitating exchanges of good practice and will be a useful platform for exploring models for cross border work between guardianship services.

Equally the Council of Bars and Law Societies of Europe (CCBE) is an international non-profit association which is at the forefront of advancing the views of European lawyers and defending the legal principles upon which democracy and the rule of law are based. CCBE membership includes the bars and law societies of 45 countries from the European Union, the European Economic Area, and wider Europe. The CCBE Migration Committee monitors European and national developments on migration issues and focuses their work on the protection of migrants' and asylum seekers' fundamental rights. They respond to EU initiatives, most notably about the reform of the CEAS, and reflect the role and experience of European bars and law societies. Equally, the CCBE can contribute to raising awareness amongst its members of the implications of transnational procedures for legal assistance providers.



5. Increase the availability of guardians and legal assistance through better resource management

Currently, countries may experience difficulties in ensuring the availability of guardians and legal assistance for unaccompanied children, in particular in certain geographical locations, such as border zones and hotspots, but also in relation to certain procedures, such as Dublin family reunion cases or in decision making on possible relocation. Resourcing challenges can arise from logistical, timing and financial constraints.

Support for guardianship at the frontline in Greece

METAdrasi has been active in providing guardianship services to unaccompanied children in Greece since 2014 with the support of the EC (including through AMIF and EMAS funding), UNHCR and in cooperation with the Greek authorities. Unfortunately, there was a significant gap in guardianship services after the new law was introduced in 2018, but not implemented. Funding problems have meant that it was not always feasible to guarantee that each child have a guardian due to limited resources. Nonetheless, significant efforts were made to ensure the presence of guardians at the borders, which was recognised as a good practice by the EU FRA in its [Opinion](#) on fundamental rights in the “hotspots” set up in Greece and Italy.

Additionally, ad hoc operating procedures and practices were developed for the recent voluntary relocation from Greece where UNHCR Greece supported METAdrasi to provide guardianship services in the absence of an institutionalised guardianship scheme (between June 2020 until February 2021). The Greek Ministry of Labor and Social Affairs launched an interim Guardianship scheme with METAdrasi between January and August 2021 as a contractor covering, among others, limited cases of unaccompanied children in the framework of the relocation scheme. METAdrasi continues to fund with its own resources a limited number of guardians in order to support the most vulnerable children until a long-term and sustainable solution is found.

The provision of legal assistance at the early stages of the procedure or at the border have also proved to be particularly challenging. Many children do not have access to legal assistance for Dublin and family reunion cases. This may occur when, for example, there is a lack of, or an inadequate, age assessment procedure, which may delay or block access to a guardian, legal assistance and decision making procedures. But more generally, access to legal assistance has proved especially difficult in restricted settings such as at borders, in detention and secure accommodation.

It is vital once more to underline that only specialised legal assistance provision will be helpful. This includes private sector pro bono attorneys, who have been trained and are working under the supervision and mentorship of expert attorneys. Roundtable participants shared several examples of how private funding and pro bono partnerships have ensured the availability of dedicated legal assistance providers in remote locations.

Pro bono model filling gaps in provision of legal aid and legal assistance on the frontline

In 2020, DLA Piper LLP carried out a mapping of legal aid systems in six EU Member States and the United Kingdom, on the basis of a benchmarking framework developed by Child Circle and KIND Europe. The mapping confirmed that in most of the countries where KIND partners are working in Europe, there exists a system of free legal aid established in law and that unaccompanied children can usually access free legal aid when seeking asylum without being subject to a means or merits test. However, unaccompanied children in many European countries still face a variety of barriers in accessing free legal aid and quality legal assistance in other procedures such as family reunion or potential relocation.

The EU FRA has also recognised such worrying gaps and challenges in its recent report on Legal aid for returnees deprived of liberty and suggested steps national authorities could take to improve access to justice for people in return procedures. These include providing free legal aid and considering flexible systems that combine public legal aid with support provided by NGOs as well as reviewing the impact of conditions, such as merit tests and short deadlines, on the right to access justice and free public legal aid.

To address such challenges, European Lawyers in Lesvos (ELIL) was founded in June 2016 by the Council of Bars and Law Societies of Europe (CCBE) and the German Bar Association. KIND Europe supports ELIL's work to provide legal services to unaccompanied children so that they are able to challenge inaccurate age assessments, prepare for asylum interviews and apply for family reunion. This work is done with the vital assistance of private sector pro bono attorneys who provide a range of legal support.

Additionally, KIND Europe works with other partners in France, Ireland, Italy, and the UK together with pro bono law firms to ensure free quality legal assistance for unaccompanied children. Pro bono attorneys are trained and mentored by immigration law experts throughout their work on cases. To date KIND and its European partners have provided legal assistance to over 1,200 children in the EU and the UK, trained 1,500 pro bono lawyers, and placed over 850 children's cases with pro bono attorneys receiving mentorship through KIND's partners.

<https://supportkind.org/kind-europe-may-2021-program-update/>



Conclusions

What is clear from this review is that there is a need for *systemic change* to strengthen these safeguards, *better practice* in the implementation of both current and future procedures and *greater resources* to ensure the availability and quality of these vital safeguards.

Through our consultation with key stakeholders, we have identified a wide range of different developments, activities and commitments, which could contribute significantly to achieving progress including through legal and policy reform, practical measures of support and operational measures as well as monitoring and accountability, at both the EU and national levels.

EU action clearly plays a crucial and unique role in shaping and supporting transnational procedures. Solid foundations for improvements also include ongoing and potential action by European networks, such as the EGN and CCBE. The intensive work of UN agencies, NGOs working to support children, guardianship organisations and legal assistance providers has the potential to continue to drive progress.

Changes are needed in both the *short-term* (when implementing the current Dublin Regulation and voluntary relocation schemes) and in the *long-term* (when shaping proposals for reform of the EU Common European Asylum System). Several of the actions identified provide seeds for future system strengthening in the longer term, others refer to opportunities for immediate progress that should be explored and further resourced. It is clear that, more immediately, new practice, including improved case management and transnational cooperation, is needed. This might usefully draw from adjacent areas of practice, for example in family law and criminal justice settings.

Some actions may advance in an incremental way, whereas others will need to happen in tandem if they are to have the full impact desired (e.g., improving the availability and specialisation of guardians and legal assistance providers).

Targeted and sustainable resources will need to be brought to bear to achieve certain improvements, at both the regional and national levels. It will be important to take the opportunity to leverage resources across the region through transnational actions and exchange. The private legal community and the corporate world can be valuable partners in helping to bridge resource challenges, particularly when provided with high quality training and mentorship.

Actions for Progress

We believe that all stakeholders can work together in a more concerted way on the priority actions necessary to achieve immediate and longer-term progress in strengthening these procedural safeguards for unaccompanied children in transnational procedures. We set out below a roadmap of actions which can lead to improvements in each of the five areas for progress identified during the consultation. The roadmap shows that, in some cases, the same action will contribute to addressing several objectives.

Associated with each action, the “In Focus Section” which follows the overview provides an indication of the potential actors to be involved and the resources, activities and plans which can be mobilized to improve the system and practice within it.

In 2022, KIND and Child Circle will continue to help identify and connect activities of relevant stakeholders, within different processes to support progress in strengthening these procedural safeguards. We will also contribute recommendations to legal and policy consultations focusing on how best to ensure more child-centred procedures, support and assistance. KIND and Child Circle also aim to build bottom-up progress, supporting specialisation and the availability of assistance from legal professionals and the pro bono community.

Through exchange and concerted action, we believe this work together with committed agencies and allies will lead to more successful and sustainable outcomes for unaccompanied children in Europe.

KIND and Child Circle greatly appreciate the expertise and engagement of those individuals and organisations who actively contributed to the consultation, including through participating in an expert roundtable. **The clear commitment of the professionals involved holds the promise of better futures for the children involved.**

Strengthening Procedural Safeguards in Transnational Procedures

 <p>Clear entitlements to safeguards & transparent procedures</p>	<p>Exchange of experience, documenting good practice and procedures</p>	<p>Developing recommendations for Model Standard Operating Procedures</p>	<p>Developing guidance on procedural safeguards in transnational procedures</p>	<p>Developing recommendations for CEAS reform</p>	<p>Strengthening monitoring and accountability</p>
 <p>Enhancing quality of guardianship & legal assistance</p>	<p>Raising awareness of need for specialised knowledge and skills for guardians and legal assistance providers</p>	<p>Specialised training for guardians and legal assistance providers</p>	<p>Developing guidance on procedural safeguards in transnational procedures</p>	<p>Support for professional networking to enhance specialised knowledge</p>	<p>Putting in place regional support services for guardians and legal assistance providers in transnational procedures</p>
 <p>Improving inter-agency case management</p>	<p>Developing recommendations for Model Standard Operating Procedures</p>	<p>Promoting case management involving guardians and legal assistance providers in the integrated child protection initiative</p>	<p>Developing guidance on procedural safeguards in transnational procedures</p>	<p>Joint training of guardians and legal assistance providers on transnational case management</p>	<p>Explore use of practices inspired by the Barnahus model in frontline situations</p>
 <p>Strengthening cross-border cooperation</p>	<p>Promoting transnational cooperation between guardians and legal assistance providers in case management in the integrated child protection initiative (EU Child Rights Strategy)</p>	<p>Explore, enhance and promote role of existing transnational networks. eg Dublin Network, European Guardianship Network and CCBE</p>	<p>Expanding legal aid for assistance in receiving countries to ensure continuity & stability of assistance to child, & address any appeals</p>	<p>Support for cross border networking, with support services to guardians and legal assistance providers</p>	<p>EU general measures of coordination (e.g. EU Relocation Coordinator)</p>
 <p>Increasing the availability of guardians & legal assistance</p>	<p>Support for pro bono initiatives to assist in transnational procedures, pending further strengthening of publicly funded legal assistance</p>	<p>Creation of pools of specialised guardians and legal assistance providers</p>	<p>Putting in place regional support services for guardians and legal assistance providers in transnational procedures</p>	<p>Practical recommendations to frontline actors on assuring access to guardianship and legal assistance</p>	<p>Information for children on procedural safeguards in particular guardianship and legal assistance</p>



In Focus:

Clear Entitlements to Safeguards & Transparent Procedures

1. Exchange of experience, documenting good practice and procedures

- ✓ **Actors involved:** potentially led by EASO, EASO Vulnerability Experts Network, EASO Dublin Network, with involvement of EU and UN agencies and other stakeholders involved in transnational procedures, including guardians and legal assistance providers, European Guardianship Network, CCBE and NGOs.
- ✓ **Build on past activities, existing resources and plans:** EASO Dublin survey 2020, upcoming EASO Vulnerability Expert Network (VEN) meeting on relocation, EGN thematic meeting on relocation 2021; EGN meeting with a panel discussion on cross border work with contributions from Caritas, Child Circle and Nidos, October 2021; [Relocating unaccompanied children: applying good practices to future schemes](#) (May 2020); UNHCR consultations on safeguards for children in Dublin procedures 2019.

2. Developing recommendations for principles for Model Standard Operating Procedures for transnational procedures

- ✓ **Actors involved:** potentially led by EASO, via inter-agency process, including EU and UN agencies, national authorities and in consultation with other stakeholders involved in transnational procedures, including guardians and legal assistance providers, European Guardianship Network, CCBE and NGOs.
- ✓ **Build on past activities, existing resources and plans:** previous SOPs on relocation; previous projects to develop SOPs for Dublin; FRA practical guidance for protecting unaccompanied children in the relocation process; UNICEF, UNHCR, IOM - Minimum Child Protection Standards for identification; IOM and UNICEF Principles and approaches to guide relocation; EASO resources on relocation: Keeping the Child's Best Interests at the Heart of Relocation, Child Circle and Missing Children recommendations on child-centred relocation procedures.

3. Developing guidance on procedural safeguards in transnational procedures

- ✓ **Actors involved:** potentially led by FRA, in consultation with EU and UN agencies, national authorities and with other stakeholders involved in transnational procedures, including guardians and legal assistance providers, European Guardianship Network, CCBE.
- ✓ **Build on past activities, existing resources and plans:** EASO Practical Guide on the best interests of the child in asylum procedures; FRA Handbook on Guardianship; FRA practical guidance for protecting unaccompanied children in the relocation process; FRA Practical guide to enhance transnational cooperation: EU child victims of trafficking or in need of protection; The International Multi-Agency Framework in [Free to Move, Invisible to Care: coordination and accountability towards Romanian unaccompanied minors' safety \(basw.co.uk\)](#).

4. Developing recommendations for CEAS reform to ensure key procedural safeguards for children in transnational procedures in CEAS reform, including in future implementing measures

- ✓ **Actors involved:** consultation between UN agencies and civil society, contributing to a thematic consultation, potentially hosted by the Commission or by the European Parliament.
- ✓ **Build on past activities, existing resources and plans:** recommendations by civil society and UN agencies on CEAS reform, see examples in selected key resources below.

5. Strengthening monitoring and accountability

- ✓ **Actors involved:** potentially led by FRA and including other EU and UN agencies, EGN, CCBE, National Preventive Mechanisms (under UN OPCAT), European Network of Ombudspersons for Children, European Network of National Human Rights Institutions, as well as involved stakeholders.
- ✓ **Build on past activities, existing resources and plans:** future monitoring mechanisms under the proposed CEAS reform.



In Focus:

Enhancing Quality of Guardianship & Legal Assistance

- 1. Raising awareness of need for specialised knowledge and skills for guardians and legal assistance providers**
 - ✓ **Actors involved:** in particular, FRA, European Guardianship Network, CCBE, UN agencies and NGOs involved in provision or support for guardians or legal assistance.
 - ✓ **Build on past activities, existing resources and plans:** exchanges within networks and the FRA Handbook on guardianship.
- 2. Specialised training for guardians and legal assistance providers**
 - ✓ **Actors involved:** in particular, FRA, European Guardianship Network, HELP programme (Council of Europe), CCBE, National Bars, ELF.
 - ✓ **Build on past activities, existing resources and plans:** existing plans of FRA on training of trainers, training programmes supported by CCBE (in collaboration with ELF and HELP), Safe Passage training, UPRights (ECRE) available on HELP (Council of Europe), Fostering Access to Immigrant Children's Rights (FAIR), an International Commission of Jurists (ICJ) project.
- 3. Developing guidance on procedural safeguards in transnational procedures (as above)**
 - ✓ **Actors involved:** potentially led by FRA, in consultation with EU and UN agencies, national authorities and other stakeholders involved in transnational procedures, including guardians and legal assistance providers, European Guardianship Network, CCBE.
 - ✓ **Build on past activities, existing resources and plans:** EASO Practical Guide on the best interests of the child in asylum procedures; FRA Handbook on Guardianship; FRA practical guidance for protecting unaccompanied children in the relocation process; FRA Practical guide to enhance transnational cooperation: EU child victims of trafficking or in need of protection; The International Multi-Agency Framework in [*Free to Move, Invisible to Care: coordination and accountability towards Romanian unaccompanied minors' safety*](#) (basw.co.uk).
- 4. Support for professional networking to enhance specialised knowledge**
 - ✓ **Actors involved:** European Guardianship Network, CCBE.
 - ✓ **Build on past activities, existing resources and plans:** regular meetings of the European Guardianship Network.
- 5. Establishing support services for guardians and legal assistance providers in transnational procedures**
 - ✓ **Actors involved:** potentially the Commission, EASO, European Guardianship Network, pan European initiatives such as KIND Europe and Safe Passage.
 - ✓ **Build on past activities, existing resources and plans:** drawing inspiration from the Dublin desk project run by Nidos and information portals established by the Commission in other fields such as OpenEurope or eJustice portal.



In Focus:

Improving Inter-Agency Case Management

1. Developing recommendations for model Standard Operating Procedures (as above)

- ✓ **Actors involved:** potentially led by the Commission or EASO, via inter-agency process, including EU and UN agencies, national authorities and in consultation with other stakeholders involved in transnational procedures, including guardians and legal assistance providers, European Guardianship Network, CCBE and NGOs.
- ✓ **Build on past activities, existing resources and plans:** previous SOPs on relocation; previous projects on SOPs for Dublin; FRA practical guidance for protecting unaccompanied children in the relocation process; UNICEF, UNHCR, IOM - Minimum Child Protection Standards for identification; IOM and UNICEF Principles and approaches to guide relocation; EASO resources on relocation: Keeping the Child's Best Interests at the Heart of Relocation: Child Circle and Missing Children recommendations on child-centred relocation procedures.

2. Promoting case management involving guardians and legal assistance providers in integrated child protection initiative (EU Child Rights Strategy)

- ✓ **Actors involved:** European Commission (DG Justice), all stakeholders as part of consultation on the same.
- ✓ **Build on past activities, existing resources and plans:** drawing inspiration from case management processes in the Barnahus model (www.barnahus.eu).

3. Developing guidance on procedural safeguards in transnational procedures (as above)

- ✓ **Actors involved:** potentially led by FRA, in consultation with EU and UN agencies, national authorities and other stakeholders involved in transnational procedures, including guardians and legal assistance providers, European Guardianship Network, CCBE.
- ✓ **Build on past activities, existing resources and plans:** EASO Practical Guide on the best interests of the child in asylum procedures; FRA Handbook on Guardianship; FRA practical guidance for protecting unaccompanied children in the relocation process; FRA Practical guide to enhance transnational cooperation: EU child victims of trafficking or in need of protection; The International Multi-Agency Framework in *Free to Move, Invisible to Care: coordination and accountability towards Romanian unaccompanied minors' safety* (basw.co.uk).

4. Joint training of guardians and legal assistance providers on transnational case management

- ✓ **Actors involved:** potentially European Guardianship Network and NGOs.
- ✓ **Build on past activities, existing resources and plans.**

5. Explore use of practices inspired by the Barnahus model in frontline situations

- ✓ **Actors involved:** Council of Baltic Sea States, Promise network, EU agencies, national stakeholders.
- ✓ **Build on past activities, existing resources and plans:** www.barnahus.eu



In Focus:

Strengthening Cross-Border Cooperation

- 1. Promoting transnational cooperation between guardians and legal in case management in integrated child protection initiative (EU Child Rights Strategy)**
 - ✓ Actors involved: European Commission, DG Justice, all stakeholders as part of consultation on the same.
 - ✓ Build on past activities, existing resources and plans.
- 2. Explore, enhance and promote role of existing transnational networks. e.g., Dublin network, potentially European Guardianship Network and CCBE**
 - ✓ Actors involved: EASO, European Guardianship Network, CCBE, NGOs.
 - ✓ Build on past activities, existing resources and plans.
- 3. Expanding legal aid for assistance in receiving countries to ensure continuity and stability of assistance to child, and address any appeals**
 - ✓ Actors involved: pro bono legal community, discussions with local bar associations and ministries.
 - ✓ Build on past activities, existing resources and plans.
- 4. Support for cross border networking and support services to guardians and legal assistance providers**
 - ✓ Actors involved: in particular, EASO, European Guardianship Network, regional NGOs and potentially with the assistance of CCBE.
 - ✓ Build on past activities, existing resources and plans.
- 5. EU general measures of coordination (possible EU Relocation Coordinator)**
 - ✓ Actors involved: European Commission, EU and UN agencies and all involved stakeholders.
 - ✓ Build on past activities, existing resources and plans: coordination meetings that were held in relation to the recent voluntary relocation scheme which were chaired by the European Commission and brought together agencies and authorities; such meetings might pave the way for more formal structures under future schemes, and to support solidarity mechanisms which may be adopted as part of the EU reform.



In Focus:

Increasing the Availability of Guardians & Legal Assistance

- 1. Support for pro bono initiatives to assist in transnational procedures, pending further strengthening of publicly funded legal assistance**
 - ✓ Actors involved: KIND Europe, PILnet, CCBE, Safe Passage, private sector law firms.
 - ✓ Build on past activities, existing resources and plans: examples outlined in the report.
- 2. Creation of pools of specialised guardians and legal assistance providers to support children in transnational procedures, in particular settings**
 - ✓ Actors involved: National authorities, European Guardianship Network, pro bono legal community, with specialised support.
 - ✓ Build on past activities, existing resources and plans: examples outlined in the report.
- 3. Establishing regional support services for guardians and legal assistance providers in transnational procedures (as above)**
 - ✓ Actors involved: potentially the Commission, EASO, European Guardianship Network, CCBE, pan European initiatives such as KIND Europe and Safe Passage.
 - ✓ Build on past activities, existing resources and plans: drawing inspiration from the Dublin desk project run by Nidos and information portals established by the Commission in other fields such as OpenEurope or eJustice portal.
- 4. Practical recommendations to frontline actors on assuring access to guardianship and legal assistance**
 - ✓ Actors involved: in particular, EASO, FRA, UN agencies, European Guardianship Network, CCBE.
 - ✓ Build on past activities, existing resources and plans.
- 5. Information for children on procedural safeguards in particular guardianship and legal assistance**
 - ✓ Actors involved: EASO, European Guardianship Network.
 - ✓ Build on past activities, existing resources and plans.

Reflection Questions: Discussed During the Roundtable

- 1. Ensure transparent decision making procedures with a clear entitlement to safeguards from the earliest possible moment, including guardianship and legal assistance**
 - How to ensure more complete provisions in the CEAS reform, in particular by building support for the Commission's proposal on entitlement to guardianship and legal assistance from the earliest moment possible? Might consultations be held on future implementing rules that could strengthen procedural safeguards? Might authoritative guidance on the issue be developed by the Commission, in consultation with stakeholders?
 - Would it be sensible to review Standard Operating Procedures (SOPs) from the recent relocation initiative, with a view to developing detailed model SOPs, with input from all relevant stakeholders including guardianship organisations and the legal community?
 - How best to document and share practices, which better fulfil procedural safeguards for children, in exchanges of experience between national authorities?
 - What can be done to improve accountability in individual cases and monitoring of procedures as a whole?
 - Listening to children and learning from their experience and views: What can be done to consult with children, better understand their experiences and solicit their views on possible improvements?
- 2. Improve access to guardianship and legal assistance in transnational procedures**
 - Given logistical, financial, resource and timing constraints, what possibilities and means exist to augment the availability of guardians and legal assistance in transnational procedures? Are there innovative practices that could be effective in addressing these challenges and how?
- 3. Enhance the quality of assistance, for example by increasing the specialized knowledge needed by guardians and legal assistance providers in relation to decision making concerning transfers and their implementation**
 - What opportunities exist to develop targeted and sustained, specialised training, focusing on transnational procedures?
 - What means could contribute to the development of specialised competence?
 - What common resources might be developed and made available to provide information on transnational procedures to children, guardians and legal assistance providers?
- 4. Enhance the ability of legal assistance providers and guardians to work together and with others in order to ensure a child-centred approach in complex, inter-agency settings**
 - What need/means are there to develop common tools and guidance for decision making procedures and implementation, as well as tools to ensure better case management and quality assurance?
 - What inspiration or connections might there be in the upcoming work of the European Commission under the EU Strategy on the Rights of the Child and its forthcoming 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 the child at the centre?
- 5. Enable guardians and legal providers to cooperate with each other across borders.**
 - How best to support transnational cooperation in practice between guardians and legal assistance providers in different countries?
 - What opportunities are there to promote explicit provisions in EU law and guidance that would ensure continuity and stability of assistance and support to the child before, during and after a transfer?
 - Might it be possible to consider provisions in law to enable guardians and legal assistance providers to seek information from national authorities or other actors in receiving States?
 - Might it be possible to consider the extension of national legal aid schemes to allow legal assistance providers to be consulted on transnational procedures in receiving States in complex cases?
 - What inspiration to draw from EU work on transnational cooperation in adjacent areas, such as Brussels IIa (recast) or trafficking (trafficking recast)?

Selected Key Resources:

Regarding Transnational Procedures Concerning Unaccompanied Children within the European Union

December 2021

European Commission, [*Relocation of unaccompanied children from Greece to Portugal and to Finland: Questions and Answers*](#), July 2020

EU Fundamental Rights Agency, [*Relocating unaccompanied children: applying good practices to future schemes*](#), May 2020

EU Fundamental Rights Agency, [*Practical guidance for protecting unaccompanied children in the relocation process*](#), May 2020

IOM and UNICEF, [*Principles and Approaches to Guide the Relocation and Integration of UAC from Greece to other EU Member States*](#), April 2020

IOM Greece, [*Factsheet: Voluntary Scheme for the Relocation from Greece to other European Countries*](#)

UNICEF, UNHCR and IOM, [*Minimum Child Protection Standards for Identification of Unaccompanied and separated Children to be Relocated from Greece to other countries in the EU*](#), April 2020

UNHCR, [*Relocation of UASC from Greece Explainer*](#), August 2020

Standard Operating Procedures for Voluntary Relocation from Greece of unaccompanied and accompanied minors with severe medical conditions or other vulnerabilities - May 2020 (not published)

Child Circle and Missing Children Europe, [*Keeping the Child's Best Interests at the Heart of Relocation: Key recommendations for EU action concerning the ongoing initiative to relocate unaccompanied children from Greece*](#), May 2020

Webinar: [*Relocation of Unaccompanied Children from the Greek Islands: Experiences, Guidance, Tools for Best Practice*](#) - Hosted by Child Circle, Missing Children Europe, Oxfam and Refugee Rights Europe - April 2020

Webinar: [*Promoting Child-centred Relocation of Children in the EU, Now and in the Future*](#)
Hosted by Child Circle and Missing Children Europe - December 2020

[*Relocations from Greece: Lessons Learned and Looking Ahead*](#), joint NGO briefing paper - October 2021

Observations and remarks after the relocation of UAM from Greece to Belgium, available from CAW Brabantia - Caritas International

[*ENOC Position Statement on Violations of the Human Rights of Children on the Move in the context of pushbacks*](#), adopted by the ENOC 25th General Assembly on 29 September 2021

European Council on Refugees and Exiles, [*Report on the Implementation of the Dublin III Regulation in 2018*](#)

European Parliament, [*Hearing on the Implementation of the Dublin III Regulation*](#), 19 February 2020

Stepping Stones to Safety

Strengthening Key Procedural Safeguards for Unaccompanied Children in Transnational Procedures within the EU

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