

Advancing Protection for Unaccompanied Children in Europe by Strengthening Legal Assistance



KIND
KIDS IN NEED OF DEFENSE  EUROPE





Kids in Need of Defense (KIND) is the pre-eminent U.S. based non-governmental organization devoted to legal 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 21,000 unaccompanied children in partnership with 677 law firm, corporate, law school and bar association partners.

Through its new European Initiative, KIND is helping unaccompanied children in Europe access free legal assistance with partners in Belgium, France, Greece, Ireland and the United Kingdom.



Child Circle is a non-for-profit centre of expertise on child protection and European measures, founded in Brussels in 2014, working on policy development and projects with partners throughout Europe, in particular in the field of children in migration. Child Circle's vision: a Europe where children are protected from violence through effective cooperation across professions and borders.

The report draws on KIND's experience in directly providing and supporting pro bono law firm assistance to unaccompanied children in the United States as well as advocating for systemic changes.

It draws on Child Circle's EU experience as regards the situation of unaccompanied children in Europe, the significant role the EU plays in relation to provisions in place for them and the potential EU action holds to stimulate improvements in their protection.

The report also reflects expertise from KIND's European partners including the Immigrant Council of Ireland (ICI), the Irish Refugee Council (IRC), the Alliance of Lawyers for Human Rights (AAD-H), European Lawyers in Lesvos (ELIL), and Kids in Need of Defense UK (Migrant & Refugee Children's Legal Unit (Islington Law Centre), Coram Children's Legal Centre, Just Right Scotland, Central England Law Centre and the Greater Manchester Immigration Aid Unit). The partners have, in particular, addressed legal assistance challenges in cases involving age assessment, asylum, trafficking, family reunification and durable solutions, including supporting pro bono assistance in leave to remain and citizenship cases.

The report has benefitted from a mapping of legal assistance systems across seven European countries and research on European and international jurisprudence generously undertaken on a pro bono basis by DLA Piper LLP and White & Case LLP respectively. It builds on an important study undertaken by a partnership led by the European Council on Refugees and Exiles funded by the EU in 2014, "Right to Justice, Quality Legal Assistance for Unaccompanied Children."

In 2021, as policies and procedures in both the United States and Europe continue to be reformed, KIND and its European partners will carry on sharing experience to advance protection for unaccompanied children and find innovative ways to strengthen legal assistance for unaccompanied children.

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INTRODUCTION

Migration is a permanent international phenomenon. It changes and evolves in the face of many shifting circumstances, such as conflict, economic hardship, climate change and social and technological developments. Persons migrating may be seeking protection, be trafficked, be looking for educational or economic opportunities, or trying to reunite with family members. Regardless of the many diverse reasons for their journeys, under international law, unaccompanied children—who travel alone or separated from family members—shall be afforded special protection and assistance. This includes providing proper guardianship, reception and care, and States should identify comprehensive, secure and sustainable solutions for their future, taking their best interests as a primary consideration.

While there have been significant steps taken to address the rights of unaccompanied children in both the European Union and the United States, State authorities have debated—and in some cases implemented—increasingly restrictive migration policies and procedures in recent years. These policies consistently affect unaccompanied children adversely and undermine their rights under international law.

For example, age disputes over whether an individual is a child can cause significant obstacles for unaccompanied children in terms of their access to safeguards. Equally, procedures to reunite family members across Europe often take too long and administrative hurdles may sometimes generate permanent family separation. More generally, there remain serious gaps in the examination of the best interests of the child when taking decisions that determine their future.

It is abundantly clear that in these increasingly complex and sometimes restricted settings, access to child-centred assistance and support, and in particular quality legal assistance, becomes all the more crucial.

This report sets out our joint vision on advancing protection for unaccompanied children by strengthening legal assistance. We introduce the current EU policy context and underline challenges and opportunities to achieve this vision (Section 1). We compare key features of different national systems for providing legal assistance to unaccompanied children, highlight the experience of KIND in the United States and of its partners in Europe and indicate priorities for improvements to the legal assistance system (Section 2). We then focus on situations where unaccompanied children typically face severe risk, alongside significant difficulties, in terms of being able to access quality legal assistance, namely at borders and in transnational procedures involving transfers of children between countries. These are areas where EU measures can play a unique role and where procedures and practice remain to be built properly (Section 3). The report concludes with our specific recommendations for EU measures which can promote progress in the field and a call for action (Section 4).

In recent years in Europe, so-called “hotspots” at border areas intended, inter alia, to facilitate identification of persons in vulnerable situations have instead contributed to worsening chaotic reception conditions. Children are often in acutely difficult and protracted states of limbo there.

Similarly, the United States’ failed deterrence policy in recent years has rapidly led to a serious deterioration of humanitarian and protection measures including a March 2020 order barring arriving unaccompanied asylum seeking children from entry into the United States. This has resulted in over ten thousand children (10,000) being denied the legal protection mandated under U.S. law (Trafficking Victims Protection Reauthorization Act of 2008) and, instead, being summarily returned to dangerous conditions that put them at further risk of violence and exploitation.

JOINT VISION:

Advancing protection for unaccompanied children by strengthening legal assistance



Unaccompanied children should benefit from free quality legal assistance in all procedures concerning their status and fulfilment of their rights.

This means that:

- ✓ All unaccompanied children are entitled in law to free quality legal assistance in all relevant administrative and judicial proceedings, regardless of their status and regardless of the procedure.
- ✓ Access to legal assistance is guaranteed through specific safeguards concerning the identification of children as under 18 and unaccompanied as well as the timely provision of information and support to them.
- ✓ Legal assistance should play a key role in ensuring that unaccompanied children have access to procedures that are appropriate to address their individual circumstances, take the best interests of the child as a primary consideration, and fulfil State responsibilities under migration and asylum laws as well as child protection laws.
- ✓ Legal assistance providers should contribute to, and draw from, a multidisciplinary, interagency approach which is necessary to take account of the child's individual needs and circumstances and to ensure that the rights of the child are fulfilled. Legal assistance to unaccompanied children is the subject of active accountability and monitoring mechanisms.



In restricted settings and in complex procedures which pose acute risks to children, quality legal assistance is actively facilitated and supported by authorities. This means that:

- ✓ Procedures are in place at the border to screen persons to identify, inform and support unaccompanied children and to exempt them from accelerated asylum procedures. Such procedures refer children to proper care and reception and provide them with access to special procedural guarantees including legal assistance and to durable solution procedures.
- ✓ In cases where an unaccompanied child may be transferred between States including for family reunion or relocation, clear and detailed measures should provide appropriate mechanisms for ensuring that the best interests of the child are a primary consideration in any transfer decision; the child and their guardian have access to free legal assistance; effective cross-border cooperation is in place and transfer procedures promote continuous and stable assistance to children from guardians and legal advisers.



Our longer term goal: a single legal framework provides uniform guarantees for all unaccompanied children. The framework provides access to a status determination pathway which leads 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.
- ✓ An examination of whether an international protection claim should be made, or whether other procedures should apply to examine the circumstances of the child.
- ✓ 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 reunification cases).

KEY TERMS:

Defining quality legal assistance for children

Quality legal assistance for unaccompanied children can be defined as encompassing both legal and procedural information as well as the right to consult with a legal adviser and the right to legal representation. Certain preconditions are necessary to allow children access to quality legal assistance, including identification, information and guardianship measures.

EU provisions relevant to legal assistance for unaccompanied children are contained in the various laws governing different procedures (in particular, in international protection, trafficking or return instruments). This has led to differences in the scope of EU obligations concerning legal assistance, depending on the procedures in which unaccompanied children find themselves. It has also led to some inconsistencies in the terminology used.

At the national level, States must implement the general obligations set out in EU law, but there may be significant differences between them on how they approach this implementation. And as we will see reflected in Section 2, models of legal assistance vary greatly between countries. Different forms of legal assistance and types of legal assistance providers may be available in different procedures and at a variety of stages within a procedure (for example, before or during an interview, for first instance decisions or for appeals or reviews).

With this in mind, these key terms are referred to in the following way in the report:

Legal assistance: Typically, this term 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 proceedings 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 the 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 or her stated wishes, and legally representing him or her in written statements and in person before asylum or other legal proceedings 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: 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 (as defined by the EU Fundamental Rights Agency in its [Handbook](#)). 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.



1.

THE LEGAL AND POLICY SETTING:

New directions for the EU?

Photo Credit: European Lawyers in Levos (ELIL)

The EU and its Member States are in the process of reforming EU migration and asylum laws. The recent EU Migration and Asylum Pact, published in September 2020, is intended to offer new momentum to negotiations between EU Member States on migration policy. It follows years of deadlock on key issues facing the EU, including search and rescue responsibilities in the Mediterranean Sea and the relocation of asylum seekers from overcrowded camps and facilities on the Greek islands and elsewhere.

The Pact is accompanied by a complex labyrinth of proposed new and amended EU measures. Included amongst them are proposed mandatory border procedures, new solidarity mechanisms between Member States to support both asylum and migration management, and measures to accelerate and promote return.

Negotiations on these measures between the EU bodies will likely take time, and the implementation of any new measures adopted will take some years. Consequently, it is critical also to make immediate progress in policy and practice under the existing EU framework, particularly in light of the myriad challenges posed by the recent pandemic, including the strain on resources.

We are deeply concerned about the risks posed to children, direct and indirect, by some of the restrictive measures proposed by the EU, including new mandatory screening and border procedures, as well as enhanced return measures.

Nonetheless, it is welcome that the European Commission identifies the “needs of children as a priority” in the Pact. It acknowledges that, *“the reform of EU rules on asylum and return is an opportunity to strengthen safeguards and protection standards under EU law for migrant children.”* Inter alia, it underlines the importance of legal assistance throughout status determination procedures. It focuses on ensuring that the best interests principle is a primary consideration in all decisions regarding migrant children and that the right of the child to be heard is respected.

These are important commitments by the EU to children’s rights. However, whether they will be translated into reality will depend heavily on a wide range of measures being put in place, including not only law and policy, but also involving operational and monitoring activities of the EU, as well as practical measures of support through funding and expert resources. And the EU must be clear-sighted about tackling the real challenges and taking important opportunities to achieve progress at this time.

Access to quality legal assistance for unaccompanied children must be a central safeguard in EU law and the roles of guardian and lawyer should be distinct and complementary.

In recent years, there has been a significant focus on guardianship provisions in EU measures. Continuing to strengthen guardianship systems is necessary as guardianship is an essential and immediate safeguard for unaccompanied children.

It is also critical for EU measures to ensure that children and their guardians have access to legal assistance providers, including lawyers. The importance of legal assistance is all the more evident in an environment where procedures are becoming increasingly complex, rapid and restrictive.

However, currently the terms used in EU legislation in relation to the guardian (including representative and legal representative) have the potential to lead to confusion as to the distinct roles of these actors and the importance of each. The guardian is present to support and assist the child, safeguard their best interests and exercise legal capacity where required. The role of a legal adviser is to provide qualified expert legal advice, act on the child's stated interests and provide representation in often complex procedures and claims. Making quality legal assistance available at the earliest possible moment is important for both the child and the State because it enhances the ability to identify the right procedural pathway and to ensure that the case is considered fully.

EU law and policy must be extremely clear: guardianship and legal assistance and representation are distinct procedural safeguards, both of which are essential for all unaccompanied children. The Pact has recognized the importance of both guardianship and legal assistance, and it will be critical for EU measures to find ways to ensure they go hand in glove in order to support unaccompanied children and find durable solutions for them. We explore this further in Section 2 below.

Any new EU mandatory border procedures should not be applicable to unaccompanied children. And any screening procedures at the border should have sufficient safeguards to ensure the identification of unaccompanied children and their immediate referral away from the border and to child protection services to receive proper reception, support and assistance.

We welcome the European Commission's proposal to exempt unaccompanied children from mandatory border procedures.

However, such an exemption will work only if there are sufficient safeguards built into the screening procedure to ensure that unaccompanied children are identified and that age-disputed individuals are granted specific safeguards and supports, including a temporary guardian. This includes the application of the benefit of the doubt and any margin of error in their favour as well as the right to appeal the outcome of any assessment with the assistance of a lawyer.

The Commission proposes that families with children under the age of twelve also be exempt from border procedures. As we will explore further in Section 3, we also believe that border procedures of the kind proposed by the Commission, which entail the use of detention and diminished procedural safeguards, should not apply to families with children, regardless of the child's age. Indeed, we are concerned that the procedures proposed hold the potential to violate the rights of many adults as well, particularly those in a vulnerable situation. More generally, we question whether the proposed screening and border procedures are truly warranted or even workable. They may ultimately divert resources and action away from different types of measures which would likely prove more effective at both managing migration and fulfilling fundamental rights obligations, namely information, assistance and support, as well as integration measures and assisted voluntary return.

EU procedures must ensure that the best interests of the child is a justiciable principle and that children are properly supported and assisted by legal advisers when it is applied.

[General Comment No 14](#) of the UN Committee on the Rights of the Child sets out extensive guidance on the best interests principle in the Convention on the Rights of the Child (CRC). The Committee underlines that the best interests is a threefold concept. It functions as a substantive right, a fundamental interpretative legal principle and a rule of procedure.

EU law and policy has increasingly recognized the primacy of the best interests principle. In particular the Commission [Communication](#) on the protection of children in migration provides that, *“Durable solutions are crucial to establish normality and stability for all children in the long term. The identification of durable solutions should look at all options, such as integration in a Member State, return to the country of origin, resettlement or reunification with family members in a third country. It is essential that a thorough best interests determination be carried out in all cases.”* The new Pact also recognises that decision making must have the best interests of the child as a primary consideration.

The centrality of the best interests to such fundamental decisions reveals how important it is to ensure that the principle is applied in a robust and formal way, in terms of how it is examined, and how it is taken into account and documented in decision making. Examining the best interests of a child in their individual circumstances may involve difficult questions of both fact and law, including, for example, the availability of evidence of family relationship, consideration of whether a relative can meet the standard

for taking care of children, and the range of risks—and absence of protection—a child might face in countries of origin. It may involve balancing different rights of the child to determine the child's best interests and then weighing the best interests of the child against other rights as outlined in [General Comment No 14](#) of the UN Committee on the Rights of the Child. However, as stressed in the Committee's General Comments [No 6](#) and [No 22](#), non-rights-based arguments, such as those relating to general migration control, cannot override best interests considerations.

Effective legal assistance must be in place to ensure that the child's best interests will properly feed into critical decisions for the child's life and that due account be given to the views of the child.

Moreover, as noted in General Comment No 14, *“States should establish mechanisms within their legal systems to appeal or revise decisions concerning children when a decision seems not to be in accordance with the appropriate procedure of assessing and determining the child's or children's best interests.... Mechanisms should be made known to the child and be accessible by him or her directly or by his or her legal representative, if it is considered that the procedural safeguards had not been respected, the facts are wrong, the best-interests assessment had not been adequately carried out or that competing considerations had been given too much weight. The reviewing body must look into all these aspects.”*

Consequently, the EU should make sure that the best interests assessments can be challenged.

Accordingly, although we clearly welcome the proposed increase in the involvement of guardians in procedures involving children (such as Dublin, relocation, status determination and return procedures under EU law), it is important to reiterate that guardians should not be the sole actors involved in assisting children when their best interests are examined. The involvement of guardians in procedures does not extinguish the need for a legal adviser. Indeed, EU law and policy should ensure that the guardian supports the child in accessing and benefiting from legal assistance for these procedures. We address this further in Section 3 below.

The streamlined approach to asylum and migration proposed in the EU Migration and Asylum Pact further accentuates the need for quality legal assistance.

The new “streamlined” approach to migration and asylum proposed by the Pact makes quality legal assistance all the more important. This approach proposes *“integrating processes which are currently separate”* and establishing a *“seamless procedure at the border, an asylum procedure and where applicable a swift return procedure.”*

We recognize the need for efficient procedures which will be beneficial for both the child and the State. The EU has powers to establish common rules for international protection and to establish procedures for return procedures where a person is found to be irregularly staying. However, there are several legal claims that may arise between the rejection of an asylum claim and a return decision. These include claims based on the European Convention of Human Rights (ECHR), anti-trafficking laws and the CRC. It is frequently national law which determines which alternative legal pathways may be available to those who cannot apply for international protection, or whose claim for international protection has been rejected. This can be particularly important in cases involving children.

Under the new approach proposed by the Pact, it will be important to ensure that the new EU “streamlined” approach does not obscure the relevance of laws other than international protection measures nor create any obstacles to the application of these fundamental rights.

And, indeed, the fact that it is necessary to explore available procedures for unaccompanied children under a range of distinct EU and national legal frameworks once more underlines the need for and role of quality legal assistance.

In fact, we believe that the best way to streamline procedures for unaccompanied children, in line with our joint vision, is to have a single legal framework which provides uniform guarantees and a pathway, supported by quality legal assistance, to ensure that all of the claims of children are examined and that a durable solution is identified and implemented. Indeed, a commitment to finding durable solutions for all unaccompanied children has been stated in past EU policy including the Commission [Communication on the protection of children in migration](#). If this is translated carefully and consistently into EU measures, it should produce the efficient and effective procedures that are so important for both the child and the State.

Transnational procedures need to be properly built by the EU.

The EU has a unique role to play in relation to the development of transnational procedures concerning the potential transfer of children between countries. However, it will sow confusion where its laws set out only a general framework for transnational procedures, without building the clear and workable procedures necessary to achieve them. The new Commission proposals under the Pact recognise that the best interests of the child should be determined in decisions on transferring children between countries in the EU. But the EU needs to develop further both the safeguards and cross border processes that will underpin these arrangements.

In transnational procedures, the EU should guarantee access not only to guardians but also to legal assistance. Moreover, procedures should facilitate the effective involvement of actors assisting children, including guardians and legal assistance providers, in seeking information and in reviewing the child's circumstances together across borders. And when a child is transferred from one country to another, transfer procedures should specifically promote continuity and stability of assistance to the child, including legal assistance. The EU should be actively facilitating cross border cooperation in this regard.

Achieving quality legal assistance in practice across Europe is crucial.

All of these issues demonstrate that the EU must promote and facilitate specific training and resources needed to ensure quality legal assistance for unaccompanied children. The EU should build on previously funded studies and training projects in this field. As is increasingly recognized, legal advisers working for children in migration need to be able to combine a knowledge of child rights, asylum law, trafficking, child protection and parental responsibility. This is in line with the growing recognition in many fields, including family law and criminal justice proceedings, of the need for more child-sensitive justice proceedings.

Independent monitoring mechanisms - including specific indicators such as the availability of guardians and legal assistance for children across the range of different procedures—will also improve progress, as will the availability of child-friendly complaints mechanisms.

A final word on the EU policy context goes to **Brexit** (the exit of Britain from the European Union), which opens important questions for the protection of unaccompanied children in Europe. Brexit creates a new external border of the EU on the western side of Europe, raising the spectre of more challenging border management issues than ever before between Northern France and Belgium and the UK, as well as between the Republic of Ireland and Northern Ireland. Brexit also raises important questions to be resolved in relation to issues such as family reunion, or cross-border cooperation on trafficking. It will be important to find ways to ensure that the best interests of the child are at the heart of new arrangements between the EU and the UK. Quality legal assistance will play an important role in building decision making that draws on our common European body of human rights law, in particular the European Convention on Human Rights. However, this will be all the more challenging if the application of the Convention in the UK is diminished should the UK Human Rights Act 1989 be amended, as has been discussed in UK law and policy circles.

As highlighted in the recent [Children's Immigration Law Academy's Pro Bono Guide](#), while the majority of children in the United States are facing proceedings before immigration courts alone, quality legal assistance can make all the difference in ensuring a timely outcome and solution in line with their best interests. Data from Syracuse University's [Transactional Records Access Clearinghouse \(TRAC\)](#) shows that juveniles who have a lawyer are over six times more likely to be granted relief than a juvenile without counsel. Additionally, represented juveniles are also over six times more likely to have their cases terminated, which is usually a positive result in removal proceedings.

2.

SYSTEM STRENGTHENING

To improve the provision of legal assistance to unaccompanied children

Photo Credit: European Lawyers in Levos (ELIL)

The provision of quality legal assistance to an unaccompanied child from their first encounter with the State and in all decision making procedures is necessary and beneficial both for the child and the State. Currently, different models of legal aid and assistance for persons in asylum and immigration proceedings exist across the EU.

There generally are provisions for legal aid and assistance for unaccompanied children, although these measures vary considerably in their scope. Moreover, a variety of practical challenges exist in relation to the provision of legal assistance in different countries and situations.

For example, in Greece, as a frontline State, there is typically a very heavy caseload, with lack of capacity and sometimes lack of adequate access to children, particularly in camps and their surrounding areas. As another example, in jurisdictions to which children have been trafficked, the absence of lawyers with specialised knowledge of child trafficking may mean that children are not effectively informed, advised and represented.

As KIND noted in their January 2020 [statement](#) before the U.S. House Committee on the Judiciary, Subcommittee on Immigration and Citizenship, the “frontloading” of legal assistance at an early stage can lead to *“enhance(ing) efficiency by, among other actions, identifying children’s grounds of eligibility for relief—or, conversely, helping them understand when they may lack such eligibility—and enabling immigration judges to spend less time explaining to children the court’s processes.”*

How to make progress?

Grounded in a child rights-based approach and child-friendly justice standards, we have identified the features below as good practice indicators for legal aid systems generally and specifically for the provision of quality legal assistance to unaccompanied children.

These indicators include legislative, policy, systemic and practical measures which involve:

- A clear entitlement to free quality legal assistance
- Applied in all relevant procedures
- Accompanied by child-friendly legal and procedural information
- Requiring specific qualifications and vetting
- Supported by specialised capacity building through training and guidance
- With additional resources available for necessary services and supports
- Connected to child-sensitive procedures embedded in an integrated system
- Underpinned by effective monitoring, accountability and complaints mechanisms:

The sections below briefly describe challenges and opportunities in these areas as well as highlighting noteworthy practices and general recommendations for improvements going forward. They have been informed by a mapping undertaken by DLA Piper LLP 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 complements and builds on an important 2014 [study](#) undertaken by the European Council of Refugees and Exiles (ECRE) on quality legal assistance for unaccompanied children.

Tools for awareness raising, advocacy and monitoring of systems and practice

[ECRE's guiding principles for quality legal assistance for unaccompanied children](#) were developed from existing international and regional legal standards and authoritative guidance as well as from the findings of ECRE's comparative research and good practices identified in 2014. The overarching principles essentially are that (i) legal advisers for unaccompanied children aim to ensure that their rights as children are fully respected, and that (ii) their work contributes to, and draws from, the overall child protection system. The principles are then directed at how legal advisers should practice, as well as pointing to the need for interpreters' assistance, funding, independent monitoring and evaluation to ensure that they can practice in line with the principles. ECRE's project also resulted in a set of structural, process and outcome [indicators for the guiding principles](#), which provide an excellent tool for exploring the extent to which the principles are fulfilled in systems and practice in different countries.

Authoritative guidance on strengthening systems to promote and realise children's rights is contained in [General Comment No 5 of the UN Committee on the Rights of the Child on General Measures of Implementation](#). Such measures include legislative reform, capacity building, training, cooperation with civil society, monitoring and making children visible in budgets. Strengthening legal aid systems and improving access to justice for unaccompanied children will benefit from considering action under each of these different measures.

A clear entitlement to free quality legal assistance

The DLA Piper 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 unaccompanied children seeking asylum can usually access free legal aid without being subject to a means or merits test. However, unaccompanied children in Europe may still face a variety of barriers in accessing free legal aid and quality legal assistance in all of the procedures which concern them.

Experience shows that mechanisms to identify children and refer them onwards to proper support and legal assistance can succeed in securing timely outcomes in line with the best interests of the child concerned. Child-sensitive screening measures facilitate the referral of unaccompanied children to child protection professionals and legal aid services. Legal empowerment and representation may help children to better understand their options. However, without this special assistance, unaccompanied children may remain unsupported and without legal advice. Such circumstances also exacerbate uncertainty for children and may result in children going missing or taking risks to continue their journey onwards.

In particular, an unaccompanied child's guardian can play a crucial role in ensuring the child receives information and access to quality legal assistance. However, this is a complicated area, as the DLA Piper mapping demonstrates, because currently the persons who act as guardians and their roles differ considerably across Europe. In some national systems, the child's appointed guardian or ad hoc administrator may be a qualified lawyer themselves, while in others they may act as a gatekeeper supporting the child in accessing information, legal counselling and legal representation.

However, as stressed in the UN Committee on the Rights of the Child in [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." This important safeguard is all the more essential when we recognise that guardianship systems vary from country

to country. Many rely on volunteers and some systems do not have adequate support or resources. An under-resourced, inexperienced, insufficiently skilled guardian clearly is not in a position to provide adequate and specialised support to the child in complex procedures.

As under-age minors, in many EU Member States unaccompanied children do not have legal capacity to apply for asylum on their own (see [EU FRA mapping](#)). This reality underlines the importance of the guardian in supporting the child to access both legal services and relevant procedures, including being able to submit an application for international protection or another immigration status in a timely manner when deemed in the best interests of the child concerned.

KIND's Experience with Child Advocates in the United States

Similar to the close collaboration between guardians and lawyers in some European countries, KIND's lawyers in the United States often work together with a [Child Advocate](#) in cases involving particularly vulnerable child clients. Child Advocates from the Young Center for Immigrant Children's Rights are appointed to individual children's cases by the Department of Health and Human Services' Office of Refugee Resettlement, the agency

responsible for the care and custody of unaccompanied children. Having a Child Advocate appointed to a case allows the KIND attorney to represent the child's express wishes, while the Child Advocate focuses on their best interests. Child Advocates have helped KIND attorneys to develop and implement post-18 release plans for clients still in federal custody as their 18th birthday approaches, including through helping with release from government custody, transportation and placement of children with family or community-based organisations. Child Advocates have also successfully supported requests for appropriate placement such as foster care and have advocated in support of motions filed by the child's attorney, such as a motion to reopen immigration proceedings following issuance of a removal (deportation) order.

*Pro bono engagement is always supportive of the broader legal aid system by complementing and enhancing it. In the United States, in the face of a chronic lack of legal representation of children, KIND works to enhance pro bono private law sector representation in these cases by closely training and mentoring private sector lawyers. KIND Europe and its partners are now working together to enhance legal assistance for unaccompanied children in Europe through enhancing pro bono initiatives. In Greece, European Lawyers in Lesvos seeks to complement legal capacity in Lesvos, and with the support of KIND Europe, has provided assistance to age disputed individuals, child asylum seekers, and children seeking reunification. In France, the Alliance of Lawyers for Human Rights is providing access to pro bono legal assistance to unaccompanied children who are at risk or victims of trafficking, and those seeking family reunification. In Ireland, unaccompanied children do not receive legal aid for family reunification procedures. Through KIND Europe, the Immigrant Council of Ireland and the Irish Refugee Council, are augmenting the assistance they make available in these procedures. Partners in **Kids in Need of Defense UK** help children and young people access pro bono legal representation so that they can enjoy their entitlement to citizenship or start their journey to permanent status.*

General recommendations:

There should be a clear provision in EU and national legislation affirming all unaccompanied children's right to free legal aid and access to legal assistance. In order to facilitate access to legal assistance, practical measures for vulnerability screening, identification and referral need to be put in place. Unaccompanied children and age-disputed individuals should be appointed an independent guardian as soon as possible. Child protection actors should be directly involved and responsible for identification and safeguarding efforts on the frontline – at borders, in airports and in outreach in street and transit contexts.

Provision of free legal aid and legal assistance in all procedures

While many unaccompanied children in Europe receive legal assistance for seeking asylum, there are significant gaps in most countries with regards to legal assistance for other matters such as challenging the outcome of an incorrect age assessment, seeking family reunification or securing a regular residence status. Without legal assistance, children are at risk of not having their individual circumstances assessed and, therefore, not being referred to the appropriate legal pathway for status resolution. Some children may also be fast-tracked through inappropriate procedures without proper safeguards and supports, leading to re-traumatisation.

From the results of the DLA Piper mapping, it is clear that how and to what extent unaccompanied children are able to access legal assistance before and during different procedures varies greatly depending on the national system. Of the countries mapped, the possibility to access legal assistance appears the most comprehensive in the Belgian system, while some serious gaps exist in other countries.

The model of pro bono legal assistance in the United States may provide useful inspiration in the immediate future in Europe to fill gaps and meet needs in the short term, until national legal aid systems are strengthened. Such efforts must be supported by specialised training and guidance, for which public resources may be needed.

Looking at another example, the legal aid system in England and Wales has changed considerably over recent years. In 2013, legislation was implemented that revoked the right to legal aid in non-asylum cases for unaccompanied children. Stepping in to fill this gap, since its launch in 2017, Kids in Need of Defense UK has helped 250 children secure immigration status through pro bono representation. Furthermore, recent progress has brought unaccompanied children back into the scope of legal aid in England and Wales, and on 25 October 2019, *The Legal Aid for Separated Children Order 2019* came into force, allowing access to legal aid for non-asylum immigration and citizenship matters. Still, some legal aid providers do not realise that these cases fit their mandate and do not take on such cases. Coram Children's Legal Centre, The Children's Society, Islington Law Centre, Just for Kids Law, and the British Association of Social Workers have put together [practical guidance](#) to raise awareness of the change and the types of children and cases covered. However, there remains a shortage of suitably experienced and trained solicitors and barristers.

Not surprisingly, across Europe, there are often gaps in the border context (before the child has been appointed a guardian) and in cases of age dispute (often when no guardian is appointed), especially in contexts when there is no possibility to appeal the outcome. Yet, in some countries, even when an unaccompanied child has been identified and has the support of a guardian, there still remain worrying gaps in legal assistance provision in important procedures such as Dublin procedures, relocation, best interests determination and regularisation mechanisms.

Furthermore, even when a child may be entitled to legal assistance, they may receive very limited support from a lawyer before and during a procedure. For example, in the majority of the countries mapped, there is no legal obligation for a legal aid provider to be present when an unaccompanied child is being interviewed in administrative or judicial proceedings. In most cases, the child will be accompanied by their guardian, legal representative or another responsible adult, but not by their lawyer, unless in some systems this is requested by the guardian.

In [KIND's Blueprint](#) for a new U.S. Administration, it is recommended that all children are provided with access to free counsel:

“The U.S. government should ensure that all unaccompanied children in immigration proceedings have attorneys. Legal counsel is essential to ensuring due process for unaccompanied children. It is virtually impossible for children to navigate the U.S. immigration system alone. The U.S. government must support and take robust measures to maximize funding for children's counsel and postpone children's immigration court hearings until they obtain lawyers.”

General recommendations:

Free legal assistance provided to unaccompanied children (and their guardians) should encompass the preparation and submission of procedural documents, preparation of the child for any interviews as well as legal representation, including accompanying the child to all necessary interviews. Legal aid is also an important safeguard in age assessment procedures and an age-disputed individual should be able to access legal assistance to appeal or review such decisions when necessary. Unaccompanied children should be entitled to and able to access legal assistance for all necessary procedures and related appeals. This may require the expertise of different lawyers dealing with asylum, immigration and child protection or family matters. However, there ideally should be a stability and continuity of legal representation whenever possible and in the best interests of the child concerned. Legal aid systems should also provide resources and opportunities for the child and their guardian to confer as often as necessary with the child's lawyer in order to establish a relationship of trust and to ensure that the child understands procedures, which are often complex and which will likely have a significant impact on the child's future.

Child-friendly legal and procedural information

According to the CRC Article 12, every child has the right to participate and to express their views freely in all matters and procedures that may affect them. Decision makers should not only listen to children, but also give due weight to their views, taking them into consideration in accordance with the child's age and maturity.

Therefore, legal and procedural information should be available in child-friendly formats for children of different maturity and literacy levels in a language that they understand in order to enable them to better understand their situation and to be able to participate fully in relevant procedures.

In contrast, the absence of child-friendly information on children's rights and the procedures concerned may mean that children never access their rights to assistance and support.

Moreover, guardians and lawyers working to advise and support children will be able to do so more effectively with the right tools. Child-friendly information is the basis for their communication with unaccompanied children.

Many governments and stakeholders have made an effort in recent years to produce child-friendly legal and procedural information for children in the asylum and immigration system. The DLA Piper mapping identified some noteworthy examples, including short films, brochures (like in [Belgium](#) and [Germany](#)) and comic books, which have also been made available in a variety of languages. The Council of Europe's [Handbook for frontline professionals on how to convey child-friendly information to children in migration](#) includes many such promising practices as well as practical tips and recommendations from children themselves.

Information is an essential measure to ensure the legal empowerment and meaningful participation of every unaccompanied child. This includes understanding the roles and responsibilities of the people they encounter. In the UK, the [Migrant & Refugee Children's Legal Unit](#) and [Coram Children's Legal Centre](#), are leaders in child-centred practice and have published various resources including a ["Who is Who?" booklet](#) to explain the roles of different adults children will encounter after arrival and throughout procedures.

Excerpt from the MICLU info booklet ["Who is Who?"](#)

Who they are

A lawyer is someone who **knows** and **understands** the **law**. An immigration lawyer knows the laws that the Home Office will use to make a decision on your asylum application, but there are other types of lawyers who understand for example **criminal law**, **family law**, or **social services law**.

What they do

A lawyer works for you. A lawyer will help you to understand what will happen while you are going through the asylum process, and how the different **laws** and **procedures** apply to your **situation**. They will need to know about what has happened to you in order to do this. They should listen to what you say.

They will need to **meet you several times** while preparing your asylum claim in order to understand everything that has happened to you. If you do not understand your lawyer, or you are afraid or ashamed to speak to them, you should tell someone. You may be able to work with a different lawyer.

Your lawyer should help to identify the parts of your **experience** that are important to your asylum claim. They should be with you in all formal interviews with immigration officials or the police and make sure that you **provide information on time**.

Know Your Rights

In the United States, unaccompanied children in the custody of the Office of Refugee Resettlement (ORR), the federal child welfare agency charged with the care and custody of these children following their arrival, receive Know Your Rights (KYR) presentations by a legal service provider. KIND, one of the legal service providers for children in ORR care, presents KYRs to children either in a group or individual setting in English and Spanish or with the assistance of an interpreter when a child prefers another language. KYRs provide information on the rights and responsibilities of the children, fundamental immigration court and proceedings information, options before immigration authorities, the need to appear for future immigration hearings, how to check for upcoming hearing dates, and how to notify the court and the Department of Homeland Security, the federal immigration agency, of a change of address. KYRs also include information regarding confidentiality with regard to attorney-client relationships and within the immigration and ORR system. KIND presents its KYR information using child-friendly techniques and keeps children engaged in the presentation by using role play and interactive games.

Breaking the Chains

Children sometimes do not fully understand the role of a lawyer and some believe that you only need a lawyer if you “have done something bad.” Therefore, there is the need for child-friendly information when a child arrives in the jurisdiction that supports children to understand the role of a lawyer and what they can and should do for the child. Through their “Breaking the Chains” project, Kids in Need of Defense UK partner Migrant & Refugee Children’s Legal Unit run engagement and empowerment sessions with asylum seeking children and young people, which help them to understand the role of the lawyer, get the best out of the relationship with their lawyer and be able to identify indicators of poor practice in legal representatives.

General recommendations:

National authorities should guarantee that unaccompanied children receive child-friendly legal and procedural information in a language they understand and in a timely manner in order to ensure that they are aware of their rights as well as how to access services and relevant procedures. The provision of up-to-date information should continue throughout any procedure including an explanation of the reasoning in fact and in law whether the decision is positive or negative. Important safeguards include the provision of information regarding the possibilities for making an appeal when necessary as well as the avenues for making complaints.

Robust requirements for qualifications and vetting

As legal aid systems have developed and improved, legal aid providers are increasingly able to provide specialised services to asylum seekers and migrants in vulnerable situations. In order to protect unaccompanied children, legal aid providers should be thoroughly vetted and possess specific qualifications for working with children and dealing with their claims.

The DLA Piper mapping resulted in a mixed picture regarding the required qualifications of legal aid services providing assistance to unaccompanied children. In England and Wales, the Legal Aid Agency framework for authorising legal aid payment and the Officer of the Immigration Services Commissioner (OISC) requires that a legal adviser who is not regulated by the Law Society or the Bar Council must be qualified at a certain OISC level to work with refugee children. Immigration advisers and solicitors working with children on a regular basis must also have had an Enhanced Disclosure and Barring Service check in the previous two years. In Belgium, lawyers wishing to provide legal assistance to children, including unaccompanied children, must complete a specific educational course in juvenile law.

Concerning vetting, while minimum safeguards such as a criminal check upon admission to the national bar association is in place

in some countries, on-going checks and child protection measures seem to be weak or lacking. This appears to be an area for further research and advocacy as well as the elaboration and enforcement of appropriate codes of conduct for those working directly with children.

General recommendation:

As with other professionals working directly with children and considering their claims, legal aid providers should be specially qualified to work with children. Ideally, such professional and educational qualifications, including mandatory minimum training requirements, should be specified in national law and supervised by the national bar association or law societies. Vetting should take place upon accreditation and systematically thereafter, including both criminal record and abuse record checks. Interpreters working with children should also be vetted and trained to work with children, including on communicating with children in appropriate child-friendly language.

In the United States, the California Welfare and Institutions Code shows a recognition of the need for specialist lawyering. Sec. 13300–13301 – provides funding to legal services organisations to represent unaccompanied children and require, in part, in order for organisations to qualify for this funding, that they “*have experience guiding and supervising the work of attorneys whom themselves do not regularly participate in this area of the law but nevertheless work pro bono on the types of cases described in paragraph.*”

Specialised capacity building through training and guidance

In order for lawyers to navigate complex legal issues and to represent their clients, they need to possess specialised knowledge and expertise on a range of matters including up-to-date expertise on asylum and immigration law as well as on child-sensitive procedures and child-specific forms of persecution. As the field of asylum and immigration law is rapidly evolving, as well as child protection measures and safeguarding, it is important for legal aid providers to participate in on-going training and continuing legal education. This specialisation enables legal aid providers to enhance the effective participation of the child in all procedures that involve them, including how they access their rights and entitlements as children in the case system. Additionally, it prepares them to train and to mentor private sector pro bono legal advisers to assist them in their work and to take on such cases themselves.

Training on child-friendly interview techniques is also important. It will not only enhance the lawyer’s capacity for communicating with the child but will also promote methods that seek to avoid the retraumatisation of the child and enhance the effective participation of the child.

From the DLA Piper mapping, we see that, while specialised training is available to legal service providers in Belgium, France and the UK, there appears to be a need for more specialised training and guidance across Europe. It was noted in a few countries that such specialised training is often carried out by civil society partners such as France [Terre d’Asile](#), the [Immigration Law Practitioners’ Association](#) (UK) and [Save the Children](#) (Finland). For example, ILPA has published a booklet on [Working with children and young people subject to immigration control: Guidelines for best practice](#). Noteworthy examples of guidance from the government include the [Home Office guidance on children’s asylum claims](#).

Furthermore, in some national contexts, the bar association or Law Society plays a key role in fostering expertise in working with children. For example, the Bureau for Legal Assistance of the French speaking Bar of Brussels has a specialised section for “MENA” or foreign unaccompanied children. In France, the National Council of Bars (Conseil National des Barreaux – “CNB”) adopted a resolution in 2017, including a [specific charter for the defence of children’s rights](#), which provides that each bar association should have a group of specially trained children’s lawyers. The CNB also undertakes to make available to all French bars relevant information, tools and training for those working with and assisting children. This unified and multidisciplinary training should enable the bar associations to set up legal assistance which is personalised and adapted to the needs of the child. The CNB has issued a summary concerning [the role of children’s lawyers](#) highlighting its charter as well.

The EU has recognised the importance of training for lawyers and judges and supported projects such as [UPRIGHTS, FAIR and Child-Friendly Justice in Action!](#). In addition to promoting its [Child-Friendly Justice Guidelines](#), the Council of Europe has also

contributed important resources in this field through the European Programme for [Human Rights Education for Legal Professionals \(HELP\)](#) including specialised training courses on: refugee and migrant children; child-friendly justice; asylum; alternatives to immigration detention; combatting trafficking in human beings and other important topics.

KIND's Pro Bono Model Building the Capacity of Partners

An essential part of KIND's pro bono model is the intensive training and guidance program that it provides for its pro bono counsel. Most of KIND's pro bono lawyers are not immigration attorneys. For this reason, training and ongoing mentorship are provided to lawyers to ensure that they are aware not only of relevant laws and procedures, but also trained on multiple aspects of working with unaccompanied child clients, such as child-friendly interviewing techniques and working with victims of trauma. KIND provides both introductory and specialised trainings to pro bono lawyers. Pro bono lawyers typically attend the general introductory KIND training before taking on a case, with numerous additional training opportunities available on a regular basis, including a library of recorded trainings and guidance memoranda. When a pro bono lawyer agrees to represent a child, the lawyer receives a summary of the facts of the case and background materials on the laws and procedures relevant to potential forms of relief that the client may be seeking. As part of its supervision and support, KIND's expert legal staff offers regular check-ins with pro bono lawyers; reviews case filings; and helps pro bono lawyers prepare for immigration agency interviews and court hearings.

Kids in Need of Defense UK Training and Materials for Working with Children

Kids in Need of Defense UK provides training on working with children and delivers a workshop to the team that has taken on each case, which is tailored to working with the specific children that have been referred to them. The Migrant & Refugee Children's Legal Unit have also created specific resources such as their ['My Life' Workbooks](#) to enable pro bono lawyers to obtain information and capture the voice of younger children (usually those aged 13 and under) in an age appropriate manner. They deliver specific workshops on obtaining witness statements from older children using child-centred techniques. Where appropriate they also attend appointments with pro bono lawyers and their child clients in order to support them and model a child-friendly approach so that they can understand how to make their environment and interactions meet the needs of the specific child that they are representing.

General recommendation:

All legal aid providers should participate in foundational and specialised training in order to be able to work with and to represent unaccompanied children in necessary procedures. Specialised legal assistance providers for unaccompanied children should be supported to train and mentor private sector pro bono attorneys to undertake such representation. Ideally, continuing education and specialisation may be fostered and supported by national bar associations.

Additional resources available for necessary services and supports

In order to do their jobs effectively, lawyers and their clients require access to other services, the costs of which ideally should also be covered by legal aid schemes. Most importantly, this includes professional interpretation and translation services, both for their own consultations with their clients as well as for support during relevant procedures with written applications, interviews and hearings.

Specific procedures or applications may require additional evidence such as medical reports, DNA testing or expert country of origin information. This is particularly vital in children's cases when a child may not fully be able to articulate their fear or when they may lack important information about child-specific forms of persecution in their home country.

The DLA Piper mapping shows that State resources are often available to cover essential services such as translation and interpretation in the provision of legal assistance to unaccompanied children. However, the available resources vary greatly between

countries and essential evidence that may be required such as Country of Origin Information or DNA testing is not always covered. Unfortunately, fees for such services may pose a significant barrier for unaccompanied children attempting to claim international protection or to reunite with families. In England, it was noted that while lawyers and state officials have to undergo specific training in interviewing children, this requirement is not made of interpreters and translators, which can then undermine all of the efforts made to be more child-friendly if the interpreter has no skills in that regard. Finally, the mapping also found that support from cultural mediators is not widely available.

KIND's work with experts

KIND's legal staff routinely engages experts and provides guidance to pro bono lawyers on securing experts, who provide crucial evidentiary support for children's protection claims. Medical and mental health experts conduct forensic evaluations to help substantiate, contextualise and encourage the development of case facts. Country condition and thematic experts are utilised by KIND's in-house and pro bono lawyers to demonstrate legal elements of children's asylum claims in the United States. KIND curates a list of such experts and also draws upon other expert databases.

EASO Resources

The European Asylum Support Office (EASO) produces many useful resources for practitioners in the asylum field. It regularly publishes Country Reports and updates on the security situation in countries such as Afghanistan, Iraq and Syria. EASO also maintains the [COI Portal](#), which provides selected Country of Origin Information authored by national asylum authorities, EASO and other EU institutions such as the EU External Action Service. One of its [judicial guides](#) also deals with the practical use of country of origin information and a forthcoming guide will address procedures and substantive law where an application or appellant is vulnerable.

General recommendations:

National authorities must guarantee that free professional interpretation and translation services are available to ensure effective communication between unaccompanied children and their guardians as well as with their legal aid providers. Resources should be available for translation of any necessary documentation as well as interpretation during the application and interview process. Legal aid schemes should include mechanisms to cover other necessary expenses related to supporting and processing the child's claims such as international protection, family reunification and residency.

Child-sensitive procedures through an inter-agency, multidisciplinary case management process

The lawyer will only be able to play their role properly in advising and representing a child in the legal procedures concerning them, if all of the other child's needs are met. The legal procedures themselves also need to be child centred and child sensitive. This means that the lawyer should be playing their role within the context of an inter-agency multidisciplinary case management process. Under this process, lawyers should contribute to and draw from the case management approach, which is required to take account of the child's individual needs and circumstances and to ensure that their rights as children are fulfilled. As explained by ECRE in their principles, "it is important to ensure a good interaction between the national asylum/and or migration system and the child protection system."

In practice, this may require breaking down the silos that exist in many national contexts between child protection measures, such as care and guardianship on the one hand, and law enforcement or immigration control measures on the other hand. As noted above, together with the guardian, the lawyer actively engages to assist the child in bridging this divide and in seeking solutions both regarding protection or immigration status as well as issues concerning care arrangements or potential family reunification.

This is done through an [integrated child protection system](#), where all duty-bearers, such as immigration and judicial authorities, and system components, such as laws and policies, work together to form a protective and empowering environment for all children. This is especially important for unaccompanied children, who are likely to be in the care of the child protection system, but who may need decisions taken in the immigration or international protection systems. Actors from the child protection system not only support children in accessing justice but may themselves be contributing evidence or be engaged in implementing the outcomes of decision making procedures.

KIND Interdisciplinary Model for Service Delivery Including Social Service Supports

The interdisciplinary model for legal service delivery at KIND ensures that the most vulnerable of clients are able to work with a Social Services Coordinator, whose role includes listening, explaining systems in a manner they can understand and making referrals to other service providers. When needed, they can also accompany the child to community partner agencies, health care offices and schools in order to establish a successful referral. Working from a trauma-informed lens, staff is cognizant that having a caring adult is essential in buffering the negative effects of toxic stress and trauma and to harness resilience.

In KIND's experience, many children in deportation proceedings benefit from receiving concurrent social services supports along with legal representation. More than just allowing the children to focus on the needs of their legal case by addressing social service-related stressors, social service supports also provide children with an increased ability to navigate complex U.S. systems, while often reducing language and other barriers to accessing these services. Child clients benefit from receiving the necessary supports aimed at mitigating the effects of complex trauma histories, interrupted schooling and challenges associated with prolonged separation, including mental health issues, disruption with sponsors and being at a higher risk for re-traumatisation. It is critical to address their mental, physical and social service needs so that children can participate fully in their immigration cases and successfully integrate into their new communities. Providing strong social services referrals means healthy integration into the community. Addressing social services needs not only improves legal outcomes; it provides children with a support system and offers them the best chance at a healthy and productive future.

General recommendations:

Child-centred and child-sensitive procedures should be in place to empower the lawyer to fully support the child in pursuing and fulfilling their rights. Inter-agency multidisciplinary case management should lead to more fair and efficient outcomes for children.

Effective monitoring, accountability and complaints mechanisms

In addition to a clear entitlement to legal aid in law and child-sensitive provision of legal assistance, on a systemic level it is also crucial that unaccompanied children are able to hold actors accountable and that measures are in place to monitor practices and to assure quality. This includes access to child-friendly complaints mechanisms. Independent monitoring and reporting measures provide accountability for the safety and well-being of children during relevant procedures and also build confidence and trust in the system.

Overall, from the DLA Piper mapping, we can see that there is a need and an opportunity for accountability and complaints mechanisms to be strengthened. In a few of the national systems reviewed, it is possible for a child, usually with the support of their guardian, to bring a complaint concerning their lawyer to the president of the national bar association (Belgium and Luxembourg) or the Disciplinary Board of the Bar Association (Finland).

The Coram Children's Legal Centre, as part of their Migrant Children's Project, produced a *fact sheet* covering legal representation for children and young people that advises children and their guardians on what to do should the child wish to bring a complaint against their legal representative and covers the steps involved in changing solicitors.

In the UK, if an unaccompanied child has a complaint in relation to legal services providers that cannot be resolved satisfactorily in accordance with the firm's or barrister's chambers' complaints procedure, then a further complaint can be made to the [Legal Ombudsman](#) in the case of solicitors, or to the Office of the Immigration Services Commissioner in relation to immigration advice. A complaint about a barrister should also be made to the Legal Ombudsman. In addition to the regulatory bodies discussed above, legal representatives, who are funded via legal aid in England, Scotland and Wales, are also subject to Peer Review by the Legal Aid Agency and a selection of their files are reviewed by a practising legal aid immigration solicitor to assess their competence. If they are assessed as 'below competent' or 'non-competent' this can lead to them losing their contract to provide legally aided advice.

Depending on the kind of concern or complaint, it may also be an effective remedy for an unaccompanied child to complain to a regional or national Ombudsperson (e.g., [Flanders](#), [Walloon](#) and [Luxembourg](#)). Another noteworthy example is Germany, where the [Bundesnetzwerk Ombudschaft Kinder-und Jugendhilfe](#), an independent institution, advises children on matters such as their entitlements and benefits, accepts complaints from children regarding the work of the Youth Welfare Office and provides mediation services.

General recommendations:

Measures should be in place to ensure that accountability and monitoring mechanisms are in place. Children should be able to make a complaint against their legal assistance provider or to request a change of lawyer. There should be clear sanctions and measures applied to legal assistance providers in case of breach of the law or code of conduct. EU measures should promote accountability and independent monitoring as regards the application of procedural safeguards for unaccompanied children.

Focus on jurisprudence

While there is continued debate in some countries on the extent to which children's rights and CRC principles, such as the best interests of the child, are justiciable, it is clear that, children's rights and best interests have increasingly been the concern of courts across Europe in recent years.

It is not only national courts contributing to this growing body of jurisprudence, but also the European Court of Human Rights and the Court of Justice of the European Union. Additionally, the European Committee of Social Rights has made significant decisions concerning the rights of migrant children and their protection and the UN Committee on the Rights of the Child has considered dozens of claims on behalf of migrant children since its communications procedure came into force in April 2014.

Judges and decision makers from these fora have examined a variety of different claims affecting migrant and asylum seeking children, including unaccompanied children. For example, in the case [EUROCEF v. France](#) the European Committee of Social Rights found violations to social, legal and economic protection on several grounds (violations of Article 17§1 of the Charter) due to: shortcomings identified in the national shelter, assessment and allocation system of unaccompanied children; delays in appointing an ad hoc guardian for unaccompanied children; the detention of unaccompanied children in waiting areas and in hotels; the use of bone testing to determine the age of unaccompanied children considered as inappropriate and unreliable; and a lack of clarity to access an effective remedy for unaccompanied children. Most recently, the UN Committee on the Rights of the Child has issued their views regarding how [age assessment procedures in Spain violated children's rights](#).

The European Court of Human Rights (ECtHR) has notably dealt with cases concerning violations of Article 3 (prohibition of torture and inhuman and degrading treatment) and Article 5 (right to liberty and security) of the European Convention of Human Rights in decisions concerning detention and expulsion. These judgements have concerned many different aspects of the lives of unaccompanied children, including cases concerning irregular entry and alleged pushbacks, detention, or failure to provide a guardian and deportation cases. Judgments from the Court may bring immediate changes for those concerned since advocates may request that the Court issue [interim measures](#) in exceptional situations where inaction may lead to imminent risk of irreparable harm. For example, such measures may require a State to transfer a child to adequate reception facilities or to suspend an expulsion order. In 2019, [the ECtHR granted interim measures](#) that meant that the Greek authorities had to transfer the children concerned to a special centre for unaccompanied children and to ensure that their reception conditions were compatible with Article 3 and the applicants' particular status.

Having regard to the best interests of the child, the Court of Justice of the European Union confirmed in [C-648/11 MA and Others vs. Secretary of State for the Home Department](#) that where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the “Member State responsible.”

Moreover, in a recent landmark judgment in Case C-441/19, [TQ v Staatssecretaris van Justie en Veiligheid](#), delivered in January 2021, the Court of Justice of the European Union held, inter alia, that *“before issuing a return decision against an unaccompanied minor, the Member State concerned must carry out a general and in-depth assessment of the situation of that minor, taking due account of the best interests of the child.”*

Quality legal assistance for unaccompanied children is an important contributing factor to the development of this important jurisprudence at the regional level. The support of an independent guardian and qualified lawyer empowers unaccompanied children to navigate complex systems and to claim their rights before these specialised and sometimes remote fora, when national remedies have been exhausted. Equally, quality legal assistance is essential to ensure that such jurisprudence is subsequently relied on in national proceedings in cases involving other children, where they can be of direct relevance or interpretative assistance.

Lawyers who can bring together the jurisprudence from all of these sources will be better placed to argue their client’s cases fully. Case resources such as the detailed case notes prepared pro bono by White & Case LLP can be used for training specialised lawyers as well as to inform future strategic litigation efforts. There is also a need for further analysis of the implementation of the CRC concerning specific issues of concern across different jurisdictions, building on the analysis provided in [UNICEF OHCHR’s 2012 study on the judicial implementation of the best interests principle](#). This might be particularly helpful in jurisdictions which fully recognise the applicability of the CRC in cases concerning migrant children. For example, in Scotland, the CRC is currently being incorporated directly into the law, which would allow it to be relied upon in Scottish courts in the near future.



3.

SITUATIONS GIVING RISE TO ACUTE CHALLENGES AND OPPORTUNITIES

For quality legal assistance for unaccompanied children

The negotiation of EU migration and asylum policy reform currently hinges on the procedures to address two key moments: how individuals seeking asylum or arriving irregularly are treated at the border (pre-screening and border procedures) and how those seeking protection might then be transferred between States so that the responsibility for hearing their claims is shared (so-called “procedures” and “solidarity mechanisms” under the new proposal on a regulation for management of asylum and migration).

Both situations present acute challenges and opportunities for quality legal assistance of unaccompanied children. The EU has a significant role in their regard and this chapter explores them more closely.

In particular, in border settings, the risk to children of being denied access to the territory, ordinary procedures, necessary protection and assistance is high. Worryingly, access to legal assistance in such contexts may be unavailable or strictly limited. Legal assistance is also typically very challenging in cases where a transfer of responsibility for the child between States is being contemplated, such as during relocation, Dublin procedures or family reunification. Transnational processes, involving actors from different countries, are frequently complex and protracted.

Both situations have occupied much public attention in recent times in both the EU and the United States. At the EU borders, we have seen the establishment of hotspots in Greece and Italy, disembarkations from rescue at sea in Lampedusa, Malta and Spain, and [pushbacks](#) at the Balkan borders and in the Mediterranean Sea. Transnational procedures regularly take place in the form of Dublin transfers, relocation and sometimes returns to third countries. In the United States, there have been restrictive deterrence policies such as the so-called Migrant Protection Protocols also known as “Remain in Mexico” and practices such as “metering,” which limits the number of asylum seekers whom the authorities at points of entry will process during a given period. Most notoriously, in recent times, the “zero tolerance” policy instituted family separations, leaving many children separated from their parents indefinitely. While this policy ended in June 2018, family separation did not, and since then more than 1,150 children have been separated from their parents under strict law enforcement measures carried out by the Customs and Border Protection authorities.

Enhancing legal assistance for unaccompanied children in these two situations is imperative to avoid negative consequences such as serious violations of the rights of these children from refoulement to family separation. And enhancing legal assistance and representation has the positive consequence of providing better opportunities to find real durable solutions, which fundamentally shape the directions of these children’s lives.

Ensuring access to territory, special safeguards in screening procedures and exemption from border procedures for unaccompanied children

In EU law, there are currently no mandatory border procedures requiring Member States to put in place accelerated decision making on certain claims at the border. Member States are permitted to establish such procedures but not required to do so. In the context of the recent EU reform, it became clear that such EU mandatory border procedures were under active consideration. In May 2020, KIND and Child Circle published a [Briefing Paper and Key Recommendations Concerning Measures at EU Borders for Unaccompanied Children](#). The Briefing Paper underlined that border procedures should never be used to adjudicate the claims of unaccompanied children and that unaccompanied children should be referred away from the border to proper reception and assistance. We also underlined that concrete measures and safeguards must be in place so that screening procedures at borders can provide the crucial opportunity to identify unaccompanied children and to ensure that they are protected from serious risks, including trafficking, violence and neglect.

The EU Migration and Asylum Pact, which was published in September 2020 and proposes new screening measures and mandatory border procedures, notably also includes a specific exemption from the mandatory border procedures for unaccompanied children. We urge the Council of the European Union and the European Parliament to agree that exemptions from border procedures for unaccompanied children be enshrined in EU law and that safeguards necessary to ensure these exemptions apply in practice.

Border procedures often take place at remote locations, in restricted facilities and with limited availability of appropriate personnel and services, including those specifically responsible for ensuring that procedural guarantees for unaccompanied children are met. Typically, there is a lack of vital independent support and assistance, with children finding it difficult to access guardians and lawyers, and with lawyers constrained in their ability to consult with children.

Borders are not the setting in which States can discharge their duty to find durable solutions for children, a process which involves best interests assessments and best interest determinations, taking account of the child's individual circumstances and rights. A durable solution process demands a multidisciplinary approach, proper procedures and adequate time to build a relationship of trust with the child as well as to gather and examine information. Cases may involve transnational procedures, for example, in Dublin cases, where the child has family members in another country. Successfully identifying and implementing a durable solution requires adequate support and assistance for the child. Key procedural safeguards in this process are guardianship and quality legal assistance.

In contrast, accelerated border procedures are precisely designed to decide on the eligibility of claims in a quick and summary manner, typically with limited access to appeals. By their nature, they are not suitable to ensure access to the special procedural safeguards required for unaccompanied children and age-disputed individuals, nor are they equipped to examine the broader range of considerations that need to be taken into account in decisions concerning unaccompanied children.

These problems are aggravated by the fact that, in and of themselves, border procedures often become protracted due to lack of capacity at the frontline and frequently involve detention or restrictions on liberty of movement, which put the children's mental and physical health at serious risk, with long-term consequences.

The CRC applies to all children within the jurisdiction of the State, including children attempting to enter the State.

It requires that special protection and assistance must be provided to unaccompanied children. Protection and assistance should begin at the border and the best interests of the child should be a primary consideration in all decisions and actions affecting children from the border onwards.

Consequently, when national authorities encounter unaccompanied and separated children, two key State responsibilities arise simultaneously - migration management and child protection.

Border procedures must be shaped to take account of both and, in doing so, must ensure that immigration control measures do not override the best interests of the children concerned.

Screening Procedures

Accordingly, screening procedures in relation to unaccompanied children in place at borders should operate in order to identify unaccompanied children and refer them rapidly away from the border. This ensures them access to proper reception and special procedural guarantees. Every unaccompanied child should be supported by a guardian and have access to legal assistance before any procedures are initiated, in particular, those which may have long-term consequences for the child and which should be informed by a formal examination of their best interests. Where doubts arise as to age, the individual should be given the benefit of the doubt and referred away from the border and into a multidisciplinary age assessment with safeguards including a temporary guardian and access to legal assistance.

We recognise that policy makers and authorities may be concerned that referring unaccompanied children away from borders undermines effective border management. They may believe that certain child-specific safeguards will allow the processing at the border of children's claims.

However, experience within the Greek hotspots shows that failing to put in place a child-sensitive entry system, which ensures the identification and onward referral of unaccompanied children, leads both to significant violations of children's rights as well as to significant bottlenecks in border management.

We recommend strong safeguards be in place in relation to screening procedures, including as regards the treatment of age-disputed individuals. This includes access to information, and temporary guardianship during screening procedures. Child protection professionals, rather than exclusively immigration officials, should be present at screening unaccompanied children, as child protection concerns need to be elevated in this immigration setting. Such safeguards in screening procedures also diminish the risk that unaccompanied children may be exploited and "attached" to unconnected adults as their family members so as to avoid border procedures.

It may also require legal assistance to the extent that any interviews during the screening procedures have an impact ultimately on the status determination procedures (for example, where information is gathered during debriefing processes that may impact on the child's claim, including in credibility assessments). We also underline the need for qualified legal assistance to challenge decisions that refer age-disputed children into border procedures. Legal assistance at the border might also be relevant to public health decisions.

In light of myriad policies previously discussed that have been put in place to prevent or deter access to the United States border, legal assistance for children seeking access to the United States has become critically important. For example, representation by KIND attorneys has prevented the expulsion under the COVID-19 public health order of more than 100 unaccompanied children at the border seeking U.S. protection.

Independent monitoring mechanisms must be in place to ensure these safeguards are applied.

Moreover, we believe that, even when unaccompanied children are exempt from them, strict border procedures such as those proposed by the European Commission which reduce procedural safeguards, including access to legal assistance, and which include the possibility of protracted detention, carry indirect risks for all children before and around the border. The Commission proposal does not exempt families with children over 12 years old from border procedures. If families with older children can fall under such procedures, this will be a violation of those older children's rights.

Such rules also clearly pose a risk that they may generate family separation. This example has been borne out at the U.S. border, where the Migrant Protection Protocols policy has forced asylum seeking adults and families to remain in Mexican territory while their claims for asylum proceed in U.S. immigration courts. Over 70,000 asylum seekers, including families with babies and toddlers, have been trapped in dangerous conditions on the Mexican side of the border, in some cases for over a year. Children, whose parents were unable to protect themselves or their children from organised crime along the border, or unable to obtain necessary medical care for sick children have, in hundreds of cases, been rendered unaccompanied. Alone, without the protection

of their parents, they were later processed as unaccompanied children. Where families are separated because of border procedures, this can cause long-term harm and ultimately lead to long and drawn-out family tracing and reunification procedures. Accordingly, we recommend that there be an exemption from border procedures and restrictions on liberty for all families with children, without imposing the age limit of 12 years.

More fundamentally, we believe that the border procedures of the kind proposed by the Commission, which may lead to protracted detention and reduced procedural safeguards, hold the potential to violate the rights of many adults, particularly those in a vulnerable situation.

We are also concerned that the proposed procedures are not clearly warranted or even workable. As to workability, the procedures raise the possibility of closed centres at ports of arrival across the EU, which risks replicating the failed EU hotspot approach in Greece throughout the EU. Moreover, such procedures clearly raise the possibility of people attempting more dangerous irregular crossings, arguably putting a premium on the people smuggling business and increasing unaccompanied children's vulnerability to trafficking.

Finally, we are concerned that the EU's emphasis on mandatory border procedures will divert resources and action away from those measures that would prove more effective both at managing migration and fulfilling fundamental rights obligations. These include the provision of information, assistance and support, proper reception and effective status determination procedures, as well as integration measures or active case management of voluntary return. We believe in particular that free quality legal assistance can play a significant role in this approach, to produce better and more sustainable outcomes for children and States.

General recommendations:

Unaccompanied children should not be denied access to the territory. Safeguards should be in place in screening procedures at the border to identify them, provide immediate support and assistance and refer them away from the border to proper reception and proper status determination procedures. Unaccompanied children should be exempt from border procedures, including expedited procedures to examine their claims for protection. No child should be deprived of their liberty on migration-related grounds. Unaccompanied children should be provided with alternative care arrangements. Families should not be separated and, instead, should be referred into alternatives to detention in the community supported by case management.

Providing legal assistance in transnational procedures with a focus on relocation within Europe

The transfer of asylum seekers, including unaccompanied children, from one EU Member State to another has long been the subject of EU rules. In such transnational procedures, asylum seeking unaccompanied children may be involved in transfers to other countries in order to reunite them with their families as quickly as possible. States may also be involved in procedures to relocate asylum seeking unaccompanied children away from difficult conditions to other countries which can offer them better safety and care. In other situations, an unaccompanied child may have entered the EU through one Member State, lodged an application and subsequently travelled independently (or by a smuggler or trafficker) to another Member State. Under the EU Dublin Regulation, a transnational procedure then may be used by national authorities in that State to address whether the child should be transferred back to the first Member State, for the determination of their international protection claim there.

The ongoing reform of EU law addresses such transnational procedures, and indeed proposes a further transnational procedure, under the proposed Return Sponsorship Mechanism. The latter anticipates that one EU State (State A) may support another EU State (State B) in implementing the return decision of an individual in State B to a third country outside the EU. If return to a third country cannot be effected, the individual may then be transferred from State B to State A. There are serious questions about whether the proposed relocation procedure for these purposes will be in line with the EU Charter for Fundamental Rights. Moreover, there appears to be no exclusion of transfers of unaccompanied children under this mechanism.

It is eminently clear that unaccompanied children have an acute need for legal information and legal assistance, as well as guardianship, to navigate transnational procedures, in their current form and as set forth in proposed EU legislation. A lawyer will play a vital role in ensuring that the child understands the legal pathway involved for them, through this transfer onwards to another country. This need for legal advice is accentuated by the fact that such cases are typically complex and may be particularly challenging for all involved, for a range of reasons.

Procedures themselves are often unclear

These transnational procedures often prove to be unpredictable and protracted. Key problems include lack of clarity in the law on procedural steps and unclear accountabilities for the authorities, who may be involved. Frequently the transnational procedures established by EU and international law are set out in very general terms. Detailed procedures regulating their application are not in place. Sometimes schemes exist without a statutory basis or without formal procedures being in place.

Lack of child friendly information

From the starting point, children often lack information or receive only very limited information from the State. Such information may effectively “compete” with that provided by smugglers or traffickers, who may have an interest in keeping children away from State procedures.

Best interests procedures need to be robust

Although there is increasing recognition of the application of the best interests principle to such transfers, the way in which the principle is applied in procedures of this kind clearly needs further development at the EU level to ensure that formal and robust procedures, with the right safeguards, are in place. This is because a transfer to another country is a very significant step in the pathway of a child, which will likely have long-term consequences and may limit future options available to the child. Consequently, the greater involvement of a guardian in transnational procedures, foreseen in the new proposals from the Commission, is clearly welcome. But it is also important that the child and their guardian receive legal assistance prior to and during any transnational procedure. [Indeed, General Comment No 14](#) of the UN Committee on the Rights of the Child to have his or her best interests taken as a primary consideration provides that, *“The child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies.”*

Relocation and family reunion

In some cases, the transfer procedure is in place to facilitate an outcome that should generally be in the best interests of the child concerned (e.g., family reunion or relocation from overcrowded camps). However, that does not mean that a child does not need legal assistance to ensure that these procedures will be successful in their outcomes and not unintentionally damaging. It is vital to ensure that reunification with a particular family member is indeed the right decision, and to ensure that the appropriate reception and support exists for a child. For example, a child may be reunited with a sibling in a country but should still benefit from a guardian in that country. A transfer procedure may need to determine the extent to which other rights of the child are fulfilled (e.g., special needs, medical or otherwise) as it depends on services available. Ultimately, a transfer decision will have a significant impact on the possible durable solutions that may be available to a child (e.g., in the event that the child is not recognised as a refugee, whether any non-harmonised national protection statuses are available and whether such status would ensure a pathway to permanency or even citizenship) as these will vary depending on the country to which a child is transferred.

Transfer back to a country that a child has left

In other cases, States may be considering a transfer of a child for migration management reasons. For example, the Commission proposes a rule whereby unaccompanied children will be transferred back to EU States 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, alongside ensuring any claims they may have to be transferred to another country are 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 relation to demonstrating their best interests.

In fact, there is no lesser need in these cases for a proper 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 the decision makers.

Such best interests assessment should always involve the guardian and legal assistance. Both the guardian and the lawyer's involvement may be critical to identify the implications of such a transfer for the child. This includes the perspective of stability and safety for the child, as well as consideration of the most appropriate legal pathway for the child (including examining durable solutions other than international protection, for example, in certain trafficking cases). Indeed, the involvement of the guardian and lawyer might precisely facilitate the smooth transfer of responsibility for the child to the first country.

Making best interests determinations in transnational procedures workable

Obviously transfers between European countries typically arise in circumstances where it is important to act swiftly. However, this does not mean that procedures should be too cursory and that children and their guardians should not benefit from information and legal assistance as well as the time to establish communication and a relation of trust. On the other hand, transnational procedures should not be so cumbersome as to choke the possibility of transfers entirely, as sometimes seems to be the case, particularly in Dublin family reunification procedures. Indeed, legal assistance can be crucial to ensure proper assessments and decision making.

Many hurdles have been observed in Dublin family reunification procedures for those arriving on the Greek Aegean islands, mainly as regards the evidence and proof needed and the specific requirements to be met. In particular, for every case of an unaccompanied child seeking reunification, the submission of a Best Interest Assessment form (BIA) is required. However, the capacity of actors to conduct the necessary BIAs within the deadlines is limited. In a number of cases it was observed that certain additional documents, which are very difficult to gather, are requested without justification, and the authorities doubt the authenticity of important original evidence.

Another common request is the provision of a translation of documents submitted in support of the application. In many cases a DNA test is required, a slow and often complicated process, which requires the support of a Greek lawyer/guardian and significant effort and expense from the relative's perspective. Due to the short deadlines and the frequent requests for further evidence, it is sometimes almost impossible to complete all the necessary actions (gathering of documents, submitting memos in re-examination applications, DNA tests) within the time frames. On the other hand, there have been many delays in the authorities responding, especially in re-examination requests, and often then only after reminders.

In Greece and elsewhere, due to the COVID measures, the procedure has become more complicated. At the same time, communication with authorities concerning re-examination requests and the need of additional evidence is slower and more difficult, which makes it even more challenging to meet the deadlines. Time delays have also been observed in the transferring of children, with flights to specific countries suspended or cancelled due to COVID. This causes frustration to the children and their relatives and creates a risk that the 6-month deadline for the transfer of the child to the receiving country, as set out in the Dublin Regulation, is missed.

More generally depending on the circumstances of the child, the best interests process may in certain cases require more time and examination of more factors concerning the future fulfilment of the rights of the child concerned. Sometimes the questions involved in examining the best interests before a transfer of a child may concern complex questions of law and evidence. Legal advice commensurate with the situation should always be available. Ideally, it should feed into an inter-agency, multidisciplinary case management process, which also facilitates any necessary cross-border cooperation between lawyers and other actors working with the children (for example, when reunification with relatives is being considered).

Cross-border mechanisms

Clear and detailed mechanisms should be in place to facilitate cooperation between the actors who are responsible for assisting the child in different countries to advance the examination of the best interests. Such cross-border mechanisms will also ensure that transfers take place in the proper way.

The transfer decision and procedure should ensure that information pertinent to the child's claim is transferred to the actors responsible for supporting and assisting the child in the second country. Any transfer of information should be done with the consent of the child or their guardian and in a way that respects data privacy rules.

Following the transfer, children typically still need to go through status determination procedures. In this regard, both the child and decision making would benefit from continuous, stable assistance and representation. However, there are not always sufficient mechanisms in place to facilitate this when a transfer is undertaken, despite the fact that this might render status determination decision making more efficient.

Measures to provide clear and complete information to the child and their guardian and to facilitate referrals from the child's guardian and lawyer in one country to the child's guardian and lawyer in another country, might be better promoted and facilitated by EU measures.

Accordingly, transnational procedures should be carefully designed and resourced to function effectively and efficiently.

This requires the development of more detailed EU measures on information, support and assistance to children, best interests procedures, cross border cooperation and transfer procedures.

The development of such measures can be informed by recent experience, including those relocations following the recent fire in the Moria camp as well as long standing experience of challenges in Dublin procedures. Many of these issues are documented in a range of ways, including through resources such as this [report](#) on relocations by the Fundamental Rights Agency, this [study](#) for the European Parliament and reports by NGOs, including ECRE's [report](#) on the application of the Dublin Regulation.

General recommendations:

Transnational procedures (including those addressing family reunification, Dublin transfers and relocations) must involve and facilitate the provision of quality legal assistance, by:

- being child-centred, transparent, clear and sufficiently detailed
- based on a robust examination of the best interests of the child
- addressing both international protection or immigration status as well as parental responsibility and care planning
- including provisions that ensure stable and continuous assistance, including legal assistance, to unaccompanied children, including post transfer

KIND Mexico Cross-Border Case Management and Pre-Departure Assistance:

KIND launched work in Mexico in February 2020 to ensure provision of legal information, counseling and assistance to unaccompanied children at the U.S.-Mexico border. KIND lawyers working at the border assist children seeking to access protection in the United States and engage with actors across sectors and on both sides of the border to ensure continuity of services for children once in the United States.

KIND attorneys who are based at the U.S./Mexico border engage with child welfare officials in both Mexico and the United States to seek appropriate placement and services while the child is in government custody.. The attorney initiates communication with the U.S.-based relatives of an unaccompanied child while the child is still in Mexico in order to expedite the family reunification process for children once in the United States, and to resolve any potential obstacles to reunification.

When a child reunifies with family in the United States where KIND has an office, the KIND border lawyer transfers the case to a KIND lawyer in the city where the child resides. When a child reunifies with family in a location where KIND does not have offices, the KIND border attorney works to secure legal representation for the child with an attorney outside of KIND. The border attorney also works closely with KIND social services coordinators to identify services and resources for the child and family in the city where the child reunifies. If an unaccompanied child is particularly vulnerable, for example a child of tender age or a child with significant special needs, the KIND border attorney may also coordinate with child advocates from the Young Center for Immigrant Children's Rights to seek appointment of a Child Advocate to the case.

CONCLUSIONS:

Call to action for European Union actors

The EU has a vital and multifaceted role to play in ensuring free quality legal assistance as a central safeguard for unaccompanied children in migration across the EU. We call on all EU bodies to play their role in achieving progress.

What must be achieved?

What EU measures are involved?



1.

LAW REFORM

involving European Parliament, Council of Ministers and the European Commission

This includes:

- Access to free quality legal assistance in all procedures
- Access to appropriate forms of legal assistance at all stages of procedures
- Requirements for specialised knowledge and training for legal assistance providers
- Requirements for professional interpreters
- Requirements for accountability and monitoring of procedural safeguards for unaccompanied children, including the availability and quality of guardianship and legal assistance, as well as child friendly complaints mechanisms

This requires clear provisions to this effect in:

- Proposed EU Asylum Procedures (asylum seeking children) and EU Asylum and Migration Management Regulations (all children)
- The ongoing revision of the EU Return Directive
- Any future revision of the EU Anti-Trafficking Directive or through measures to support implementation of the EU Anti-Trafficking Directive (trafficked children)

This includes:

- Identification measures, including proper age assessment procedures with safeguards
- Prompt access to independent guardians
- Child-sensitive information
- Involvement of child protection officials in identification and referral mechanisms

This requires clear provisions to this effect in:

- Proposed EU Asylum Procedures (asylum seeking children) and EU Asylum and Migration Management Regulations (all children)
- The ongoing revision of the EU Return Directive
- Any future revision of the EU Anti-Trafficking Directive or through measures to support implementation of the EU Anti-Trafficking Directive (trafficked children)

Ensure EU law contains an entitlement to **free quality legal assistance** for unaccompanied children

Ensure EU law contains the **safeguards** necessary for access to legal assistance

Ensure EU law contains appropriate screening mechanisms at the border to ensure unaccompanied children are identified and referred to normal procedures

This includes:

- Involvement of child protection officials
- Temporary independent guardians at the border
- Child-friendly information
- Availability of legal assistance
- Effective remedies against a failure to refer away from the border

This requires clear provisions to this effect in:

- The proposed EU Screening Regulation

Ensure EU law contains exemptions for unaccompanied children from mandatory border procedures

This includes:

- Explicit exemption for unaccompanied children
- Benefit of the doubt for age disputed individuals

This requires clear provisions to this effect in:

- The proposed EU Asylum and Migration Management Regulation

Ensure EU law enables and promotes the establishment of national durable solution procedures based on the best interests of the child

This includes:

- Clear and detailed procedures on best interest determinations
- The removal of proposed provisions to impose return decisions directly after the failure of a claim for international protection

This requires clear provisions to this effect in:

- The proposed CEAS legislation
- The revision of the EU Return Directive
- The implementation of the EU Anti-Trafficking Directive

Ensure EU law provides appropriate guarantees for children within families at the border, also to avoid family separation

This includes:

- Border procedures should exempt all families with children and not just families with children under 12 years old

This requires clear provisions to this effect in:

- The proposed EU Asylum and Migration Management Regulation

Monitoring and accountability mechanisms at the border and elsewhere should explicitly concern the availability of these procedural safeguards in relation to unaccompanied children

This includes:

- Involvement of independent monitors with child protection expertise
- Use of child-specific indicators, including on the availability of information, support, guardianship and legal assistance to children
- Child-friendly complaint mechanisms

This requires clear provisions to this effect in:

- The proposed EU Screening Regulation and EU Asylum and Migration Management Regulations

Build effective transnational procedures in the law concerning transfers of children

This includes:

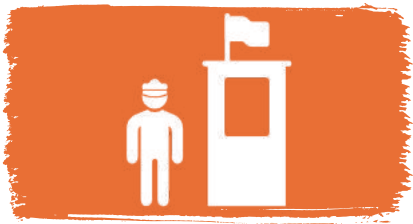
- Clear and detailed procedures on best interests determinations before any transfer
- With support and legal assistance to children
- Inter-agency and multidisciplinary case management to allow cooperation across borders
- Measures to facilitate continuity and stability of assistance

This requires clear provisions to this effect in:

- The proposed Screening Regulation and Asylum and Migration Management Regulation
- The revision of the EU Return Directive
- The implementation of the EU Anti-Trafficking Directive provisions on durable solutions

What must be achieved?

What EU measures are involved?



2. EU OPERATIONAL PROCEDURES

in particular the work of EASO, FRA and Frontex

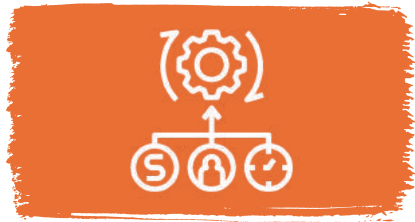
Promote access to legal assistance of unaccompanied children in hotspots, at borders, at disembarkation and on return processes

The work of the EU agencies at the borders, in ports and in return procedures must promote and facilitate access to legal assistance providers

EU monitoring and accountability mechanisms

- EU monitoring mechanisms for the operational activities of the EU agencies
- Involvement of independent persons with child protection expertise
- Use of child-specific indicators, including on the availability of information, support, guardianship and legal assistance to children
- Child-friendly complaint mechanisms

What must be achieved?



Support Member States to ensure quality of legal assistance

What EU measures are involved?

3. EU PRACTICAL MEASURES OF SUPPORT involving the Commission, the EU Fundamental Rights Agency, the EU Asylum Support Office (EASO) and the European Coast and Border Guard Agency (Frontex)

- Facilitating exchange of experience and good practice between States
- Promoting the role of guardians to improve access to legal assistance through activities in the European Guardianship network
- Capacity building for lawyers, adjudicators, judges and guardians, as well as interpreters
- Explore the development of guidance on quality legal assistance for unaccompanied children (Commission/EASO/FRA), potentially along the lines of the guardianship handbook produced by the Commission and FRA
- Improve case management through practical tools, including in transnational procedures concerning transfers of unaccompanied children between EU States
- Raising awareness of specific issues for migrant children in application of EU justice directives on victims' rights and procedural safeguards for child suspects and accused
- Providing regional resources for legal assistance providers
- Support for innovative measures which can extend the availability of legal assistance, including at the borders, for unaccompanied children, such as through law clinics and private sector pro bono

This includes in or through:

- The upcoming EU Child Rights Strategy
- The implementation of the Communication on the protection of children in migration
- The upcoming EU Anti-Trafficking Strategy and
- EU agency action, including the work of the vulnerable experts network of the European Asylum Support Office



A CALL TO ALL ACTORS:

As can be seen from this body of recommendations, there is room and opportunity for considerable progress to be made at the EU level in improving the legal assistance provided to unaccompanied children. There are also significant challenges to be faced, including those changes wrought by Brexit, which will raise difficult questions of law and practice and require the development of new mechanisms for cooperation to fulfil the best interests of unaccompanied children.

EU work should also connect with the work of a wide range of regional and international bodies, including the work of the Council of Europe and the UN Committee on the Rights of the Child and the UN Committee on the Rights of Migrant Workers and their Families, following their recent adoption of joint General Comments concerning children's rights in the context of international migration.

Other stakeholders play an important role in working together with the EU and national authorities to create the means to meet this challenge. We call on the EU to continue and strengthen its cooperation with the vital work of NGOs and IGOs in the field.

We also see the contribution that can be made by the legal profession themselves, including bar associations and law societies, and this should be actively promoted. Public interest engagement by the legal community also provides the means to help build the right tools and processes in this pioneering work—and could contribute to building an enduring system.

Our fundamental recommendation is that free quality legal assistance should be available to all unaccompanied children for all relevant procedures affecting them and that best interests procedures are improved and justiciable for all cases involving children. However, it is clear that there are many gaps and a lengthy road ahead to fulfil this legal requirement completely. In the meantime, the model of pro bono legal assistance in the United States, which the KIND partnership is helping to support in Europe—bringing more resources to the table—may provide useful inspiration in the immediate future in Europe to fill the representation gaps.

Advancing Protection

for Unaccompanied Children in Europe by Strengthening Legal Assistance

Looking forward to 2021, KIND and its European partners remain committed to foster innovative approaches as regards legal assistance and representation, by expanding the quality assistance available to unaccompanied children and contributing to stronger case management.

With recent developments in the United States we see opportunities for a positive evolution of the law, policy and practice that applies to unaccompanied children there and in the Americas. KIND and Child Circle look forward to continuing to exchange transatlantic learnings to bolster progress in both Europe and the Americas.

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